



Northern Ireland
Assembly

Committee for the Environment

Report on the Local Government Bill (NIA 28/11-15)

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

Ordered by the Committee for the Environment to be printed 20 February 2014
Report: NIA 139/11-15 (Committee for the Environment)

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 2011 has been as follows:

- Ms Anna Lo MBE (Chairperson)
- Ms Pam Cameron (Deputy Chairperson)⁷
- Mr Cathal Boylan
- Mr Colum Eastwood⁴
- Mr Tom Elliott²
- Mr Alban Maginness³
- Mr Ian McCrea¹
- Mr Barry McElduff⁵
- Mr Ian Milne⁶
- Lord Morrow
- Mr Peter Weir

1 Mr Ian McCrea replaced Sydney Anderson on 16 September 2013

2 Mr Tom Elliott replaced Mr Danny Kinahan on 23 April 2012

3 Mr Alban Maginness replaced Mrs Dolores Kelly on 7 October 2013

4 Mr Colum Eastwood replaced Mr John Dallat on 18 June 2012

5 Mr Barry McElduff replaced Mr Chris Hazzard on 10 September 2012

6 Mr Ian Milne replaced Mr Francie Molloy on 15 April 2013

7 Mrs Pam Cameron replaced Mr Simon Hamilton as Deputy Chairperson on 10 September 2013

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List of Abbreviations

The Minister	The Minister for the Environment
The Department	Department of the Environment
CPPs	Community Planning Partnerships
DOE	Department of the Environment
ALGFO	Association of Local Government Finance Officers
CiNI	Children in Northern Ireland
EU	European Union
GPC	General Power of Competence
NIAO	Northern Ireland Audit Office
NICCY	Northern Ireland Commissioner for Children and Young People
NIEL	Northern Ireland Environment Link
NILGA	Northern Ireland Local Government Association
NIPSA	Northern Ireland Public Service Alliance
NIRIG	Northern Ireland Renewables Industry Group
NIWEP	Northern Ireland Women's European Platform
QMV	Qualified Majority Voting
RTPINI	Royal Town Planning Institute Northern Ireland
RSPB	Royal Society for the Protection of Birds
STC	Statutory Transition Committee
STV	Single Transferable Vote

Executive Summary

1. This report sets out the Committee for the Environment's consideration of the Local Government Bill.
2. The Bill consists of 128 clauses, 16 Parts and 12 Schedules. The Bill will establish a new framework for the reorganisation of local government and will impact on every aspect of the operation of councils, including how decisions are made, how positions of responsibility on a council are shared across the political parties, and how improvements in the delivery of council functions can be achieved. The Bill will also see the introduction of a new ethical standards regime and council-led community planning.
3. Members sought a balanced range of views as part of their deliberations on the Bill and requested evidence from interested organisations and individuals as well as from the Department of the Environment.
4. The Committee was broadly supportive of the Bill and agreed the majority of clauses as drafted. However, members expressed concerns about aspects of the procedure for investigating complaints against councillors under the Code of Conduct; the establishment and scrutiny of a performance improvement structure for councils; the introduction of community planning and engagement with other statutory agencies and Departments, as well as the community and voluntary sector; and procedural and governance arrangements for the new councils, including the lack of clarity around the criteria for the use of the call-in procedure. These have been detailed below.
5. The Committee welcomed the Department's assurances that most of these issues would be addressed either by bringing forward amendments to the Bill at Consideration stage, or through subordinate legislation and statutory guidance.
6. Where the Minister was not minded to amend the Bill, the Committee agreed to make formal recommendations for his consideration and, in certain instances, to bring forward its own amendments.

Key issues

7. The following key issues were identified in the course of the Committee's consideration of the Bill:

Governance and Procedures

Constitutions of councils

8. The Committee welcomed the requirement contained in clause 2 for councils to produce a written constitution, but expressed reservations that no timescale was specified for the publication of the constitution. Particularly since the Department plans to provide a Model Constitution as a template, the Committee believes that a council should provide a constitution on a timely basis, and at least by the end of the expiry of the period of the Shadow Councils.
9. The Committee communicated these concerns to the Department, but the Minister has indicated that he does not consider it appropriate to amend this clause, so that councils are not pressured into publishing a hastily prepared constitution. The Committee feels that a specified time would act as an incentive rather than a constraint, and for this reason has **agreed to bring forward an amendment at clause 2 (2) to specify that a constitution should be available 'from April 2015'**.

Lifting of the blanket ban on council staff standing for election

10. Clause 4 of the Bill gives effect to Schedule 1 which introduces a ban on MLAs, MPs or MEPs being elected as councillors, and which removes the current blanket ban on council employees from being elected or acting as councillors, with the exception of certain prescribed employees. During the second stage debate the Minister stated that these will be officers who are in positions where they work directly with, and provide advice to, a council or one of its committees.
11. Respondents to the Committee's call for evidence expressed the view that the lifting of the blanket ban on employees acting as councillors will necessitate robust guidance, particularly in relation to potential conflicts of interest, and the Committee envisaged a number of practical difficulties in implementing this.
12. The Committee welcomed confirmation from the Minister that, after further discussion with local government, he plans to consult on positions of political sensitivity, as well as a geographic restriction on staff becoming councillors of the council where they are employed, so that these can be specified in subordinate legislation.

Positions of responsibility

13. Clause 10, together with Schedule 3, specifies the positions of responsibility within councils, as well as the methods to be used to fill these positions. Stakeholders largely supported the principle of proportionality, but some argued that consideration should be given to permitting local solutions which are politically acceptable, so that each individual council could decide how best to apply proportionality at local level, and to which positions.
14. The Committee was generally content with the provisions of the Bill on this issue, but **called on guidance to be issued by the Department to clarify if all these positions, which include the mayor, deputy mayor and Committee chairs, are to be allocated annually or for the full four-year period.**

Executive/Committee systems

15. The Bill offers alternative permitted governance structures for councils, and provides that the executive of a council must take the form of either one committee to be known as a 'cabinet-style executive', or more than one committee to be known as a 'streamlined committee executive'.
16. The Committee raised issues in four areas on this aspect of the Bill. The first related to the operation of committees with quasi-judicial functions, such as planning or licensing. It is unclear from the Bill if these committees would be subject to the call-in or qualified majority voting, or if these committees would have their own in-built appeal mechanism. Departmental officials indicated this would be clarified by guidance and specified in standing orders to be covered by subordinate legislation.
17. The second area of concern relates to the role of the mayor and deputy mayor. These positions currently have both civic and political significance, and are part of the decision-making process, with the mayor (chairperson) having a casting vote. The Bill specifies at clause 25 (3) that a council executive must not include the chair or deputy chair in order to maintain the appearance of independence from the council's decision-making.
18. The Committee agreed that the chair/ mayor and the deputy chair/ mayor need to be fully aware of the rationale behind any decisions taken by the council as they are held accountable by ratepayers and need to be in a position to be able to comment authoritatively on these. The Minister was not minded to make an amendment to reflect this; **consequently the Committee agreed to amend clause 25 (3) to read 'The chair and deputy chair of the council shall be ex-officio non-voting members of the executive'.**

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19. In its consideration of the number of members to be appointed to a council executive – either cabinet-style or streamlined – the Committee did not feel that the minimum number specified by the Bill, i.e. four members, was appropriate to ensure adequate cross-party representation. For this reason the Committee **agreed to bring forward amendments to clause 25 at (4)(a) and (5)(a) to increase the minimum number to six.**
20. The last area of the council committee structure which the Committee believes may require amendment relates to the application of the Quota Greatest Remainder process to the appointment of councillors to committees as outlined in Schedule 4. Members were concerned that the use of this process will result in independent councillors being unable to have a seat on any committee. The Committee therefore has **recommended that this Schedule should be amended to ensure that the formula is run as a single process in respect of all committee seats from the outset over the duration of the council term.**

Call-In (Reconsideration of decisions) and Qualified Majority Voting

21. The Bill specifies provisions to be included in standing orders to enable decisions which have not yet been implemented to be reconsidered ('called-in'), and for the use of an enhanced majority ('qualified majority') to be used where appropriate. Stakeholders were generally supportive of the percentages prescribed – 15% of councillors in support of a call-in, and 80% of members present to provide a qualified majority – although fears were expressed that the overuse of either of these procedures could result in a deadlock in council decision-making. There is, however, provision for these percentages to be revised by regulations subject to an affirmative resolution of the Assembly.
22. The Committee's concerns focussed very largely on the practical implications on the use of the call-in mechanism. The Bill does not specify the criteria to be used to determine the grounds for reconsideration under clause 45 (1)(b), that a decision would disproportionately affect adversely any section of the inhabitants of the district, and the Committee believed that any lack of clarity could lead to a specious use of call-in.
23. The Committee also remained concerned that the use of a call-in under 45 (1)(b) will require the opinion of a practising barrister or solicitor. Stakeholders had highlighted the practical difficulties likely to arise from the selection of a lawyer, but the Department indicated that the specification of a panel of lawyers, rather than an individual barrister or solicitor, would introduce an additional safeguard on top of a measure that was already designed to act as a safeguard in this process, and which may also have cost implications.
24. The Committee would therefore **recommend that careful consideration should be given to ensuring that the criteria for call-in should be so clearly defined in guidance and Regulations** that the role of the barrister or solicitor is not so crucial to this process; and that the procedures for obtaining an opinion from a barrister or solicitor will also be clearly outlined.
25. Although the Committee accepted the Department's assurances that it was already working closely with representatives of local government to develop a process that would deliver local accountability and protection of minorities whilst not impacting on the transaction of council business, the Committee will welcome the opportunity to scrutinise these procedures in more detail during its consideration of the Local Government (Standing Orders) Regulations.

Code of Conduct

26. The Committee was supportive of the introduction of the Northern Ireland Local Government Code of Conduct for Councillors to standardise across all councils the principles of conduct expected from councillors. Whilst acknowledging the value of this, however, there were a number of areas where the Committee was not content with the provisions for investigation of breaches of the Code.

Appeal Mechanism

27. The main cause for concern was the lack of provision for an appeal mechanism against a decision by the Northern Ireland Commissioner for Complaints. The Commissioner is enabled to investigate, adjudicate and prescribe sanctions in respect of any alleged breaches of the Code, but no form of appeal against his decision is specified in the Bill. In his evidence to the Committee, the Commissioner took the view that judicial review was an appropriate option for appeal, but the Committee felt that this was not only time consuming but too limited in scope to be adequate.
28. In response to these concerns, the Department will amend clauses 62 and 63 to enable a councillor who is censured, suspended or disqualified by the Commissioner to appeal to the High Court. While the Committee welcomed these amendments, members believed that the grounds for appeal to the High Court should be specified on the face of the Bill, and should include leave to appeal against both an incorrect decision and an unduly excessive sanction.
29. **The Committee has therefore agreed that a further amendment should be drafted by the Department to provide for this.**

Minor Complaints

30. The issue of how more minor complaints against breaches of the Code should be addressed was raised with the Committee by various representatives of local government. Under the provisions of the Bill, all written complaints are to be referred to the Commissioner for consideration, and the procedures for investigation and adjudication are specified in Part 9 of the Bill. While it was agreed that this may lead to disproportionate action being taken, there was a lack of consensus as to how otherwise such complaints may be resolved since the comparatively small size of councils in Northern Ireland poses difficulty in establishing an internal mechanism.
31. The Department has endeavoured to provide for this by amending clause 58 to make the powers of the Commissioner more flexible so that he may take action other than conducting an investigation. This will enable the Commissioner to refer a complaint back to a council for local resolution or some form of mediation. As with the other procedures outlined in the Bill, this will be further clarified in guidance to be issued by the Commissioner.
32. The Committee agreed that it was content with this amendment.

Moratorium on Complaints

33. The nature and timing of bogus or vexatious allegations against councillors also concerned the Committee. The Commissioner gave an undertaking that complaints would be investigated with the utmost urgency, and that malicious complaints would be subject to the laws of defamation, but members believed that unfounded complaints made immediately prior to an election may result in a candidate losing a council seat. Indeed, evidence from the Welsh Commissioner for Complaints indicated that the number of complaints received immediately prior to an election almost doubled.
34. The Committee agreed to ask the Minister to consider an amendment to introduce a moratorium on complaints for up to six months before an election. The Minister responded that, while he understood the Committee's concerns, he had to balance against this the possibility of actual and real complaints being barred from being investigated during that time. A moratorium would prevent well founded complaints from being brought into the public domain.
35. Although members recognised the practical difficulties in enforcing any kind of moratorium, the Committee urged the Department and the Commissioner to investigate how this issue can be addressed effectively without compromising on openness and transparency. **This has been reflected in its recommendations.**

Councillors on External Bodies

36. The application of the Code of Conduct to the role of councillors on external bodies gave rise to concerns from representatives of local government that there is an inherent unfairness that a councillor should be subject to a code of conduct whereas individuals who also sit on these bodies are not. The Commissioner for Complaints confirmed to the Committee that this would be the case, but he advocated the establishment of a code of conduct that would apply to all public appointees to ensure equivalence and the same level of accountability.

Apportionment of Costs

37. The allocation of the costs of the Commissioner's office is specified by clause 67 as being apportioned to councils, by a method to be set out in Regulations. The Commissioner indicated to the Committee that he was unhappy with this clause as it inferred that councils were to be charged in proportion to the number of complaints made against them.
38. The Department has agreed to address this by 'top slicing' funding for the Commissioner from the grant paid out to councils and has indicated that it plans to bring forward an amendment to clause 67 to accomplish this. **The Committee was content with this policy, but has not had sight of the proposed amendment.**

Review of the Role of the Commissioner

39. The role that the Commissioner for Complaints will play in local government has still largely to be determined in a practical sense. The Bill sets out the framework of his responsibilities but there is a great deal of work to be carried out in drafting guidance and procedures. The Committee therefore very much welcomed the Minister's assurance that he plans to carry out a review of the Commissioner's role within three to four years.

Community Planning

40. Community planning is a new concept to Northern Ireland although it has already been introduced in other jurisdictions. Although the introduction of community planning has been given a broad welcome right across the board, it is the very newness of the process that has given rise to so many areas of concern among stakeholders.
41. The new councils will have a duty to engage with local communities to produce a community plan which will have links with its land use plan, and this will echo the new role of councillors in delivering statutory planning. The Bill does not specify time scales for the production of the plan, nor to what extent councils must be proactive in their consultation with local communities.
42. The community and voluntary sector believes that its role should be clearly specified within the provisions of the Bill, and that a list of statutory planning partners should be listed on the face of the Bill to ensure adequate and meaningful participation by these agencies. The sector also voiced concerns that the duty on councils to consult with communities has not been expressed in stronger terms and there is no provision for assessing the performance of community planning by monitoring outcomes.
43. Representatives of local government expressed fears that the whole process would be inadequately resourced and that government departments would not participate in the process in a meaningful way – NILGA stated that the effectiveness of community planning and the delivery of improved outcomes would depend on the strength of relationships between councils, departments and public bodies.
44. The Committee referred all these concerns to Departmental officials during oral evidence sessions. Officials reiterated that, while the Bill set out the partnership ethos of community planning, subordinate legislation and guidance would specify both the details of the process and the bodies to be involved as planning partners. The Committee was content that this

would provide a greater degree of flexibility and the opportunity for greater inclusiveness than if these were to be included in the provisions of the Bill.

45. The Committee expressed concerns, however, that the requirement for engagement with the voluntary and community sector was not expressly stated in the Bill, and that there was no reference at clause 69 to a requirement to promote equality and good relations, or to address social deprivation.
46. Officials indicated that the Minister is unlikely to bring forward an amendment to include these criteria, but that he had not yet confirmed his intention. The Committee sought an assurance from the Minister that, at the very least, statutory guidance would clearly outline the role of the community and voluntary sector, and that the need for community planning to promote equality and good relations, and address social exclusion resulting from deprivation and poverty, would also be included in this guidance. **The Committee has highlighted this in its recommendations.**
47. The Committee has **also recommended that the Minister should consider an amendment to clause 76 (1)** to specify that reasonable arrangements should be made by a council to seek the views of relevant persons and to ensure that this does not become a mere box-ticking exercise.

Performance Improvement

48. The Committee was supportive of the requirement for councils to ensure continuous improvement in carrying out their duties and welcomed the enhanced role of the Local Government Auditor in scrutinising performance improvement information.

Performance Indicators

49. Issues raised by stakeholders focussed on what is perceived as a ‘top down’ model whereby the Department may specify the performance indicators and standards to be used by councils. Local government representatives expressed concerns that the proposals in the Bill are largely based on the Welsh model. This model has faced criticism that it has proved overly bureaucratic and costly, and ultimately taken resources away from councils. There were calls to ensure that any performance improvement model was developed in conjunction with local government and specifically tailored to Northern Ireland where councils do not have the same powers or budget as their Welsh counterparts.
50. There were also concerns that the indicators specified in clauses 87, 88 and 92 – strategic effectiveness, service quality, service availability, fairness, sustainability, efficiency and innovation – included no reference to economic considerations or value for money. However, the Committee accepted the Department’s explanation that these provisions replace the Local Government (Best Value) Act (Northern Ireland) 2002 and place the focus on improving performance rather than the concept of best value.

Audit and Assessment Reports

51. The NIAO expressed reservations that the provisions of the Bill did not provide flexibility for the auditor to take risk assessment into account in determining the extent to which full reporting will be required. The Audit Office believes that, once the new arrangements become embedded, it may be unnecessary for a report to be made in full and separately on every council every year, and that exception reporting may be more appropriate.
52. The Committee welcomed the Minister’s decision to consult with the NIAO to make an amendment to the Bill to allow for a risk based approach to the audit process over time, rather the annual reporting requirement, and accepted his assurance that he would review the audit process after a few years.
53. While the Committee welcomed the Minister’s intention to amend the Bill to bring forward the date by which councils must publish performance improvement information from 31st October

to 30th September (clause 95), it was not content that this would allow the Local Government Auditor sufficient additional time to report on this information. The Committee consequently agreed that it would recommend that the Department should amend the reporting dates specified in clause 95 and 98 after due consultation with the NIAO.

Control of Councils by Northern Ireland departments

54. While the Committee did not feel that it was inappropriate for Departments other than the Department of the Environment to investigate the administration of any statutory functions of councils, the Committee was in agreement with stakeholder comments which highlighted that councils will have no form of appeal against a finding of failure. **The Committee therefore recommends that the Minister should give consideration to amending clause 108 to provide for this.**

Guidance

55. The majority of respondents to the Committee's call for evidence highlighted the importance of the guidance which will detail the implementation of this Bill. There are a number of aspects of this Bill, particularly in relation to community planning and performance improvement, where clear and detailed guidance will provide an essential support structure for those organisations, both voluntary and statutory, which will seek to deliver the provisions of the Bill.
56. **The Committee would therefore recommend that the Department actively consults with these stakeholders** as this guidance is drafted, and that it takes cognisance of views expressed during this consultation to ensure that the reform of this area of public administration is completed as smoothly and effectively as possible.

Recommendations and Committee Amendments

Constitutions of Councils

57. The Committee has agreed to bring forward an amendment to insert a publication date at clause 2 (2) and will specify that a council's constitution should be available '*from April 2015*'.

Positions of Responsibility

58. The Committee recommends that guidance should be issued by the Department to clarify whether all positions of responsibility, which include the mayor, deputy mayor and Committee chairs, are to be allocated annually or for the full four-year period.

Role of the Mayor and Deputy Mayor

59. The Committee has agreed to bring forward an amendment to clause 25 (3) so that it reads '*The chair and deputy chair of the council shall be ex-officio non-voting members of the executive*' to reflect its view that the chair/ mayor and the deputy chair/ mayor need to be fully aware of the rationale behind any decisions taken by the council as they are held accountable by ratepayers and need to be in a position to be able to comment authoritatively on these.

Council Executive

60. The Committee agreed to bring forward amendments to clause 25 at (4)(a) and (5)(a) to increase the minimum number of members to be appointed to a council executive – either cabinet-style or streamlined - from '*four*' to '*six*' to ensure adequate cross-party representation.

Procedures for Call-in (Reconsideration)

61. The Committee recommends that the criteria for reconsidering decisions, and the guidelines for obtaining an opinion from a barrister or solicitor, should be clearly defined in guidance and Regulations to ensure that the decision-making process of councils is not adversely impacted by the improper use of this procedure.

Appeal to the High Court

62. In relation to breaches of the Code of Conduct, the Committee recommends that an amendment should be drafted to add a further subsection to clauses 62 and 63 to specify grounds for appeal to the High Court in addition to those grounds which already form the basis for judicial review. These should include leave to appeal against a decision which was not supported by the evidence and against an excessive sanction.

Complaints made before elections

63. The Committee recommends that the Department and the Commissioner for Complaints should give consideration to procedures to ensure that complaints lodged with the Commissioner within six months prior to an election are dealt with in such a way so as to have due regard for both the protection of the reputation of a prospective candidate and the right for validated complaints to be made public.

Apportionment of Costs

64. The Committee recommends that the Department brings forward an amendment to clause 67 (3), (4) and (5) to remove the requirement for expenditure of the Commissioner to be apportioned to councils, and to substitute a provision for these costs to be '*top sliced*' from the Departmental grant to local government.

Community Planning

65. The Committee recommends that the Minister gives further consideration to bringing forward an amendment to specify the requirement for community planning to promote equality and good relations; and that social exclusion resulting from deprivation and poverty is also specified. The Committee has already accepted his assurance that these, together with a definition of the role of the voluntary and community sector, will be addressed in statutory guidance.
66. The Committee further recommends that the Minister amends clause 76 (1) to insert the word '*reasonable*' before the arrangements to be made by a council to seek the views of relevant persons.

Audit and Assessment Reports

67. The Committee recommends that the Minister should work closely with the Local Government Auditor and the Northern Ireland Audit Office to ensure that statutory guidance and Regulations reflect the most effective use of resources, together with timely, complete and appropriate reporting of performance improvement information.

Control of Councils by Northern Ireland departments

68. The Committee recommends that the Minister should give consideration to amending clause 108 to provide for a form of appeal against a finding of failure by councils which have been investigated by a Northern Ireland department.

Use of the Quota Greatest Remainder

69. The Committee recommends that the Minister should bring forward an amendment to Schedule 4 to ensure that the formula for appointments to committee be run for all committee positions at once, and for the duration of the council term, based on the number of seats each party has immediately after the election.

Guidance

70. The Committee recommends that the Department should actively consult with appropriate stakeholders as guidance is drafted, and that it takes cognisance of views expressed during this consultation to ensure that the reform of this area of public administration is completed as smoothly and effectively as possible.

Consideration of the Bill by the Committee

Introduction

71. The Local Government 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 1 October 2013.
72. The Minister of the Environment made the following statement under section 9 of the Northern Ireland Act 1998:
- 'In my view the Local Government Bill would be within the legislative competence of the Northern Ireland Assembly'.*
73. The policy context for the Bill is to rationalise the current 26 district councils to create 11 new district councils, introduce new governance arrangements for councils to ensure the protection of the rights of all people and also provide for fair, transparent and efficient decision-making, develop a new council-led community planning process, transfer a range of functions from central to local government; and develop appropriate performance management systems for district councils.
74. The aim of the legislation is to establish a new framework for reorganised local government which will be supported by a significant and comprehensive programme of subordinate legislation and guidance.
75. The Department initially briefed the Committee on 26 September 2013, prior to the Second Stage of the Bill in the Assembly on 1 October 2013. Departmental officials provided a useful overview of the policy underlying the Bill, before taking questions from members.
76. The Bill was referred to the Committee after its second stage reading on 1 October 2013.
77. At its meeting on 26 September 2013 the Committee agreed to insert advertisements in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill; the Committee also agreed a motion to extend the Committee stage of the Bill until 20 February 2014 to allow adequate time for scrutiny.
78. The motion to extend was agreed by the Assembly on 14 October 2013.
79. The Committee considered the Bill and related issues at meetings on 12 and 26 September 2013; on 3, 10, 17 and 24 October 2013; on 7, 14, 21 and 28 November 2013; on 5 and 12 December 2013; on 9, 16, 23 and 30 January 2014; and on 4, 6, 11, 13, 18 and 20 February 2014. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1 and Minutes of Evidence at Appendix 2.
80. The Committee had before it the Local Government Bill (NIA 28/11-15) and the Explanatory and Financial Memorandum that accompanied the Bill.
81. The Committee referred the Delegated Powers Memorandum submitted by the Department on 10 December 2013 to the Examiner of Statutory Rules for scrutiny. He reported back to the Committee on 23 January 2014 that, for the most part, the powers seem to be appropriate and subject to an appropriate degree of Assembly control. However, he drew attention to three powers, namely, clauses 51(5) and 54(2) (relating to exempt information) in Part 8 and clause 85 (relating to the general power of competence) in Part 11.
82. The Examiner was of the opinion that clauses 51(5) and 54(2) (relating to exempt information) should be subject to draft affirmative procedure in that they expressly allow for amendments of the Bill and that they are quite significant powers.

83. In relation to clause 85 (relating to the general power of competence), the Examiner stated that it contained a very wide power and should therefore be subject to a super affirmative procedure which involves enhanced consultation on a laid proposed draft order and a further laying of the draft order itself with commentary on any changes made since original laying. These recommendations for amendment were all accepted by the Department.
84. The Committee's call for written evidence closed on 12 November 2013 and there were 38 responses. Copies of all written submissions received by the Committee are included at Appendix 3 and additional information submitted at Appendix 6.
85. The Committee held an evidence-gathering event on 28 November 2013 in the Long Gallery to which everyone who responded to the call for evidence was invited. Stakeholders were offered the opportunity to present their views to members of the Committee; Departmental officials were also present and responded to the views expressed.
86. The Committee had a number of oral briefings from Departmental officials, as well as from representatives of the Northern Ireland Local Government Association (NILGA), Assembly Research and Information Service, Northern Ireland Public Service Alliance (NIPSA), Northern Ireland Audit Office (NIAO), Community Places, the Commissioner for Complaints and Belfast City Council. All these oral evidence sessions were recorded by Hansard.
87. Departmental officials returned on 23 January 2014 to assist the Committee in its deliberation on key issues of the Bill. The officials stated that the Department was seeking legal advice on a definition of politically sensitive posts in relation to the bar being lifted on council staff becoming councillors. Officials also indicated that they were working with senior officials in local government to establish a process for call in. In addition, the Department stated that a paper was being presented to the Minister on how minor complaints are dealt with in other jurisdictions, but Members stressed the need for an appeal mechanism to be included in the Bill against decisions made by the Commissioner for Complaints, and asked the Department to report back on this issue.
88. The Committee commenced its informal scrutiny of the clauses of the Bill on 30 January 2014 and continued with this on 4, 6, 11 and 13 February 2014.
89. The Committee also conducted its formal Clause by Clause scrutiny of the Bill on 13 February 2014.
90. The Committee met to consider a draft report on 18 February 2014, and at its meeting on 20 February 2014, the Committee agreed its report on the Bill and ordered that it should be printed.

Clause by clause consideration of the Bill

Clause 1 – Names of councils

91. This clause provides for how the names are to be formed and makes provision for the name given to a council to be altered by subordinate legislation.
92. There were no objections to this clause from the Committee's call for evidence but there were calls for clarification on when subordinate legislation would be brought forward to permit councils to obtain Borough or City status.
93. In briefing the Committee, Departmental officials advised that the clause would allow the Department to change the name of the council to whatever the new council asked. The new councils would need to decide if they wanted to adopt a new charter or keep the existing one; this posed a problem for Lisburn City Council which would lose its city status if the councils it was merging with did not adopt its charter.
94. The Committee requested further information on the naming of the new councils. The information on the naming of the new councils was still outstanding by the time the Committee considered the clause at the meeting on 11 February when members indicated they were broadly content with the clause.
95. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 2 – Constitutions of councils

96. This clause requires a council to maintain a constitution and ensure that it is available for inspection by members of the public.
97. Respondents called for copies of a council's constitution to be made freely available on its website and for the documents to be published on a timely basis and for council involvement in the formulation of a constitution.
98. The Department stated that it was working with local government to develop the key documents that will form part of a council's constitution such as the Standing Orders and that these would be issued prior to the establishment of the incoming councils. The Department also informed the Committee that it would need to make a technical amendment to clause 2 (1) (b). The Committee asked the Department to provide the wording of the amendment and to provide a model of a constitution.
99. The Committee was content with the Department's proposed model for a constitution but agreed to introduce a Committee amendment to ensure that a council constitution is published no later than April 2015.
100. The Committee agreed the clause subject to the following Committee amendment:

Clause 2, page 1, line 17

After "that" insert "from 30 April 2015"

101. The Committee also agreed the clause subject to the following Departmental amendment:

Clause 2, Page 1, Line 14

Leave out 'council's code of conduct' and insert 'Northern Ireland Local Government Code of Conduct for Councillors'

Clause 3 – Qualifications

102. This clause sets out the conditions to be satisfied for a person to be qualified to be elected or to be a councillor.
103. In its response to the Committee's call for evidence, the Public Services Commission stated that it would welcome a provision in the Bill for a code of conduct for councillors which should contain provision on the relationship between councillors and their staff. The Department stated that the Local Government Reform Joint Forum, which is a consultative body comprising the management side in local government and central government and the trade unions, has established a sub-group to update the staff code of conduct. An important link between the staff code of conduct and councillors' code of conduct will be a protocol on relations between councillors and employees. It is intended that a group will be established consisting of elected members, representatives of the LGRF and Departmental officials to consider the protocol.
104. The Committee accepted the Department's response and indicated it was broadly content with the clause at the meeting on 30 January 2014.
105. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 4 – Disqualifications

106. This clause gives effect to Schedule 1 which sets out the conditions under which a person is disqualified for being elected or acting as a councillor. These conditions include the introduction of a bar on MLAs, MPs and MEPs being elected, or being, councillors.
107. Respondents to the Committee's call for evidence stated that robust guidance would be necessary in relation to potential conflicts of interest as a result of an employee also acting as a councillor. It was also felt that the removal of the bar on all employees of a council could present problems for line managers, who may struggle to exercise appropriate authority over an employee who is also a councillor.
108. Departmental officials told the Committee that regulations will outline the posts where the bar will still apply but that officials would need to take the Minister's views on how to progress this issue.
109. On 13 February 2014 Departmental officials informed the Committee that the Minister was still considering the positions of political sensitivity, and that he intends to consult on this and a geographic restriction on council staff serving in the council area in which they work. This would then be outlined in subordinate legislation and the blanket ban on staff becoming councillors would remain in force for the council elections in May 2014.
110. The Committee was content with the Department's explanation and agreed the clause as drafted.

Clause 5 - Penalties for acting as a councillor while disqualified

111. This clause sets out the penalties for acting as a councillor while disqualified.
112. The only comment on this clause was that the phrase 'a person who acts or purports to act as a councillor while disqualified' creates confusion because it would not appear that if a councillor is disqualified his/her actions are no longer valid so there was no need for 'purports' to be included in the clause.
113. The Department's response stated that this makes provision in respect of an individual who gives the impression that they are acting as a councillor and therefore there was no need for an amendment.
114. The Committee accepted the Department's response and agreed the clause as drafted.

Clause 6 - Declaration on acceptance of office of councillor

115. This clause requires a person elected as a councillor to serve a declaration, as set out in Schedule 2, on the clerk of the council before acting as a councillor. This declaration requires the person to affirm that they will observe the Northern Ireland Local Government Code of Conduct for Councillors in the performance of their functions.
116. The only issue raised in relation to this clause was the need for clarification on whether the period of two months from the day of the person's election means starting on the day of election or the day after.
117. The Department's response stated that Section 39 of the Interpretation Act (Northern Ireland) 1954 provides that any reference to a month should be construed as a reference to a calendar month. For a period of time expressed to begin on a particular day, that day shall not be included in that period of time.
118. The Committee accepted the Department's response and agreed the clause as drafted.

Clause 7 – Resignation

119. This clause provides for a person to resign as a councillor at any time.
120. There were no views expressed by stakeholders on this clause but Committee members raised issues in relation to the current use of co-option to councils.
121. Departmental officials responded that this was a reserved matter and agreed to provide a paper on the current use of co-option to councils. This paper was considered at the meeting on 13 February when members indicated they were content with the paper.
122. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 8 - Vacation of office on account of non-attendance

123. This clause provides for a person to cease to be a member of a council if they fail, subject to certain conditions, to attend any meeting of the council over six consecutive months.
124. Stakeholder responses suggested that guidance should be provided to take account of a situation where a councillor may have to prioritise between attending a main council meeting or joint committee meeting, or to provide some form of standardisation as some councils may be more lenient than others.
125. In response, the Department stated that the "six month" non-attendance provision relates to any meeting of a council or one of its committees or sub-committees and is designed to ensure that an individual holding the office of councillor has the opportunity to undertake his/her representative role in some form prior to his/her position as a councillor being declared vacant.
126. The Department further stated that this clause was a re-enactment of section 9 of the Local Government Act (Northern Ireland) 1972 to provide for the minimum level of attendance required to remain a councillor. Decisions on the acceptance of a reason for extended absence should be a matter for individual councils.
127. Members questioned officials on the use of this clause in exceptional circumstances such as long term illness and the Departmental officials agreed to provide a paper clarifying the exceptional circumstances in which an exemption could be made in relation to vacation of office in the event of non – attendance.
128. This paper was considered at the meeting on 13 February when members indicated they were content with the paper and agreed the clause as drafted.

Clause 9 - Declaration of vacancy in office in certain cases

129. This clause sets out the circumstances for which a council must declare a vacancy.

130. There were no views expressed on this clause by respondents to the Committee's call for evidence.

131. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 10 – Positions of responsibility

132. This clause sets out the positions of responsibility to be held by an elected member of the council, which must be allocated across the political parties represented on the council, and the process which must be used for the allocation.

133. NILGA felt that it should be for each individual council to decide how best to apply proportionality at local level, and also called for clarification in relation to the position of committee chairs. ARC 21, along with several other respondents, also felt that, in general, the proposals appear to be too prescriptive, leaving little for councils to make decisions on a local basis to suit local needs and political representation.

134. In its response, the Department stated that the provision of three alternative methods for allocating positions of responsibility across the political parties represented on a council provides the flexibility for local agreement on how proportionality will be achieved. This approach was agreed by all the main political parties who were represented on the policy development panel on governance and relationships.

135. All positions on a cabinet-style executive are included to take account of the significance of this model in relation to decision-making in the council. The operation of the process for the sharing of committee membership will provide the opportunity for representation to be shared across the political parties. The allocation of positions of responsibility will take place at the first meeting of a council following a local government election prior to the filling of the remaining membership of a committee.

136. At the meeting on 30 January 2014 the Departmental officials agreed to provide the wording of a technical amendment to Clause 10(4).

137. The Committee was content to agree the clause subject to the following Departmental amendments:

Clause 10, Page 5, Line 25

Leave out 'subsection (1)(f)' and insert 'this Act'

Clause 10, Page 5, Line 26

Leave out 'prescribed public body or other association' and insert 'public body'

138. The Chairperson recorded her opposition to the use of the D'Hondt mechanism, rather than Single Transferable Vote, in allocating positions of responsibility

Clause 11 - Arrangements for discharge of functions of council

139. Clause 11 provides that a council may arrange for any of its functions to be discharged by a committee, sub-committee or an officer of the council, or by another council.

140. Whilst there were no objections to this clause, it was suggested that the list of functions reserved for the council should be more clearly defined, for example, to exclude minor technical land disposals, way leaves, small loans etc. It was also suggested that the list of functions which cannot be delegated is amended to 'affordable borrowing limit' under Local Government Finance Act (2011) rather than 'borrowing money'.

141. The Departmental officials agreed to report back on the possibility of amending this clause to address a possible conflict with the Local Government Finance Act.

142. At the meeting on 13 February the Committee was content to agree the clause subject to the following Departmental amendment:

Clause 11, Page 5, Line 38

At end insert-

'() making a determination under section 13(1) of the Local Government Finance Act (Northern Ireland) 2011 (affordable borrowing limit) and monitoring an amount determined under that subsection;'

Clause 12 - Arrangements by one council for discharge of functions by another council

143. This clause places limitations on making arrangements for the discharge of functions under executive arrangements.

144. Stakeholders felt this clause seemed unnecessarily complicated and the department's intervention would only be welcomed as a position of last resort.

145. The Department informed the Committee that its permission would not be required for such arrangements to operate. The subordinate legislation will detail who has responsibility for arranging for the discharge of a function by another council if one of the relevant councils is operating executive arrangements.

146. The Committee accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 13 - Arrangements for discharge of functions by councils jointly

147. This clause provides for the establishment of a joint committee between two or more councils to discharge a function of the participating councils.

148. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 14 - Exercise of functions not prevented by arrangements under this Part

149. This clause provides that a council or a committee is not prevented from exercising a function if it has arranged for that function to be discharged by a committee or sub-committee.

150. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 15 - Appointment of committees etc. for the purpose of discharging functions

151. This clause provides that a council may appoint a committee, and two or more councils may appoint a joint committee, to discharge functions.

152. Clarification was sought as to why a committee appointed to regulate and control the finance of the council cannot have an external member. The Department stated that it considered it appropriate that discussions relating to the finances of a council are restricted to members of the council to maintain the necessary confidentiality.

153. The Committee accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 16 - Appointment of committee to advise on discharge of functions

154. This clause enables a council, and two or more councils, to appoint a committee, that may include persons who are not members of the appointing council or councils, to advise on the discharge of functions.

155. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 17 - Appointment of councillors to committees, etc.

156. This clause gives effect to Schedule 5 which provides for the sharing of membership of a committee between the political parties represented on the council.

157. There was concern expressed that the prescription of this one method only is unduly restrictive and does not permit local arrangements which have broad agreement to be utilised as an acceptable alternative.

158. In its briefing to the Committee, the Department stated that the legislation provides councils with the ability to choose between the Quota Greatest Remainder and the Droop Quota method for ensuring proportionality in the membership of committees.

159. The Committee accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 18 - Joint committees: further provisions

160. This clause provides that the expenses of a joint committee must be met by the appointing councils.

161. There were no comments from stakeholders on this clause and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 19 - Disqualification for membership of committees

162. This clause provides that a person disqualified from being elected or being a member of a council cannot be a member of a committee or sub-committee of that council, or a joint committee on which the council is represented or on one of its sub-committees.

163. There were no comments from stakeholders on this clause and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 20 - Declaration required of persons who are not members of council

164. This clause provides that a person who is not a member of a council may not act as a member of a committee until the person has signed a declaration agreeing to observe the Northern Ireland Local Government Code of Conduct for councillors.

165. There were no comments from stakeholders on this clause and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 21 - Voting rights of persons who are not members of council

166. This clause provides that a person appointed to a committee who is not a member of the appointing council has no voting rights at meetings of that committee.

167. There were no comments from stakeholders on this clause and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 22 - Termination of membership on ceasing to be member of council

168. This clause specifies that a person who is no longer a member of a council is also no longer a member of a committee of that council.

169. There were no comments from stakeholders on this clause and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 23 - Permitted forms of governance

170. This clause sets out the forms of political governance a council may operate for its decision-making. These are executive arrangements, a committee system or prescribed arrangements.
171. Stakeholder responses noted that the clause does not specify potential forms of governance arrangements linked to statutory or quasi-judicial functions to be undertaken by councils and the associated processes and rules which may or may not apply in this instance e.g. qualified majority voting and call-in.
172. In its briefing to the Committee, the Department stated that it is working with senior officers from local government to develop the proposals for the regulations for operation of executive arrangements and the allocation of functions between the council and its executive. The Department anticipated that the regulations will specify those functions and responsibilities to be the responsibility of a council's executive and that it will be for a council that has adopted executive arrangements to determine how it wishes those functions or responsibilities discharged, as provided for in clause 11 of the Bill.
173. At the meeting on 13 February 2014, the Departmental officials informed the Committee that the operation of call in and qualified majority voting would be outlined in guidance and become mandatory elements of standing orders. The Committee was content with this clarification and agreed to the clause as drafted.

Clause 24. - Power to prescribe additional permitted governance arrangements

174. This clause gives the power to the Department to make regulations prescribing alternative forms of governance that may be adopted by a council. It provides that the Department must have regard to any proposals received from a council when it considers whether or how to make regulations under this clause.
175. Concerns were expressed from several respondents to the Committee's call for evidence that that subsection (6) (c) of this clause is a potentially unnecessary barrier to local agreement on governance. In reply, the Department stated that the introduction of an alternative form of governance arrangements must be capable of being used by all councils to ensure that it delivers efficient and effective decision-making and includes appropriate mechanisms for the protection of minority interests.
176. The Committee accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 25: Council executives

177. This clause provides that an executive of a council must take the form of either:
- a) a committee of the council to be known as a "cabinet-style executive", or
 - b) more than one committee of the council to be known as a "streamlined committee Executive".
178. Several respondents noted that this clause does not permit the Chair and Vice-Chair of a council to be members of an executive, in marked contrast to the operation of a traditional committee system where the Chair and Vice-Chair can be part of the decision-making mechanism, with the Chair having a casting vote at council meetings.
179. It was also stated that the Bill does not specify which committees may be streamlined and if this also applied to quasi-judicial committees, such as planning committees.
180. The Committee expressed concerns regarding the minimum number required for membership of executive committees which is currently set as 4 members and suggested that it may be more appropriate to increase this number to ensure adequate cross-party representation.

181. The Department responded that the Mayor and deputy Mayor, or Chairperson and vice-chairperson, of a council are civic positions and it is the holder's responsibility to represent the corporate views of the council. The inclusion of the holder of any of these positions on the executive could be viewed as compromising this independence from the decision-making.
182. The Department further stated that the streamlined committee structure is a form of executive arrangements and the functions and responsibilities of streamlined committees will be specified in the regulations in relation to the operation of executive arrangements. Officials told the Committee that the minimum level of membership had been set at a level to provide for cross-party representation, if the political parties represented on a councils wish to select these positions of responsibility.
183. At the meeting on 13 February 2014 Departmental officials informed members that the Minister was not minded to bring forward an amendment to this clause. The Department intended to issue guidance which would allow the Chair and Deputy Chair of a council to attend meetings unless they were of a sensitive nature such as meetings to discuss Human Resource issues.
184. The Committee was not content with the Department's responses and agreed to bring forward the following amendments:
- Clause 25, page 11, line 29**
- Leave out subsection (3) and insert*
- '(3) The chair and deputy chair of the council shall be ex-officio non-voting members of the executive.'*
- Clause 25, page 11, line 31**
- Leave out 'four' and insert 'ten'*
- Clause 25, page 11, line 34**
- Leave out 'four' and insert 'ten'*
- Clause 26: Functions which are the responsibility of an executive**
185. This clause provides the mechanism for determining which council functions are to be the responsibility of the executive.
186. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.
- Clause 27: Functions of an executive: further provision**
187. This clause makes further provision on the exercise and discharge of functions which are the responsibility of the council executive.
188. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.
- Clause 28 - Allocation and discharge of functions**
189. This clause sets out in greater detail how decision-making is to be undertaken under executive arrangements and provide for the executive to determine how functions which are the responsibility of the executive should be discharged.
190. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 29 - Discharge of functions of and by another council

191. This clause sets out in greater detail how decision-making is to be undertaken under executive arrangements and provide for the executive to determine how functions which are the responsibility of the executive should be discharged.
192. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 30 - Joint exercise of functions

193. This clause sets out in greater detail how decision-making is to be undertaken under executive arrangements and provide for the executive to determine how functions which are the responsibility of the executive should be discharged.
194. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 31 - Overview and scrutiny committees: functions

195. This clause outlines that executive arrangements must ensure that these committees have power to make reports and recommendations, either to the executive or the council, on any aspect of council business.
196. Clarification was sought by stakeholders in regard to the relationship between call-in, and overview and scrutiny procedures, and which of these would take precedence.
197. In its briefing to the Committee, the Department stated that it is working with senior officers from local government to develop guidance and Rules of Procedure for the operation of overview and scrutiny committees and that the call-in process provides the formal opportunity for executive decisions to be referred to an overview and scrutiny committee.
198. The Committee accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 32 - Overview and scrutiny committees: supplementary provision

199. This clause describes in detail how overview and scrutiny committees may carry out their functions, giving them the power to appoint sub-committees and make arrangements for these sub-committees to discharge any functions of the overview and scrutiny committee.
200. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 33 - Scrutiny officers

201. This clause provides that a council operating executive arrangements must designate one of its officers as a scrutiny officer to perform the functions set out in this section.
202. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 34 - Reference of matters to overview and scrutiny committee etc.

203. This clause provides that a council's executive arrangements must make provision to enable members of an overview and scrutiny committee, including a sub-committee of such a committee, to refer matters to the committee or sub-committee.
204. There were no comments from stakeholders in relation to this clause and the Committee indicated it was broadly content with the clause at the meeting on 30 January 2014.
205. At the meeting on 13 February 2014, the Departmental officials informed the Committee that the Department proposed to bring forward 2 technical amendments to this clause.

206. The Committee agreed the clause subject to the following Departmental amendments:

Clause 34, Page 18, Line 9

Leave out 'an excluded' and insert 'a prescribed'

Clause 34, Page 18, Line 17

Leave out subsection (4)

Clause 35 - Dealing with references under section 34(1)(c)

207. This clause makes further provision in relation to the reference of matters to overview and scrutiny committees by a member of a council who is not also a member of the committee.

208. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 36 - Duty of council or executive to respond to overview and scrutiny committee

209. This clause makes provision about reports and recommendations of overview and scrutiny committees.

210. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 37 - Publication etc. of reports, recommendations and responses: confidential and exempt information

211. This clause makes provision in relation to an overview and scrutiny committee or a council excluding "confidential information" and "relevant exempt information" when publishing a document.

212. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 38 - Meetings and access to information etc.

213. This clause provide powers for the Department to specify in regulations the circumstances in which meetings of the executive or its committees must be open to the public and which meetings must be held in private.

214. Trade Union Side expressed concerns that such systems have been and will be abused in order to circumvent employment obligations and the industrial relations process.

215. The Department told the Committee that these provisions strike a balance between ensuring transparency in the transaction of council business and the need to prevent the disclosure of confidential information.

216. The Committee accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 39 - Meetings and access to information etc.: further provision and regulations

217. This clause makes provision for written records of prescribed decisions made at meetings of the executive held in private to be kept, including reasons for the decisions.

218. Trade Union Side expressed similar concerns as for clause 38. The Department reiterated that these provisions strike a balance between ensuring transparency in the transaction of council business and the need to prevent the disclosure of confidential information.

219. The Committee again accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 40. - Meetings and proceedings

220. This clause makes provision on the timing and general arrangements for meetings of a council, and require a council to make standing orders for the regulation of the proceedings and business of councils and their committees.
221. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 41 - Standing orders

222. This clause makes provision on the timing and general arrangements for meetings of a council, and require a council to make standing orders for the regulation of the proceedings and business of councils and their committees.
223. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 42 - Regulations about standing orders

224. This clause makes provision on the timing and general arrangements for meetings of a council, and require a council to make standing orders for the regulation of the proceedings and business of councils and their committees.
225. Belfast City Council stated that clause 42 Subsection 2(b) indicates that regulations may require such standing orders to contain provisions for specific decisions of a committee to be referred to, and reviewed by, the Council itself and the council sought clarification as to what these decisions may be. It also recommended that the Regulations specifying matters that must be included in standing orders are drawn up with local government.
226. In its briefing to the Committee, the Department stated it is working with senior officers from local government to develop Model Standing Orders for use by councils, and to identify those Standing Orders, particularly in relation to governance arrangements, that must be included.
227. The Committee accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 43 - Simple majority

228. This clause provides for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority.
229. A respondent to the Committee's call for evidence stated that, in the case of a Joint Committee, further clarification needs to be given in relation to "simple majority". The Departmental officials informed the Committee that "simple majority" will apply to all decisions of a council and its committees unless the decision is specified as requiring a qualified majority. The decisions requiring a qualified majority will be specified in regulations.
230. The Committee accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 44 - Qualified majority

231. This clause provides for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority.
232. Several stakeholders stated that while they recognised the previous consensus reached on thresholds, there is some debate within the sector in relation to the 80% level specified in this clause. The provision for review contained in the Bill is welcomed.
233. In response, the Department told the Committee that it is working with local government to determine the practical considerations in relation to the operation of qualified majority voting

and the decisions to which it will apply. These matters will be specified in subordinate legislation that will be subject to consultation. Furthermore, the threshold for qualified majority voting was agreed across all the political parties represented on the policy development panel on governance and relationships and qualified majority voting will only apply to decisions specified in regulations, as a mandatory element of a council's standing orders.

234. The Committee accepted the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 45 - Power to require decisions to be reconsidered

235. This clause provides for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority.
236. Several stakeholders stated that there is debate within the sector in relation to the 15% figure for call in, and concern in some councils that this system may lead to unnecessary bureaucracy and delay. There was particular concern in relation to the grounds for call-in detailed at 45 (1) (b) which seemed vague. The stakeholders further stated that agreement and detailed clarification of what this actually means in practice will be critically important, as will guidance on the role of the legal advisor stipulated in 45(2).
237. The Department responded that it was working with senior officers from local government to develop the criteria for, and the operation of, the procedure for the reconsideration of a decision of an executive or recommendation from a committee and these will be specified as a mandatory element of a council's standing orders.
238. Members asked the Departmental officials to report back to the Committee, after discussions with the Minister, on the criteria for a call in and guidance on the use of a solicitor/barrister in the procedure for the reconsideration of a decision.
239. At the meeting on 13 February Departmental officials informed members that the Minister was not minded to bring forward an amendment. Committee members remained of the opinion that a great deal more clarification of the call-in procedure was required but the Committee agreed the clause as drafted.

Clause 46 - Admission to meetings of councils

240. This clause makes provision in relation to public access to meetings of councils, and to the agenda and connected reports on issues to be discussed at a meeting of the council.
241. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 47 - Access to agenda and connected reports

242. This clause makes provision in relation to public access to meetings of councils, and to the agenda and connected reports on issues to be discussed at a meeting of the council.
243. The Trade Unions expressed concerns that such systems have been and will be abused in order to circumvent employment obligations and the industrial relations process.
244. In its briefing to the Committee the Department stated that the provisions strike a balance between ensuring transparency in the transaction of council business and the need to prevent the disclosure of confidential information as the issues raised are matters between a council and its employee's representatives.
245. The Committee was content with the Department's explanation and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 48 - Inspection of minutes and other documents after meetings

246. This clause makes provision in relation to public access to meetings of councils, and to the agenda and connected reports on issues to be discussed at a meeting of the council.
247. One council expressed the view that this clause may become onerous on councils in terms of resources required to keep physical copies of the range of papers and that it would be of benefit if electronic copies would be satisfactory.
248. In its response, the Department stated that it will be a matter for councils to determine the method of retention provided that the material is available for inspection as required by the provision.
249. The Committee was content with the Department's explanation and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 49 - Inspection of background papers

250. This clause makes provision in relation to public access to meetings of councils, and to the agenda and connected reports on issues to be discussed at a meeting of the council.
251. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 50 - Application to committees and sub-committees

252. This clause makes provision in relation to public access to meetings of councils, and to the agenda and connected reports on issues to be discussed at a meeting of the council.
253. NILGA stated that preliminary policy discussions take place in sub-committee meetings which are minuted, but to which the public and press do not have access, and this allowed for freer discussion and debate. Several members of the Committee also expressed the view that there was merit in a level of discussion at sub-committee/committee level that was not in the public domain.
254. In response, the Department stated that it considered that discussions on an issue in a sub-committee are integral to the overall decision-making process and, as such, should be open to inspection both by the other members of the council and the public. This will ensure that members of council and members of the public are aware of all the matters that were considered in the development of recommendation or decision. The Committee was content with the Department's explanation.
255. At the meeting on 13 February, the Departmental officials informed members that the Department wished to make 2 technical amendments to the clause.
256. The Committee was content to agree the clause subject to the following Departmental amendments:

Clause 50, Page 28, Line 29

Leave out 'be'

Clause 58, Page 33, Line 17

At end insert-

"(1A) Instead of, or in addition to, conducting an investigation under this section, the Commissioner may take such action as appears to the Commissioner to be desirable to deal with any particular case falling within subsection (1)."

Clause 51: Additional rights of access to documents for members of councils

257. This clause provides that, subject to specific exclusions, any council document relating to any business to be discussed at a meeting of the council or committee or sub-committee is to be open to inspection by any member of the council.
258. Several respondents to the Committee's call for evidence stated that they had no objection to the clause but noted the need for staff guidance and training to ensure that this part of the Bill is properly implemented. The Department assured the Committee that guidance and training would be provided.
259. The Examiner for Statutory Rules recommended in his report on the Delegated Powers memorandum that the level of Assembly control on subordinate legislation relating to this clause should be strengthened, from negative to draft affirmative resolution. Departmental officials were in agreement with this recommendation and provided details of a consequential amendment to clause 125 to achieve this.
260. The Committee was content with the amendment and agreed to the clause as drafted at its meeting on 13 February 2014.

Clause 52: Councils to provide additional information

261. This clause requires a council to maintain in a register that is open to inspection by the public, contact details and details on the membership of committees and sub-committees for every member of the council.
262. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 53: Supplemental provisions and offences

263. This clause sets out supplemental provisions in relation to access to documents that must be open to inspection and the offences that will apply in the event of obstructing access to the documents or refusing to provide copies as required.
264. The Committee indicated it was content with the clause as drafted at the meeting on 13 February 2014.

Clause 54: Exempt information and power to vary Schedule 8

265. This clause provides a power for the Department to add to, delete or vary any description of exempt information by virtue of which the public may be excluded from a meeting during the item to which the report containing the information relates.
266. The Examiner for Statutory Rules recommended in his report on the Delegated Powers memorandum that the level of Assembly control on subordinate legislation relating to this clause should be strengthened, from negative to draft affirmative resolution. Departmental officials were in agreement with this recommendation and provided details of a consequential amendment to clause 125 to achieve this.
267. The Committee was content with the amendment and agreed to the clause as drafted at its meeting on 13 February 2014.

Clause 55 - Interpretation and application of this Part

268. This clause provides an interpretation of Part 8.
269. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 56: Code of conduct

270. This clause provides for the Department to issue the Northern Ireland Code of Conduct for Councillors.

271. Stakeholders called for a code of practice to be established covering the relationship between councillors and employees. The Departmental officials informed the Committee that an important link between the staff code of conduct and councillors' code of conduct will be a protocol on relations between councillors and employees. It is the Department's intention that a group will be established consisting of elected members, representatives of the Local Government Reform Joint Forum and Departmental officials to consider the protocol.
272. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 57: Guidance

273. This clause states that the Northern Ireland Commissioner for Complaints (Commissioner) may issue and publish any guidance on matters relating to the conduct of councillors.
274. NILGA called for a provision requiring that guidance is issued for consultation to be inserted into the Bill, in line with other provisions elsewhere in the Bill which require guidance to be issued for consultation, particularly in relation to planning matters which will be a significant new role for members of the new councils.
275. In its response to the Committee the Departmental officials stated that the Commissioner for Complaints has confirmed he intends to consult with key stakeholders on the initial procedures and guidance regarding the mechanisms that support the code of conduct.
276. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 58 - Investigations

277. Clause 58 provides that the purpose of an investigation is to determine whether there is evidence of any failure to comply with the Code and whether action needs to be taken in respect of the matters under investigation and if an adjudication should be made by the Commissioner on the matter under investigation.
278. NIPSA felt it was not appropriate for the Commissioner of Complaints to deal with a complaint about of from a councillor in respect of a staff member.
279. Several other respondents to the Committee's call for evidence noted that the Department had informally indicated that the role of the Commissioner may be reviewed in several years' time, with a potential to introduce Standards Committees. The respondents supported such a review during the 2015-2019 electoral term, and called for an amendment to the Bill to confirm such a review in law, along with a requirement for future reviews at set intervals. The respondents also called for a mechanism to deal with minor complaints.
280. In reply, the Department stated that the Commissioner for Complaints will only have the power to investigate alleged breaches of the Northern Ireland Local Government Code of Conduct for Councillors. In relation to the call for a review of the Commissioner's role, the Department stated that the Minister had indicated in the Assembly that the system will be reviewed in 3-4 years' time.
281. In regards to a system for dealing with minor complaints, the Department stated that the ethical framework would not preclude a council from dealing with minor complaints which have arisen in the council by seeking local resolution or mediation before the matter reaches the stage of a written complaint being forwarded to the Commissioner. Officials have been researching the issue of how complaints of a minor nature are dealt with in other jurisdictions and would be putting a paper to the Minister for consideration.
282. The Committee raised the issue of how minor complaints would be dealt with and the Departmental officials agreed to report back to the Committee on discussions with the Minister on the possibility of an amendment to this clause to deal with minor complaints.

283. Members also asked that the Minister reiterated his intention for the role of the Commissioner for Complaints to be reviewed in 3-4 years.
284. At its meeting on 13 February the Committee considered the Department's proposed amendment which would allow the Commissioner for Complaints to refer minor complaints back to a council. The officials also confirmed that the Minister, at Consideration Stage, would reiterate his intention for the role of the Commissioner for Complaints to be reviewed in 3-4 years.
285. The Committee was content with the Department's response and agreed the clause subject to the following Departmental amendment:

Clause 58, Page 33, Line 17

At end insert-

"(1A) Instead of, or in addition to, conducting an investigation under this section, the Commissioner may take such action as appears to the Commissioner to be desirable to deal with any particular case falling within subsection (1)."

Clause 59 - Investigations: further provisions

286. Clause 59 provides that the person who is the subject of an investigation should be given the opportunity to comment on the allegation put to the Commissioner.
287. NILGA felt that that the guidance to be issued by the Commissioner should incorporate full details of the procedure to be adopted for investigating complaints. Departmental officials confirmed to the Committee that this would be the case.
288. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 60 - Reports, etc.

289. This clause provides for the Commissioner to produce a report on the findings of an investigation and, where the Commissioner considers it necessary in the public interest, to produce an interim report prior to the completion of an investigation.
290. Several local government representatives felt that this clause should compel the Commissioner to issue a report when he decides that there is no case to answer or that he does not intend to take any action, rather than the current version which only says that he "may" issue such a report. The representatives felt that it may be the case that allegations against a member may be in the public domain, and therefore it was important that, in cases where there is no case to answer or no action will be taken, that a publicly available report must be made.
291. In response, the Department stated that, if there is no evidence of failure or no action needs to be taken, the Commissioner may decide, due to the particular circumstances of a case, not to complete an investigation. In addition, an allegation that could result in these outcomes may not be in the public domain. Therefore a report may not be appropriate nor in the public interest in these circumstances and the Bill provides the Commissioner with this discretion. The Commissioner, in his briefing to the Committee, advised members of his intention to be open and to publish allegations of breaches of the code.
292. Members expressed concerns that malicious complaints were often made in the run up to elections which had a detrimental impact on a councillor standing for election. The Committee asked the Departmental officials to report back on discussions with the Minister, and the Commissioner for Complaints, on the possibility of a moratorium on complaints 2-3 months in advance of an election.

293. The Committee considered the Department's response at the meeting on 13 February 2014 when the officials informed the Committee that the Minister was not minded to make an amendment to the clause to introduce a moratorium on complaints in the lead up to an election.
294. Members were not content with this response and asked officials to provide further information on the rise of complaints in Wales in the run up to an election and how these complaints are dealt with. Although members recognised the practical difficulties in enforcing any kind of moratorium, the Committee urged the Department and the Commissioner to investigate how this issue can be addressed effectively without compromising on openness and transparency. This has been reflected in its recommendations.
295. The Committee agreed the clause as drafted at the meeting on 13 February 2014.

Clause 61 - Interim reports

296. This clause provides for the Commissioner to produce a report on the findings of an investigation and, where the Commissioner considers it necessary in the public interest, to produce an interim report prior to the completion of an investigation.
297. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 62: Decision following report

298. The clause provides for the Commissioner to adjudicate on any matter by deciding whether or not a person has failed to comply with the Code and sets out to whom this information must be sent.
299. Belfast City Council felt that the Department should include a right of appeal to the County or High Court for a member who may be found to be in breach of the code and any associated sanctions to be specified by the Commissioner.
300. The Committee also felt that the issue of an appeal mechanism needed to be taken very seriously; a judicial review may not provide an adequate remedy as it is essentially a review of the process undertaken and will not always examine the merits of any decision.
301. The Committee asked the Departmental officials agreed to report back on discussions with the Minister on the possibility of an amendment to this clause to introduce an appeals mechanism for complaints.
302. The Committee considered the Department's response at the meeting on 13 February 2014 when the officials informed the Committee that the Minister had agreed to bring forward an amendment to allow an appeal to the High Court.
303. Members welcomed the amendment but asked the officials to add a further subsection to clauses 62 and 63 to specify grounds for appeal to the High Court in addition to those grounds which already form the basis for judicial review. These should include leave to appeal against a decision which was not supported by the evidence and against an excessive sanction, and may be similarly worded to Scottish legislation.
304. The Committee agreed the clause subject to the following Departmental amendment:

Clause 62, Page 36, Line 36

At end insert-

'(13) A person who is censured, suspended or disqualified by the Commissioner as mentioned in subsection (3) may appeal to the High Court if the High Court gives the person leave to do so.'

Clause 63: Decisions on interim report

305. This clause provides that, where the Commissioner considers that there is evidence that a person who is subject to an interim report has failed to comply with the code and that the failure is such that it would be likely to result in disqualification, and if the Commissioner considers that it would be in the public interest to immediately suspend or partially suspend the person, then the Commissioner may give notice to the clerk of the council accordingly, giving effect to that consideration.
306. Several respondents to the Committee’s call for evidence felt that further clarification and guidance was required in terms of the process to be applied by the Commissioner.
307. In its response to the Committee, the Departmental officials stated that the Commissioner has the power to issue guidance on matters relating to the conduct of councillors and this includes the procedures that will apply in relation to complaints. The Committee was content with the Department’s response.
308. The Departmental officials, at the meeting on 13 February 2014, informed the Committee that, as a result of the amendment to clause 62, a consequential amendment would need to be made to clause 63.
309. The Committee agreed the clause subject to the following Departmental amendment:

Clause 63, Page 37, Line 29

At end insert-

‘(9) A person who is suspended (or partially suspended) by the Commissioner by notice as mentioned in subsection (1) may appeal to the High Court if the High Court gives the person leave to do so.’

Clause 64: Recommendations

310. This clause provides for the Commissioner, having adjudicated on any matter, to make recommendations to a council about any matters relating to the exercise of the functions of a council or the failure to observe the Code.
311. There were no comments from stakeholders in relation to this clause and the Committee indicated it was broadly content with the clause at the meeting on 4 February 2014.
312. At the meeting on 13 February 2014, the Committee was informed by the Department that it proposed to make several technical amendments to this clause to clarify that the Commissioner’s report should go primarily to the Department of the Environment, rather than any other Department. The Committee was content with the policy underlying the amendments which were to be provided at a later date.
313. The Committee was content to agree the clause as drafted.

Clause 65: Disclosure and registration of councillors’ interests, etc.

314. This clause provides for the clerk of the council to establish and maintain a register of the interests of its councillors and for the council to ensure that the register is available for public inspection.
315. NILGA sought the inclusion of appropriate details of all interests to be declared under this clause to be incorporated into the Code of Conduct and related guidance, to ensure full consistency across councils.
316. Arc 21 felt that provision should also be made for “conflicts of interest” declarations to be formally made at the commencement of meetings to ensure that the register is kept as up to date as possible; ARC 21 also stated that the additional expense to publish in one or more newspapers circulating in the district is an unnecessary expense and that councils should be

able to publish their Registers on their own websites and other social media without having to incur the cost of advertising.

317. The Department, in its response, stated that Sections 28 -33 of the Local Government Act (Northern Ireland) 1972 which deals with the declaration of interests will remain extant and that the Code of Conduct would provide further clarification on declaration of interests.

318. Officials further stated that publication applies after the establishment of the register and does not prevent councils from using their websites as an additional communication tool. The areas of the new councils will be larger and this provides local information and supports constituents that may not have access to electronic information.

319. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 66: Extension of 1996 Order

320. This clause provides for certain provisions of the Commissioner for Complaints (Northern Ireland) Order 1996 to apply as if references to that Order includes reference to this Bill.

321. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 67: Expenditure of Commissioner under this Act

322. This clause provides for the Commissioner to apportion the estimated amount of the expenses of the Commissioner's office in relation to the ethical standards framework between all the councils in Northern Ireland. Councils must pay the apportioned amount to the Commissioner at such time and in such manner as the Commissioner directs.

323. Several respondents to the Committee's call for evidence asked for consultation with the local government sector regarding the apportionment of fees and said there were a number of methods by which the apportionment could be carried out, and discussions should be held with the sector in order to agree the most appropriate method.

324. The Departmental officials informed the Committee that they were considering the apportionment methods, which will be submitted to the Finance Working Group, an inter council/departmental group, prior to being presented to the Minister. The Committee asked the Departmental officials to report back on whether this would require an amendment to this clause.

325. At the meeting on 13 February Departmental officials informed the Committee that the Minister was prepared to make an amendment to allow for top slicing council grants to pay for the costs of the investigations of complaints by the Commissioner for Complaints, and the Committee agreed that it would support such an amendment.

326. The Committee agreed to the clause as drafted.

Clause 68 – Interpretation

327. This clause provides an interpretation of Part 9.

328. Several respondents to the Committee's call for evidence asked for clarification as to the position in regard to the membership of outside bodies in any such instances where a councillor is suspended / disqualified from being a councillor or where they are also suspended / disqualified from being a member of any committee, joint committee or subcommittee of the council.

329. When briefing the Committee, the Department stated that a councillor cannot act if they are disqualified. If a councillor is a representative of their council on an outside body and that councillor is disqualified, then that councillor cannot represent their council on that body. If that councillor was suspended, then the council, which appointed that councillor to the outside body, must consider whether that councillor's appointment should still stand by taking

into account the details of that suspension, including any effect their decision may have on public confidence.

330. The Committee asked the Departmental officials to report back on discussions with the Minister on a possible amendment to this clause to make the position in regard to the membership of outside bodies in any such instances more explicit.
331. The Committee considered the Department's response at the meeting on 13 February 2014 when officials informed the Committee that the Minister had agreed to bring forward an amendment to this clause.
332. The Committee was content to agree the clause subject to the following Departmental amendment:

Clause 68, Page 40, Line 11

At end add-

'(5) Where a councillor is an external representative of a council-

(a) any reference in this Part to a councillor being partially suspended from being a councillor includes a reference to that councillor being suspended from being an external representative; and

(b) if that councillor is suspended otherwise than partially or is disqualified from being a councillor that councillor is also suspended or disqualified from being an external representative.'

Clause 69 – Community Planning

333. This clause places a duty on councils to initiate, maintain, facilitate and participate in community planning for their area. It also places a duty on community planning partners to participate in community planning and assist the council in the discharge of its duty.
334. Several respondents to the Committee's call for evidence called for the Bill to be strengthened through the insertion of appropriately worded clauses to provide the required reassurance to councils that partners will have to attend, sending senior officials, and, where may be required, to realign their budgets accordingly.
335. The Department stated that the duty on community planning partners must recognise the separate and distinct accountability frameworks within which they operate and that the engagement of the community planning partners will be based in the development of effective relationships between a council and its partners.
336. Respondents also felt that the wording of the proposed duties of Departments needed to be strengthened to ensure that all parties relevant to the success of community planning have strong obligations placed upon them.
337. In reply to this, the Department stated that government departments, as bodies having responsibility for the policy frameworks within which functions and services are delivered, have a distinct role in the process which is recognised by the duty that is placed upon them. The sequencing of the provisions has no impact on the outcome – it is the making of the provision that is key.
338. Several stakeholders stated that the community planning model proposed in the Bill was largely similar to the Welsh community planning model. Whilst the stakeholders had no issue with this they stated that it was vital that the legislation and supporting guidance takes account of the specific circumstances in Northern Ireland. Also, in other jurisdictions there are significant regional support structures in place to support and promote local government improvement and community planning. The stakeholders felt that there were currently no

similar support arrangements within Northern Ireland and suggested that the establishment of a regional support structure to support improvement and community planning should be included in the proposals.

339. In its briefing to the Committee, the Departmental officials stated that the proposed statutory guidance will be specific to Northern Ireland and consider issues appropriate to councils here. The establishment of regional support structures is a matter for consideration by local government and the Partnership Panel. The duty on departments goes further than that applying in other jurisdictions such as Scotland and Wales, in that it places a duty on departments to have regard to any implications of a community plan for the exercise of the department's functions. The role of departments in community planning will be underpinned by the Partnership Panel.
340. There were also calls from stakeholders to link community plans to the Programme for Government as many community planning partners would be directly involved in delivering PfG targets and it was felt that an appropriate linkage could maximise both impact and resource efficiency.
341. The Departmental officials informed the Committee that the Partnership Panel will provide a forum for elected representatives from district councils and Executive Ministers to examine the relationship between community plans and the Executive's Programme for Government and the potential for any linkages. Community planning is a long term process which will provide opportunities for the alignment of plans and strategies at a local and regional level.
342. Whilst the Committee was content with the Department's responses, members asked if there was a possibility that equality and good relations could be added to this clause and also asked that the Minister gives an assurance, at Consideration Stage, that the role of the voluntary and community sector will be outlined in statutory guidance.
343. The Departmental officials agreed to report back to the Committee, after discussions with the Minister, on a possible amendment to this clause to include equality and good relations.
344. The Committee considered the Department's response at the meeting on 13 February 2014 when the officials informed the Committee that the Minister was not minded to make an amendment but was still taking soundings from stakeholders. The officials also gave an undertaking that the Minister would give an assurance, at Consideration Stage, that statutory guidance would outline the role of the voluntary and community sector and may include wellbeing, equality and good relations.
345. Members also raised the issue of the possible inclusion of social exclusion resulting from deprivation and poverty in the criteria for community planning.
346. The Committee was content to agree the clause as drafted but asked that the Department provided further clarification on the Minister's proposed way forward on this clause.

Clause 70: Community planning partners

347. This clause provides a power for the Department by order to specify the bodies or persons who are to be the community planning partners of a council.
348. Several stakeholders felt that the Bill should list the community planning partners who are under a duty to participate and should also allow for additional partners to be identified and added as and when required.
349. In response the Department told the Committee that the specification in subordinate legislation, of those bodies and persons who are to be community planning partners of a council, provides greater flexibility to add or remove bodies or persons from the list as required. Specification in subordinate legislation has the same effect as specification in the primary legislation. If the partners were named on the Bill and there were changes to be made this would mean having to introduce further primary legislation.

350. NILGA stated that it is considered vital to the success of the community planning process that partners are compelled to attend relevant meetings, and align plans and budgets to the community plan, but there is no indication that the forthcoming order will be any more than a specified list of organisations.
351. The Departmental officials informed the Committee that they were working with senior officers from local government to identify the bodies and persons who should be specified as community planning partners. Work had also begun on engaging with departments and statutory bodies to raise awareness of their role in community planning which will assist in informing the identification of those bodies to be specified as community planning partners.
352. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 71: Production of community plan

353. This clause specifies that, once a council and its community planning partners have reached a consensus as to the community plan objectives and actions, the council must produce a document (known as a community plan) capturing that consensus.
354. Several respondents to the Committee's call for evidence felt that the production of a community plan should be within a specific time period and not "as soon as is practicable" as this would allow too much potential for slippage.
355. The Department stated that its proposed approach was to provide the flexibility that may be required to obtain consensus rather than specifying a timeframe which may act as a constraint and that this was a matter for consideration by the Minister.
356. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 72 - Duty to review community plan

357. This clause requires a council and its community planning partners to review the community plan at least every four years to consider the extent to which objectives have been met and, if not met, the progress made towards the objectives.
358. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 73 - Review of community plan

359. This clause requires a council and its community planning partners to review the community plan at least every four years to consider the extent to which objectives have been met and, if not met, the progress made towards the objectives.
360. Community Places felt that the council and its community planning partners should report on the means of consultation including a summary of the outcomes of this consultation. The group also felt that it was essential that community involvement is consistent and robust across the 11 new council areas and felt that, in order to ensure that a review of a community plan is conducted in a timely fashion, a timescale of six months should be introduced for when the plan should be published after a review.
361. In reply, the Department stated that it would consider the point on consultation in the context of the development of statutory guidance as there will be a need to strike a balance between engaging with the community, the administrative burden this could place on a council and its community planning partners, and the desired outcomes. The introduction of a specific timeframe, whilst having merit, could act as a constraint in conducting a proper review process and this was a matter for consideration by the Minister.

362. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 74: Monitoring

363. This clause requires a council, and its community planning partners, to make arrangements for monitoring progress made on meeting the community planning objectives and the associated actions.
364. NILGA felt that it was unclear how accountability will be shared and made possible, particularly as Northern Ireland Departments are responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners and NILGA also asked if there would be sanctions for partners who fail to participate adequately.
365. In its briefing to the Committee, the Departmental officials stated that the issue around accountability could be considered in the proposed statutory guidance and will be supported by the operation of the proposed Partnership Panel. The officials further stated that it was difficult to envisage the operation of a sanctions regime that would not adversely impact on the delivery of a specified bodies functions and responsibilities. Inadequate participation by planning partners may be raised with those responsible for the body and with a Minister either directly or through the proposed Partnership Panel.
366. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 75: Implementation

367. This clause requires that a council or a community planning partner must take all reasonable steps to perform any action or exercise any function assigned to it in the community plan.
368. Several stakeholders felt that it was unclear how community planning "performance" will be assessed and felt that participating Departments must reciprocate and clearly have a performance duty.
369. The Department stated that this issue would be considered in the context of the proposed guidance and can be considered further by the proposed Partnership Panel.
370. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 76: Community involvement

371. This clause requires a council and its community planning partners to make arrangements to involve, and take account of the views of:
- local residents;
 - non-residents who receive services provided by the council or one of its community planning partners;
 - representatives of voluntary organisations;
 - representatives of business interests; and
 - anyone else whom the council considers to have an interest in improving the district's economic, social or environmental well-being
- in connection with community planning, preparation of a community plan and the review of a community plan.

372. The feeling was expressed by stakeholder that this clause needed to be strengthened to ensure active participation from the community is encouraged with an assurance that their views will be taken into account and considered.
373. The Departmental officials informed the Committee that the proposed statutory guidance will consider in more detail the issue of community involvement in the process and those persons and bodies with whom a council and its community planning partners should engage.
374. Members of the Committee felt that the point made by stakeholders on the need to strengthen the clause was a valid point.
375. Members asked the Departmental officials to report back to the Committee, after discussions with the Minister, on a possible amendment to Clause 76(1) to insert 'reasonable' before arrangements.
376. The Committee considered the Department's response at the meeting on 13 February 2014 when the officials informed the Committee that an amendment was proposed for this clause.
377. In the absence of the wording of the proposed amendment, the Committee agreed to the clause as drafted.

Clause 77: Guidance

378. This clause provides a power for the Department to issue guidance in relation to community planning to which a council and its community planning partners must have regard.
379. One stakeholder stated that it was imperative that the Department produces detailed guidance which should outline a set of minimum standards which community plans should be required to meet. It was also felt that guidance should include quality standards for community engagement and steps to ensure that community planning structures are fully representative of all voluntary and community bodies, with particular regard to the section 75 equality categories.
380. In its briefing to the Committee the Department stated that the proposed guidance will provide more detail on all aspects of the community planning process to underpin the legislative framework. The implementation of the Community Planning Foundation Programme will assist in the identifying issues that may need to be addressed in the statutory guidance.
381. NILGA felt that it was important that consultation is a collaborative process between the Department and Local Government as 'one size' was unlikely to 'fit all' and this would need to be reflected in the guidance and reporting arrangements.
382. The Department told the Committee that it would work closely with senior officers from local government and other bodies in the development of the proposed guidance and that the development of the guidance will also be informed by the outworking of the Community Planning Foundation Programme.
383. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 78: Duty of departments in relation to community planning

384. This clause places a duty on Northern Ireland Departments, as far as it is reasonably practical for them, to promote and encourage community planning when exercising a function which might affect community planning, and to have regard to any implications of a community plan on the exercise of functions.
385. NILGA felt that this clause was too weak and strongly encouraged the Committee to consider how to legislate more effectively for the sharing of accountability. NILGA was deeply concerned by the prospect that Departments will consider that it is not 'reasonably

practicable' to 'aim' to promote and encourage community planning and that they may not provide the appropriate oversight into the contribution of their agencies to the community plan.

386. In its briefing to the Committee, the Departmental officials stated that an amendment would be made to remove 'aim to' from Clause 78(a). Members welcomed the amendment and requested a copy for consideration at a future meeting.

387. The Committee considered the draft amendment at the meeting on 13 February 2014 and members were content to agree the clause subject to the following amendment:

Clause 78, Page 45, Line 7

Leave out 'aim to'

Clause 79: Establishment of bodies corporate

388. This clause provides a power for the Department, by order, to establish corporate bodies to co-ordinate and further community planning following application by a council and one or more of its community planning partners, and consideration of a report on matters specified in subsection (2) of the clause.

389. In its response to the Committee's call for evidence NIPSA stated that there was a need to require negotiations with the trade unions representing any affected staff and should a body corporate be established.

390. In response, the Department stated that the establishment of a community planning partnership as a body corporate will be a matter for individual councils and their community planning partners having regard to appropriate statutory provisions.

391. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 80: Amendments to the Planning Act (Northern Ireland) 2011

392. This clause amends the Planning Act (Northern Ireland) 2011 to provide a statutory link between community planning and spatial planning.

393. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 81 – Interpretation

394. This clause provides an interpretation of Part 10.

395. One stakeholder questioned the need for this clause as they felt that enabling alternative names for community plans across Councils could lead to confusion.

396. The Committee asked the Department for its views and was told that the clause was needed to provide flexibility for a council to adopt a name for its community plan that it considers to be more reflective of its content and objectives.

397. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 82: Council's general power of competence

398. This clause provides a general power of competence for councils. It gives councils the same power to act that an individual generally has and provides that the power may be used in innovative ways, that is, in doing things that are unlike anything that a council – or other public body – has done before, or may currently do.

399. Whilst most respondents to the Committee’s call for evidence welcomed this clause and the introduction of the general power of competence, they stated that there was a need for clear and detailed guidance in relation to the operation of this new power which must be developed in partnership with local government and provide both clarity and protection for councils and local people.
400. In its briefing to the Committee, the Department stated that the potential use of the general power of competence will be a matter for individual councils to determine and that the development and issue of guidance by the Department would have the potential to place unintended parameters around the use of the power, beyond those provided in the Bill.
401. The Committee was content with the Department’s response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 83: Boundaries of the general power

402. This clause sets out the boundaries of the general power, requiring councils to act in accordance with statutory limitations or restrictions. Restrictions that apply to existing powers that are overlapped by the general power are applied to the general power.
403. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 84: Limits on charging in exercise of the general power

404. This clause restricts the ability of a council to charge for providing a service to a person using the general power, or where they are using an existing provision which provides a similar power. If no specific charging power exists, councils can charge up to full cost recovery for discretionary services – that is those that they are not required to provide to a person, where that person has agreed to their being provided.
405. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 85: Powers to make supplemental provision

406. This clause provides the Department with powers to remove or change statutory provisions that prevent or restrict the legal capacity of councils to use the general power to do things that an ordinary individual can do, and to remove overlaps between the general power and existing powers.
407. The Examiner of Statutory Rules advised the Committee, in his paper on the delegated powers of the Bill, that members may wish to press the Department on considering a super-affirmative procedure for orders made by the Department under clause 85(1) (and orders under clause 85(2) where combined with orders under clause 85(1)).
408. The Committee accepted the Examiner’s advice and requested the wording of a Departmental amendment to ensure that this clause was subject to super affirmative resolution.
409. The Committee considered the draft amendment at the meeting on 13 February 2014.
410. The Committee was content to agree the clause subject to the following Departmental amendment:

Clause 85, Page 48, Line 41

At end insert-

‘(5) Before the Department makes an order under this section it must consult—

(a) such associations or bodies representative of councils;

(b) such associations or bodies representative of officers of councils; and

(c) such other persons or bodies,

as appear to the Department to be appropriate.

(6) If, following consultation under subsection (5), the Department proposes to make an order under this section it must lay before the Assembly a document explaining the proposals and, in particular—

(a) setting them out in the form of a draft order; and

(b) giving details of consultation under subsection (5).

(7) Where a document relating to proposals is laid before the Assembly under subsection (6), no draft of an order under this section to give effect to the proposals (with or without modification) is to be laid before the Assembly until after the expiry of the statutory period beginning with the day on which the document was laid.

(8) In preparing a draft order under this section the Department must consider any representations made during the period mentioned in subsection (7).

(9) A draft order laid before the Assembly in accordance with section 125(3) must be accompanied by a statement of the Department giving details of—

(a) any representations considered in accordance with subsection (8); and

(b) any changes made to the proposals contained in the document laid before the Assembly under subsection (6).'

Clause 86: Limits on the power conferred by clause 85

411. This clause requires the Department, before exercising the power provided by clause 85, to consider whether certain specified conditions have been met.

412. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 87: Improvement: general duty

413. This clause requires a council to make arrangements to secure continuous improvement in the exercise of its functions.

414. NILGA stated that this clause had been lifted from the Welsh legislation without tailoring to the Northern Ireland situation. In reply, the Department stated that drafting of the clause had regard to the situation in Northern Ireland as the issue of fairness touches on a council's statutory duty under section 75 of the Northern Ireland Act 1998, its inclusion is designed to reinforce the need to consider the equality duty and draw attention to social needs obligations in service delivery.

415. Stakeholders also felt that any performance improvement regime should not be bureaucratic or take up scarce resources complying with what may be or may not be a useful exercise. In response to this, the Department informed the Committee that the proposed framework is designed to provide flexibility for each council to determine its performance improvement objectives and targets, either individually or as a consequence of any collaborative arrangements, whilst putting in place reporting arrangements that will provide accountability to local residents, Ministers and the Assembly.

416. Several stakeholders also told the Committee that there was an overlap in this clause with the Best Value Act, where councils are required to “make arrangements for continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”

417. In its briefing to the Committee, the Department stated that the provisions in this clause replace the Local Government (Best Value) Act (NI) 2002 and place the focus on improving performance rather than the concept of best value.
418. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 88: Improvement objectives

419. This clause requires a council, for each financial year, to set itself improvement objectives for improving the exercise of particular functions of the council and to have in place arrangements to achieve those objectives.
420. Several representatives from the local government sector stated that reporting is already in place on these issues, and the requirement to demonstrate continuous improvement. The representatives queried whether current reporting arrangements would be satisfactory, or whether a parallel system will be initiated, doubling the administrative burden on councils in some areas.
421. In its reply to the Committee, the Department stated that it would be up to councils to determine whether the information they already provide on these issues is sufficient to meet the performance improvement reporting requirements and how this information can be utilised.
422. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 89 - Improvement: supplementary

423. This clause defines the aspects of improvement which feature in this Part of the Bill, and allows a council to demonstrate improvement in a variety of different ways.
424. Several local government organisations felt that the reference to 'particular groups' at Clause 89 (d) (i) needed further clarification. The organisations also felt that particular scrutiny was needed on the list of improvement objectives to ensure that there are clear definitions for each category.
425. The Department stated that this issue will be considered further in the context of the development of guidance to support the framework.
426. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 90 - Consultation on improvement duties

427. This clause places a duty on a council, in fulfilling its duty and setting improvement objectives, to consult with representatives of people falling within specified categories;
- persons liable to pay rates;
 - those who use or are likely to use services provided by the council; and
 - persons appearing to the council to have an interest in the district.
428. NIPSA stated that there should be a requirement to consult with the relevant trade unions.
429. In reply, the Department stated that this will be a matter for individual councils.
430. Belfast City Council sought clarification on clarification on how the duty to consult sits with Part 10, Clause 76 of the Bill relating to a duty to take account of the views of various parties in the production of community plans, is detailed.

431. The Department's reply stated that a less stringent duty is considered appropriate in relation to performance improvement as a council's strategic objectives link directly to its community plan, which will have been the subject of engagement, and the other objectives and targets covered by the improvement duty may have limited or no bearing on the council's community plan.
432. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 91 - Appropriate arrangements under sections 87(1) and 88(2)

433. This clause requires a council, in the discharge of its improvement duties to have regard to any guidance issued by the Department.
434. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 92: Performance indicators and performance standards

435. This clause provides the Department with a power to prescribe by order factors of performance (performance indicators) against which a council's performance will be measured.
436. Several respondents from the local government sectors stated it was vital that the Department develops, in partnership with local government, an agreed approach to the setting of performance indicators.
437. The Department informed the Committee that the proposed Partnership Panel would provide a mechanism to develop any regional performance indicators which will be specified in subordinate legislation.
438. The respondents from the local government sector also proposed that an agreed, specific guidance should be issued, in relation to the composition and calculation of indicators and standards and those standards/indicators must be reviewed annually by the local government auditor.
439. The Department, in reply, stated that it will be a matter for the proposed Partnership Panel to consider the development of the performance indicators and standards and, the role of the Local Government Auditor in the process.
440. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 93 - Collection of information relating to performance

441. This clause requires a council during each financial year to collect information which will allow it to assess its performance in achieving its improvement objectives and to measure its performance against performance indicators or standards set by the Department or any other indicators or standards which the council chooses to use.
442. Several local government organisations expressed deep concern with this clause, which, they felt, was likely to place an unnecessarily large administrative burden on councils. The organisations were strongly of the view that the burdens of inspection, data collection and reporting should be kept to a minimum.
443. In its briefing to the Committee, the Department stated that the processes for the collection of the information necessary for a council to report on its performance improvement would be a matter for individual councils and that the reporting and inspection provisions in Part 14 of the Bill will only apply in the specific circumstances, not as a matter of routine.
444. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 94 - Use of performance information

445. This clause requires a council during each financial year to collect information which will allow it to assess its performance in achieving its improvement objectives and to measure its performance against performance indicators or standards set by the Department or any other indicators or standards which the council chooses to use.
446. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 95 - Improvement planning and publication of improvement information

447. This clause requires a council during each financial year to collect information which will allow it to assess its performance in achieving its improvement objectives and to measure its performance against performance indicators or standards set by the Department or any other indicators or standards which the council chooses to use.
448. In its submission to the Committee's call for evidence, the Northern Ireland Audit Office stated that an earlier date to report would be more preferable and would better inform the overall process including the scope for timely audit and assessment and informing future improvement planning.
449. The Committee agreed with the points made by the NIAO and asked the Departmental officials to report back on the possibility of amending the clause from 31st October to 30th November as the reporting date to facilitate the Local Government Auditor in the preparation of financial accounts for councils.
450. At the meeting on 13 February 2014 the Committee was informed that the Minister proposes to bring forward an amendment to change the date at 95 (3)(a) from '31st October' to '30th September'. While the Committee would support an amendment to allow the Auditor more time, members felt that the Department should be encouraged to make use of its power at 95 (3)(b) to specify another date.
451. In the absence of the wording of the proposed amendment, the Committee agreed that it was content with the clause as drafted.

Clause 96 - Improvement information and planning

452. This clause requires the Local Government Auditor to carry out an audit to assess whether a council has discharged its duties under clause 95 and acted in accordance with any guidance issued by the Department.
453. NIAO expressed concerns that this clause would not provide flexibility for the auditor to consider matters such as risk assessments to inform the extent of work and reporting that is necessary. The NIAO felt that, once the new arrangements are embedded, that it is unnecessary for the auditor to report in full and separately on each Council each year and exception reporting may become more appropriate.
454. In reply, the Departmental officials informed the Committee that this is a new framework for new councils which will need to become established over a number of years. The auditing of the arrangements that each of the individual councils put in place to meet their statutory obligations in relation to performance will be an important factor to support this and the creation of baseline data and a move to a more risk based approach could be a matter for further consideration in due course following a system review.
455. The Committee agreed that a move to a risk based assessment after a period of time establishing a baseline was a better approach which would provide the Auditor with more flexibility. Members asked the Departmental officials to provide the wording of an amendment which would review the audit process after 2-3 years and asked the officials to ask the Minister to give an undertaking on this at Consideration Stage.

456. The Committee was informed of a proposed amendment by the Minister at the meeting on 13 February 2014 which would allow a move to a risk based audit approach. The officials also gave an undertaking that the Minister would, at Consideration Stage, give an assurance to review the audit process after 2-3 years.

457. The Committee also agreed to the clause subject to the following Departmental technical amendment:

Clause 96, Page 54, Line 15

Leave out '95(6)' and insert '113'

Clause 97 - Improvement assessments

458. This clause places a duty on the Local Government Auditor to carry-out a forward-looking assessment of how far a council is likely to meet the requirements of this Part in that year; this may cover more than one year if the Local Government Auditor so wishes.

459. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 98 - Audit and assessment reports

460. This clause places a duty on the Local Government Auditor to produce a report or reports for each council in relation to his duties under clauses 96 and 97.

461. The NIAO stated that this clause requires the auditor to provide copies of audit reports by 30 November which seemed unachievable in the current proposals as Councils would only publish their reports by 31 October. NIAO suggested a more realistic date for audit reporting of this information of no later than 31 January.

462. The Departmental was in agreement with the views of the NIAO and asked the officials to report back on the possibility of amending the clause from 30th November to 31st January or, alternatively, bring forward the date of the publication of council accounts to an earlier date than 31st October.

463. While the Committee would support an amendment to allow the Auditor more time, members felt that the Department should be encouraged to make use of its power at 98 (3)(b) to specify another date.

464. The Committee was informed by the officials of the proposal for an amendment at the meeting on 13 February 2014. The Committee agreed to the clause subject to the following Departmental amendments:

Clause 98, Page 54, Line 33

Leave out '95(6)' and insert '113'

Clause 98, Page 55, Line 1

Leave out '95(6)' and insert '113'

Clause 99 - Response to section 98 reports

465. This clause requires a council to respond to a report or reports from the Local Government Auditor if it contains:

- a recommendation to the council as to the action it should take to comply with the requirements of this Part; or
- a statement that the Local Government Auditor intends to undertake a special inspection.

466. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 100 - Annual improvement reports

467. This clause requires the Local Government Auditor to produce and publish each year an annual improvement report for each council.
468. The NIAO told the Committee that, in the interests of efficient reporting and proportionality, it would be useful to have more flexibility in the audit reporting mechanism and the extent of required reporting. For example, over time it may be appropriate to produce a consolidated publication of Annual Improvement Reports rather than producing a separate annual report for each council.
469. The Department, in reply, stated that this is a new framework for new councils for which will need to become established over a number of years and that a move to a more risk based approach could be a matter for further consideration in due course following a system review
470. The Committee asked the Departmental officials to consult with the NIAO on a possible amendment on the requirement for the Local Government Auditor to be obliged to produce an annual improvement report every year.
471. Departmental officials indicated at the meeting on 13 February that the Minister will give consideration to bringing forward an amendment to provide an enabling power for the Department to determine, in consultation with the Local Government Auditor, which council should be audited on performance on which year, and the Committee was broadly supportive of this.
472. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 101 - Special inspections

473. This clause permits the Local Government Auditor to conduct a special inspection of a council where the Auditor believes that a relevant council may fail to comply with the requirements of this Part.
474. The NIAO suggested that the proposals in the Bill could undermine the auditor's independence if a Department has the power to direct the Auditor to carry out work. Instead, the NIAO suggested that the legislation provides for the Department to request work to be carried out by the Auditor.
475. In response, the Department told the Committee that it has a statutory responsibility for the provision and oversight of local government functions, including the provision of a local government audit function. In this context and in order to ensure that appropriate arrangements exist for providing accountability to the Assembly it is appropriate that the Department has the proposed power of direction. It will not be for the Department to direct how an audit should be undertaken or reported as this would clearly interfere with the Local Government Auditor's independence.
476. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 102 - Reports of special inspections

477. This clause permits the Local Government Auditor to conduct a special inspection of a council where the Auditor believes that a relevant council may fail to comply with the requirements of this Part.
478. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 103: Powers of direction, etc.

479. This clause contains powers for a relevant department to intervene in and direct a council which is failing, or is at risk if failing to comply with this Part of the Bill. The clause also sets out the options open to the relevant department.
480. Several local government stakeholders expressed concern about how and when the powers in this clause would be used and asked that guidance was produced for government departments to ensure that they don't begin to micro-manage councils and to not place unrealistic reporting expectations on them.
481. In reply, the Department stated that it is appropriate that a department with policy responsibility for a function or responsibility being exercised by a council has the ability to intervene if an improvement plan is not making appropriate provision in relation to that function or responsibility. A department may only use the power provided in relation to a function for which it has policy responsibility and the practical framework around the use of the power could be considered by the Partnership Panel
482. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 104: Power to modify statutory provisions and confer new powers

483. This clause provides the Department with a power (by order) to make provision to modify or exclude the application of enactments which apply to councils if it is satisfied that such an enactment prevents or obstructs a council from complying with the provisions of this Part.
484. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 105 - Application of certain local government audit provisions

485. This clause provides the Department with a power to confer upon a council any additional power it considers necessary in order to facilitate compliance with this Part of the Bill. In exercising a power conferred on them a council must take account of any guidance issued by the Department.
486. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 106 - Partnership Panel

487. This clause requires the Department to establish a Partnership Panel for Northern Ireland whose members, to be appointed by the Department, are to comprise Northern Ireland Ministers and members of district councils.
488. Several local government organisations told the Committee that they were strongly in agreement that a partnership panel was necessary, but that the local government representation should be nominated by the sector, agreed with the Department.
489. The Departmental officials informed the Committee that the appointment of councillors to the proposed Partnership Panel was a formal mechanism which did not remove the responsibility for the nomination of the appropriate councillors by their respective councils. The Committee was content with the Department's response.
490. At the meeting on 13 February the Department informed the Committee that it proposed to make amendments to the clause to enable each council to nominate a representative to the Partnership Panel. The Committee agreed the clause subject to the following Departmental amendments:

Clause 106, Page 60, Line 6

Leave out "appointed by the Department"

Clause 106, Page 60, Line 8

Leave out “(4)” and insert “(3A)”

Clause 106, Page 60, Line 8

At end insert-

‘(3A) Each council may nominate a councillor to serve as a member of the Panel.’

Clause 106, Page 60, Line 9

Leave out subsection (4)

Clause 107: Power of any Northern Ireland department to direct council to make reports

- 491. This clause re-enacts section 127 of the Local Government Act (Northern Ireland) 1972 but extends it to all departments, not just DOE.
- 492. NILGA, and several other local government representatives, felt that the language in the clause and the scope of powers conferred on departments to be contradictory to the spirit of fostering a more collaborative working arrangement between central and local government.
- 493. The Department, in response, told the Committee that it will be a matter for an individual Department that has policy responsibility for a function or responsibility being delivered by a council to determine the circumstances in which it wishes to use these powers, taking account of any previous steps it has taken to address a particular issue. The practical outworking of these powers is a matter that could be given further consideration by the Partnership Panel.
- 494. The Committee was content with the Department’s response and at the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 108: Inquiries and investigations

- 495. This clause re-enacts section 128 of the Local Government Act (Northern Ireland) 1972 but extends it to all departments, not just DOE.
- 496. A respondent from the local government sector expressed concern that councils will have no form of appeal against a finding of failure nor any requirement of a Department to engage with a council to rectify the problem prior to such directions being made.
- 497. In its response the Department stated that this would be a matter for further consideration by the Partnership Panel.
- 498. Members shared the concerns expressed by the respondent and asked that the clause be amended to include a right of appeal for councils.
- 499. The Department stated, at the meeting on 13 February, that it would bring forward such an amendment on this clause.
- 500. In the absence of the wording of the amendment the Committee agreed the clause as drafted.

Clause 109: Power of any Northern Ireland department to intervene in case of default by council.

- 501. This clause re-enacts section 129 of the Local Government Act (Northern Ireland) 1972 but extends it to all departments, not just DOE. It provides a power for any department, if it is satisfied following an inquiry or investigation that a council has failed to discharge any of its function, to intervene in the operation of the council.
- 502. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 110: The local government auditor

503. This clause amends the Local Government (Northern Ireland) Order 2005 to reflect the Comptroller and Auditor General's responsibility for local government audit with the Northern Ireland Audit Office (NIAO), and structural and procedural changes within the local government audit section.
504. The NIAO informed the Committee that it has raised with the Department a number of other matters which it would ask to be addressed as part of this legislation.
505. The Department responded by saying that it was currently considering the issues raised by the NIAO.
506. The Committee was content with the Department's response and at the meeting on 13 February 2014 the Committee agreed the clause as drafted.

Clause 111: Power to repeal provisions relating to surcharge, etc.

507. This clause provides a power for the Department to remove the provisions relating to the surcharge of councillors, contained in the Local Government (Northern Ireland) Order 2005, by regulations.
508. NILGA, along with several other local government sector organisations, welcomed the provision to the effect that the Department may by Order repeal the relevant legislation relating to the previous ability of the local government auditor to seek a declaration that an item of account is unlawful and to seek the recovery of an amount not accounted for.
509. In reply, the Department stated that The Bill provides an enabling power for Article 19 of the 2005 Order to be repealed by way of regulation and that consideration will be given to repealing the surcharge provisions when the ethical standards framework surcharge has been in place for a period of time.
510. The Committee was content with the Department's response and indicated it was broadly content with the clause at the meeting on 11 February 2014.
511. At the meeting on 13 February 2014, the Departmental officials informed the Committee that it proposed to make an amendment to the clause.
512. The Committee agreed the clause subject to the following Departmental amendment:

Clause 111, Page 62, Line 25

Leave out 'Article' and insert 'Articles 18(1) and'

Clause 112 - Minor and consequential amendments

513. This clause outlines minor and consequential amendments relating to the definition of local government auditor.
514. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 113: Guidance

515. This clause provides a power for the Department to issue guidance on any aspect provided for in the Bill. A duty is placed on a council to have regard to any such guidance.
516. This clause was welcomed by the local government sector organisations that responded to the Committee's call for evidence.
517. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 114: Transitional rate relief in consequence of changes in local government districts

518. This clause amends the Rates (Northern Ireland) Order 1977 to provide a transition scheme for managing rates convergence where there are wide disparities in the level of district rates between the merging councils.
519. This clause was welcomed by the local government sector organisations that responded to the Committee's call for evidence.
520. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 115: Commencement of the Local Government (Boundaries) Order (Northern Ireland) 2013

521. This clause amends Article 1(4) of the Local Government (Boundaries) Order (Northern Ireland) 2012 to ensure there is clarity on which hereditaments the new councils will have the power to make a rate in respect of before they take on full responsibility for all their functions on 1 April 2015.
522. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

New clause

523. At the meeting on 13 February 2014 the Departmental officials informed the Committee of a proposed new clause after clause 115.
524. The Committee agreed the new clause:

After Clause 115 insert -

‘Transferred functions grant

Transferred functions grant

115A.(1) In the Local Government Finance Act (Northern Ireland) 2011, after section 27 (rates support grant) there shall be inserted the following section-

“Transferred functions grant

27A.(1) The Department shall for any prescribed financial year make a grant under this section to councils.

(2) In this section “transferred functions grant” means the grant payable under this section for any financial year.

(3) The transferred functions grant is payable only to a council which is a new council within the meaning of Part 2 of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010.

(4) The amount of the transferred functions grant payable to a council for any financial year is the amount equal to the difference between-

(a) the amount of the product of the district rate for that year (within the meaning of the Rates (Northern Ireland) Order 1977) so far as it relates to the rateable net annual values of the hereditaments in the district of that council; and

(b) the amount which would have been the amount of that product if the total of the rateable net annual values of the hereditaments in the district of that council had been increased by a prescribed amount.

(5) Subsection (4) is subject to section 28 (reductions in grants).

(6) Payments in respect of transferred functions grant shall be made to a council at such times as the Department may determine.'

(2) In section 28 of that Act (reductions in grants), in subsections (2)(a) and (6)(b) and in the heading for "or 27" there shall be substituted " , 27 or 27A".'

Clause 116: Exclusion of non-commercial considerations

525. This clause re-enacts the provisions in section 2 of the Local Government (Best Value) Act (Northern Ireland) 2002 to provide a power for the Department to specify a matter that should cease to be a non-commercial consideration for the purposes of district council contracts.

526. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 117: Control of disposals and contracts of existing councils and their finances

527. This clause amends the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 to supplement the controls on existing councils in the run up to reorganisation to take account of the Local Government Finance Act (Northern Ireland) 2011.

528. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

New clause 117A

529. The Departmental officials informed the Committee of a proposed new clause after clause 117. The Departmental officials informed the Committee that the wording of the new clause would be forwarded at a later date.

530. At the meeting on 13 February 2014 the Committee agreed the new clause in principle only, without prior sight of the wording of the clause.

Clause 118 - Persons ceasing to hold office

531. This clause re-enacts the provisions in sections 34, 35 and 39 of the Local Government Act (Northern Ireland) 1972 in respect of persons ceasing to hold office, validity of acts done by unqualified person and insurance against accidents to councillors.

532. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 119 - Validity of acts done by unqualified person

533. This clause re-enacts the provisions in sections 34, 35 and 39 of the Local Government Act (Northern Ireland) 1972 in respect of persons ceasing to hold office, validity of acts done by unqualified person and insurance against accidents to councillors.

534. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

New clause 119A

535. At the meeting on 13 February 2014 the Departmental officials informed the Committee of a proposed new clause after clause 119 to allow for the abolition of the Local Government Staff Commission.

536. the Committee agreed the new clause:

After clause 119 insert-

'Power to dissolve Local Government Staff Commission

Power to dissolve the Local Government Staff Commission for Northern Ireland [1diss]

**. In section 40 of the Local Government Act (Northern Ireland) 1972 (Staff Commission), after subsection (8) there shall be added the following subsection^{3/4}*

“(9) The Department may by order make provision for, and in connection with, the dissolution of the Staff Commission and such an order may—

(a) provide for the transfer of the functions, assets and liabilities of the Staff Commission to any other body or person; and

(b) contain such incidental, consequential, transitional or supplementary provisions (including the modification or repeal of any statutory provision (including a provision of this Act)) as appear to the Department to be necessary or expedient.

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

Clause 120 - Insurance against accidents to councillors

537. This clause re-enacts the provisions in sections 34, 35 and 39 of the Local Government Act (Northern Ireland) 1972 in respect of persons ceasing to hold office, validity of acts done by unqualified person and insurance against accidents to councillors.

538. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 121: Schemes for transfers of assets and liabilities

539. This clause requires the Department, and any other department transferring a function to the new councils, to make a scheme or schemes for the transfer of assets and liabilities of a local government body or a department to a new local government body.

540. NILGA contended that a scheme for transferring local government employees to the appropriate new councils should be prepared by the existing councils and approved by the new councils (in shadow form) prior to submission to the Department for approval.

541. The Department informed the Committee that the Local Government Reform Joint Forum has been given responsibility for developing the agreed Staff Transfer Scheme for Local Government Staff. The Department will be working closely with local government on the detail of the specific transfer schemes as they apply in each council.

542. At the meeting on 11 February 2014, the officials informed the Committee that the Department needed to make an amendment to this clause due to an issue over the transfer of Armagh County Museum.

543. At the meeting on 13 February 2014, the Committee agreed the clause subject to the following Departmental amendments:

Clause 121, Page 66, Line 14

Leave out lines 14 to 21 and insert-

‘121.-(1) The power conferred by subsection (4) is exercisable where it appears to any Northern Ireland department necessary or expedient as mentioned in section 123(1) or (2).’

Clause 121, Page 66, Line 30

At end insert-

(6A) The Department of Culture, Arts and Leisure may make one or more schemes for the transfer of designated assets or liabilities of the Board of Trustees of the National Museums and Galleries of Northern Ireland relating to Armagh County Museum to the council for the district of Armagh, Banbridge and Craigavon.’

Clause 121, Page 66, Line 40

Leave out from ‘means’ to ‘that’ in line 42

Clause 121, Page 67, Line 1

Leave out 'it'

Clause 121, Page 67, Line 3

Leave out 'it'

Clause 122: Compensation for loss of office or diminution of emoluments

544. This clause provides for compensation to be paid to a person who suffers loss of employment or diminution of emoluments as a result of the establishment of the new councils or the transfer of functions from a local government body or Northern Ireland department to a new local government body.
545. NIPSA felt that this clause was wholly deficient as the previous Minister had assured the Local Government Reform Joint Forum that its severance agreement would appear on the face of the Bill.
546. In its briefing to the Committee, the Department stated that Changes to Local Government Pensions due to be introduced in April 2014 would impact upon the previously agreed severance scheme for local government. As the revised content of staff severance schemes had yet to be fully consulted upon with key stakeholders and agreed by both Management and Trade Union Sides, it would not be appropriate to add these as a schedule to the Bill.
547. The Committee was content with the Department's explanation and indicated it was broadly content with the clause at the meeting on 11 February 2013.
548. At the meeting on 13 February 2014, the Departmental officials informed the Committee that the Department proposed to make amendments to the clause to specify who should be liable for the payment of compensation.
549. The Committee agreed the clause subject to the following Departmental amendments:

Clause 122, Page 67, Line 11

Leave out from 'means' to 'includes' in line 15 and insert 'includes the Local Government Staff Commission and;'

Clause 122, Page 67, Line 18

Leave out from 'Act' to the end of line 22 and insert-

'or any other Act mentioned in subsection (1) of section 123;

(b) any transfer of functions or any statutory provision falling within paragraph (a) or (b) of subsection (2) of that section.'

Clause 123: Supplementary and transitional provisions for the purposes of this Act and other purposes

550. This clause provides a power for the Department and, any other Northern Ireland department, to make incidental, consequential, transitional or supplemental provisions that it considers appropriate in connection with the reorganisation of local government and the transfer of functions from a local government body or Northern Ireland department to a new local government body.
551. There were no comments from stakeholders on this clause and the Committee indicated it was broadly content with the clause at the meeting on 11 February 2014.
552. At the meeting on 13 February 2014, the Departmental officials informed the Committee that the Department proposed to make an amendment to replace the entire clause.

553. The Committee agreed the clause subject to the following Departmental amendment:

Clause 123, Page 68

Leave out lines 12 to 39 and insert-

'123.-(1) The Department may by regulations make such incidental, consequential, transitional or supplemental provision as appears to the Department to be necessary or expedient for the purposes of, or otherwise in connection with -

(a) this Act;

(b) the Local Government (Boundaries) Act (Northern Ireland) 2008; or

(c) the Planning Act (Northern Ireland) 2011.

(2) Any Northern Ireland department may by regulations make such incidental, consequential, transitional or supplemental provision as appears to that department to be necessary or expedient for the purposes of, or otherwise in connection with -

(a) any transfer of functions to a local government body, whether they are functions of that department or not, coming into operation on or before 1st April 2015; or

(b) any statutory provision coming into operation on or before 1st April 2015 which confers functions on a local government body, whether this is expressed as transfer of functions or not.

(3) In this section "local government body" includes the Northern Ireland Housing Executive.

(4) Nothing in this section is to be taken as limiting the generality of any other statutory provision (including a provision of this Act) and nothing in any other statutory provision (including a provision of this Act) is to be taken as limiting the generality of this section.

(5) Regulations under this section which amend any statutory provision must not be made unless a draft of the regulations has been laid before, and approved by, resolution of the Assembly.'

Clause 124: Interpretation

554. This clause contains interpretation provisions and defines a number of terms used throughout the Bill.

555. There were no adverse comments from stakeholders to this clause and the Committee indicated it was broadly content with the clause at the meeting on 11 February 2014.

556. At the meeting on 13 February 2014, the Departmental officials informed the Committee that the Department proposed to make amendments to the clause.

557. The Committee agreed the clause subject to the following Departmental amendments:

Clause 124, Page 69, Line 12

At end insert-

' "external representative", in relation to a council, has the meaning given by section 10 (4);'

Clause 124, Page 69, Line 17

At end insert -

' "local government body" means a local government body within the meaning of Part 2 of the Local Government (Northern Ireland) Order 2005;'

Clause 124, Page 69, Line 27

Leave out 'section 103' and insert 'sections 103 and 123'

Clause 125: Regulations and orders

558. This clause details the assembly controls which will apply to regulations and orders under the Bill. Regulations and orders under clauses 24, 25, 42, 44, 45, 79, 85, 89, 104, 111, Schedule 1 paragraph 1(2) or (3) and paragraph 11(4) of Schedule 4 must not be made unless a draft of the regulations or order has been laid before, and approved by a resolution of, the Assembly.

559. There were no adverse comments from stakeholders to this clause and the Committee indicated it was broadly content with the clause at the meeting on 11 February 2014.

560. At the meeting on 13 February 2014, the Departmental officials informed the Committee that the Department proposed to make amendments to the clause to include, among other items, provision for clauses 51 and 54 to be listed as subject to the draft affirmative procedure..

561. The Committee agreed the clause subject to the following Departmental amendments:

Clause 125, Page 70, Line 5

Leave out 'making' and insert 'a Northern Ireland department makes'

Clause 125, Page 70, Line 6

Leave out 'the Department' and insert 'it'

Clause 125, Page 70, Line 10

Leave out 'the Department' and insert 'it'

Clause 125, Page 70, Line 12

Leave out 'made by the Department' and insert 'under this Act'

Clause 125, Page 70, Line 27

At end insert-

'() section 51;

() section 54;'

Clause 125, Page 70, Line 40

Leave out 'Department' and insert 'Northern Ireland department making them'

Clause 126: Minor and consequential amendments and repeals

562. This clause provides for the amendments set out in Schedule 11 and the repeals set out in Schedule 12 to have effect.

563. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 127: Commencement

564. This clause concerns the commencement of the Bill and enables the Department to make Commencement Orders.

565. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Clause 128: Short title

566. This clause provides a short title for the Bill.

567. At the meeting on 13 February 2014, the Committee agreed the clause as drafted.

Schedules

568. **Schedule 1** to the Bill includes detailed provisions in relation to disqualifications for being elected or acting as a councillor.

569. Belfast City Council stated that it was aware that regulations will designate those employee roles which would be disqualified from acting as councillors and that these regulations were unlikely to be in place in time for the 2014 elections but the council sought assurance from the Department that robust guidelines would be provided to deal with any potential conflict of interest as a result of an employee also acting as a councillor.

570. The Department informed the Committee that this was an issue being considered by the Minister for the introduction of subordinate legislation to specify politically restricted posts and the level of posts.

571. The Committee was content with the Department's explanation and at the meeting on 13 February 2014, the Committee agreed the schedule as drafted.

572. **Schedule 2** to the Bill provides the Declaration of councillor(s).

573. There were no comments from stakeholders on this schedule and at the meeting on 11 February 2014 the Committee indicated it was broadly content with the schedule.

574. At the meeting on 13 February 2014, the Committee agreed the schedule as drafted.

575. **Schedule 3** to the Bill provides the Declaration for person(s) who are not a councillor on appointment to a committee.

576. One local government organisation stated that, if vacancies or a new Position of Responsibility are to be filled using STV, it is likely that the largest party will win the election and therefore potentially skew the proportionality principle. The organisation preferred the use of direct replacement in the case of vacancies and one of the nomination methods for filling additional positions.

577. In its response to the Committee, the Department stated that the same approach must be used for the filling of a vacancy or a new position of responsibility as is used for the initial allocation of positions. In the Department's view, to do otherwise runs against the principle of providing consistency in the operation of each of the specified methods.

578. At the meeting on 11 February 2014 the Committee asked the officials to provide clarification on the wording at Part 3 (14).

579. At the meeting on 13 February 2014, the Committee was content with the Department's explanation and agreed the schedule as drafted.

580. **Schedule 4** to the Bill includes detailed provisions in relation to the filling of positions of responsibility.

581. Belfast City Council noted that that the application of the Quota Greatest Remainder process for the appointment of councillors onto committees was to be employed separately for each committee rather than grouping all committee places together into an overall "pool" and the effect this will have on individual Parties will be dependant both on the outcome of the election and on the choice made as to the number of places on each committee.

582. At the meeting on 11 February 2014, the Committee asked the officials to investigate the possibility of independents being excluded from committees using the Quota Greatest Remainder process.

583. The Departmental officials provided further clarification at the meeting on 13 February when the Committee asked the Department to provide worked examples of how this schedule will work in practice in appointing councillors to committees. Members requested this information to further inform debate at Consideration Stage of the Bill
584. The Committee agreed that an amendment should be prepared to ensure that the formula for appointment to committees be run for all committee positions at once for the duration of the council term based on the number of seats that each party has immediately after the election.
585. The Committee agreed the schedule subject to this amendment.
586. **Schedule 5** to the Bill includes detailed provisions in relation to the appointment of councillors to committees.
587. There were no comments from stakeholders on this schedule and at the meeting on 11 February 2014 the Committee indicated it was broadly content with the schedule.
588. At the meeting on 13 February 2014, the Committee agreed the schedule as drafted.
589. **Schedule 6** to the Bill includes detailed provisions in relation to the voting rights of co-opted members of overview and scrutiny committees.
590. There were no comments from stakeholders on this schedule and at the meeting on 11 February 2014 the Committee indicated it was broadly content with the schedule.
591. At the meeting on 13 February 2014, the Committee agreed the schedule as drafted.
592. **Schedule 7** to the Bill includes detailed provisions in relation to meeting and proceedings.
593. Belfast City Council noted the proposal that a meeting of the council could be requisitioned by 5 members rather than what had been previous the case - 5 or one-fifth, whichever is the greater. The council sought clarification on the rationale for the proposed reduction in the threshold.
594. In response, the Department stated that the threshold provided a protection for the interests of minorities by enabling a political party or parties with lower levels of representation on a council to be able to call a meeting of the council.
595. The Committee was content with the Department's response and at the meeting on 13 February 2014, the Committee agreed the schedule as drafted.
596. **Schedule 8** to the Bill includes detailed provisions in relation to exempt information for the purposes of access to information.
597. There were no comments from stakeholders on this schedule and at the meeting on 11 February 2014 the Committee indicated it was broadly content with the schedule.
598. At the meeting on 13 February 2014, the Committee agreed the schedule as drafted.
599. **Schedule 9** to the Bill lists the minor and consequential amendments relating to local government audit.
600. There were no comments from stakeholders on this schedule and at the meeting on 11 February 2014 the Committee indicated it was broadly content with the schedule.
601. At the meeting on 13 February 2014, the Departmental officials informed the Committee that it proposed to make a small technical amendment. The Committee agreed the schedule subject to the following Departmental amendment:

Schedule 9, Page 89

Leave out line 20

602. **Schedule 10** to the Bill includes detailed provisions in relation to transfer schemes
603. The Public Service Commission stated that The RPA Principles are based on best practice and on employment law. The Commission was disappointed that the procedure set out in the Northern Ireland Executive's Fourth Guiding Principle, filling new or substantially new posts in new organisations being created as a result of the review of public administration, had not been followed in relation to the selection of Chief Executives of the new councils.
604. The Department informed the Committee that the decision to utilise open recruitment to fill the new posts of chief executives applied the 2nd Guiding Principle from the Compendium of Principles, Practice and Guidance Notes published by the Public Service Commission and the Office of the First Minister and Deputy First Minister.
605. The Committee was content with the Departmental response and at the meeting on 13 February 2014, the Committee agreed the schedule as drafted.
606. **Schedule 11** to the Bill list the minor and consequential amendments necessary as a result of the Bill
607. There were no comments from stakeholders on this schedule and at the meeting on 11 February 2014 the Committee indicated it was broadly content with the schedule.
608. At the meeting on 13 February 2014, the Departmental officials informed the Committee that it proposed to make a technical amendment. The Committee agreed the schedule subject to the following Departmental amendment:

Schedule 11, Page 93, Line 8

At end insert-

'Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 (c.7)

3A. In section 17 (power to modify legislation), in subsection (2) in the definition of "local government legislation", after paragraph (cc) insert-

" (cd) the Local Government Act (Northern Ireland) 2014;"'

609. **Schedule 12** to the Bill list the repeals necessary as a result of the Bill
610. There were no comments from stakeholders on this schedule and at the meeting on 11 February 2014 the Committee indicated it was broadly content with the schedule.
611. At the meeting on 13 February 2014, the Departmental officials informed the Committee that it proposed to make 2 technical amendments. The Committee agreed the schedule subject to the following Departmental amendments:

Schedule 12, Page 93, Line 19

At end insert-

'In section 104(1), the words "any other council or", and in both places where they occur the words "the other council or, as the case may be,"'

Schedule 12. Page 93, Line 33

At end insert-

'The Local Government (Best Value) Act (Northern Ireland) 2002 (c.4) The whole Act.'

Long Title

612. The Committee agreed the Long Title of the Bill at the meeting on 13 February 2014.



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings

Thursday 26 September 2013

Senate Chamber, Parliament Buildings

- Present:** Ms Anna Lo MLA (Chairperson)
Ms Pam Brown MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Tom Elliott MLA
Mr Ian McCrea MLA
Mr Ian Milne MLA
Lord Morrow MLA
Mr Peter Weir MLA
- In Attendance:** Mr Paul Gill (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)
- Apologies:** Mr Barry McElduff MLA
Mrs Dolores Kelly MLA
- Interests declared:** Ms Pam Brown – member of Antrim Borough Council
Mr Ian McCrea – member of Cookstown District Council
Lord Morrow – member of Dungannon and South Tyrone Borough Council
Mr Peter Weir – member of North Down Borough Council, member of NILGA.

10:14am The meeting began in public session.

16. Departmental briefing on the Local Government Bill

Linda McHugh (Director, Local Government Policy Division), John Murphy (, Local Government Policy Division), Tommy McCormick (Local Government Policy Division) and Julie Broadway (Local Government Policy Division) briefed the Committee in relation to the Local Government Bill.

The main areas discussed were the main provisions of the Bill and the modified proposals following the consultation exercise.

Agreed: The Committee requested that Departmental officials report back to the Committee on discussions with the Commissioner for Complaints on an appeals mechanism and on how the process operates in other jurisdictions.

The Committee also requested details of the subordinate legislation that will be produced along with a list of delegated powers and guidance.

[EXTRACT]

Thursday 3 October 2013

Present: Ms Anna Lo MLA (Chairperson)
Ms Pam Brown MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Tom Elliott MLA
Mr Barry McElduff MLA
Mr Ian McCrea MLA
Mr Ian Milne MLA
Lord Morrow MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mrs Dolores Kelly MLA
Mr Peter Weir MLA

10:07am The meeting began in public session.

8. Matters Arising

The Committee returned to agenda item 4.

8.6 The Committee considered several papers regarding the Local Government Bill.

Agreed: The Committee was content with the proposed timeline for the Bill, with the Committee stage of the Bill being extended to 20 February 2014.

Agreed: The Committee agreed to issue the draft press release under consideration.

10:26am Lord Morrow joined the meeting.

Agreed: the Committee agreed a draft motion to extend the Committee stage of the Bill to 20 February 2014.

Agreed: The Committee was content with the proposed list of stakeholders to be contacted directly for their views on the Bill. Members also agreed to request submissions from NICCY, NICVA and the Older People's Commissioner and to provide details of any further stakeholders they wish to include to Committee staff.

Agreed: The Committee also agreed to request a further paper from Assembly Research on the forecast costs associated with the new local council structure, how this is to be funded and the impact of rates convergence.

[EXTRACT]

Thursday, 14 November 2013

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Ms Pam Brown MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Lord Morrow MLA
Mr Ian Milne MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)
Ms Roisin Kelly (Assembly Bill Clerk)

11. Assembly Research briefing on the Local Government Bill

A representative of Assembly Research and Information Service provided the Committee with an overview of the Local Government Bill.

The briefing was recorded by Hansard.

The main areas discussed were the community planning aspect of the Bill, qualified majority and examples of the general power of competence contained in the Bill.

11:56am Mr McCrea re-joined the meeting.

Agreed: The Committee agreed to request further information on the Bill from Assembly Research.

Agreed: The Committee agreed that all stakeholders who had submitted responses to its call for evidence on the Bill should be invited to attend the Stakeholder.

[EXTRACT]

Thursday, 21 November 2013

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Ms Pam Brown MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Ms Antoinette Bowen (Clerical Officer)
Ms Noreen Hayward (Clerical Officer)
Ms Roisin Kelly (Assembly Bill Clerk – item 6 only)
Ms Suzie Cave (Assembly Research Officer – item 4 only)

Apologies: Lord Morrow MLA
Ian Milne MLA

10.39am The meeting commenced in public session.

13. Local Government Bill – consideration of stakeholder responses

The Committee considered the written submissions received in response to the Committee's call for evidence.

Agreed: The Committee agreed to schedule oral briefings from NILGA, the Local Government Auditor, Community Places and NIPSA.

Agreed: The Committee agreed to publish all written submissions on the Assembly website. The Committee also agreed that it would accept a late submission from the Woodland Trust.

Agreed: The Committee agreed that it was content for members to receive Bill papers in electronic format, unless otherwise indicated to staff.

12:04pm Mr Elliott left the meeting.

[EXTRACT]

Thursday, 28 November 2013

Long Gallery, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Ms Pam Brown MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Mr Ian Milne MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: No apologies were received

9:14am The meeting commenced in public session.

1. Apologies

Apologies were indicated as above.

2. Local Government Bill Stakeholder Event

The Chairperson welcomed attending stakeholders and Departmental officials and explained the format of the event.

9.29 am Lord Morrow joined the meeting.

10.12 am Mr McCrea joined the meeting.

There followed a discussion on parts 3, 7, 9, 10, 12 and 13 of the Planning Bill.

Stakeholders and members were invited to give their views primarily on these clauses and Departmental officials responded to questions and issues raised.

The event was recorded by Hansard.

[EXTRACT]

Thursday, 5 December 2013

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Ms Pam Brown MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Mr Ian McCrea MLA
Mr Ian Milne MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alban Maginness MLA
Mr Barry McElduff MLA

10.04am The meeting commenced in public session.

12. NILGA briefing on the Local Government Bill

Derek McCallan (Chief Executive), Alderman Arnold Hatch, Councillor Sean McPeake and Councillor Myreve Chambers briefed the Committee on the Local Government Bill.

The main areas discussed were community planning, partnership planning, qualified majority voting and call in procedures.

The briefing was recorded by Hansard.

Agreed: The Committee agreed to arrange a further meeting with NILGA to discuss the Bill in more detail.

13. NIPSA briefing on the Local Government Bill

Bumper Graham (Assistant General Secretary) and Pat Baker (Chairperson, NIPSA Local Government Panel) briefed the Committee on the Local Government Bill.

The main areas discussed were the protection and interests of staff involved in the changes proposed by the Bill. A further area of discussion was the potential for conflict of Council staff were elected to their employing council.

1:27pm Mr Weir left the meeting.

1:37pm Mr Eastwood left the meeting.

1:37pm The Chairperson left the meeting and the Deputy Chairperson assumed the chair.

The briefing was recorded by Hansard.

[EXTRACT]

Thursday, 12 December 2013

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mr Cathal Boylan MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Mr Ian Milne MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)
Ms Roisin Kelly (Bill Clerk – item 1 only)

Apologies: Ms Pam Brown MLA (Deputy Chairperson)
Mr Alban Maginness MLA
Lord Morrow MLA

10.10am The meeting commenced in closed session.

10. Local Government Auditor briefing on the Local Government Bill

Louise Mason (Chief Local Government Auditor) and Laura Murphy (Policy Officer, NIAO) briefed the Committee on the Local Government Bill.

The briefing was recorded by Hansard.

10:54 am Mr Eastwood left the meeting.

The main areas discussed were the enhanced role of the Local Government Auditor as laid out in the Bill and the significant time constraints associated with this role.

Agreed: The Committee agreed that it would be useful if the Local Government Auditor could provide it with information on the potential costs of different levels of monitoring performance improvement.

Agreed: The Committee agreed to forward the Delegated Powers Memorandum for the Local Government Bill to the Examiner of Statutory Rules for technical scrutiny.

Agreed: The Committee agreed to establish a sub Committee, with a quorum of three, to take detailed stakeholder evidence on the Local Government Bill. It was agreed that the first meeting should be held on 7 January 2014.

[EXTRACT]

Thursday, 9 January 2014

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mrs Pam Cameron MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)
Ms Suzie Cave (Research Officer)

Apologies: Mr Colum Eastwood MLA

13. Assembly Research briefing on the Local Government Bill

The Committee received a briefing from Assembly Research in relation to papers on the use of the call-in procedure; the role of statutory bodies in Community Planning in Scotland; the Single Transferrable Vote model; and the role of the Commissioner for Complaints.

The briefing was recorded by Hansard.

Agreed: The Committee agreed to request further research papers on the Local Government Bill.

The Committee considered a request from Belfast City Council to brief the Committee on the Local Government Bill

Agreed: The Committee agreed to schedule a briefing.

14. Community Places briefing on the Local Government Bill

Colm Bradley (Director, Community Places), Louise McNeill (Planner, Community Places) and Clare McGrath (Community Places) briefed the Committee on the community planning aspects of the Local Government Bill.

11:51am Mr McElduff left the meeting.

The briefing was recorded by Hansard.

Agreed: The Committee requested further information from Community Places regarding the community planning toolkit and examples of enhanced use of the general power of competence in other jurisdictions.

The Committee discussed the possibility of an evidence-gathering visit to another jurisdiction where the aspects of the Local Government Bill which are to be introduced in Northern Ireland have already been implemented.

Agreed: The Committee agreed that Committee staff should prepare a paper outlining options for a potential visit, as well as other available options such as teleconferencing and inviting representatives from other jurisdictions to brief the Committee.

[EXTRACT]

Thursday, 16 January 2014

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mr Cathal Boylan MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Mr Ian Milne MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mrs Pam Cameron MLA (Deputy Chairperson)

10:12am The meeting commenced in public session.

8. Local Government Bill – Briefing from the Commissioner for Complaints

Dr Tom Frawley (Commissioner for Complaints), Ms Marie Anderson (Deputy NI Ombudsman) and Ms Gillian Coey briefed the Committee regarding the Local Government Bill.

The main areas discussed were the need for an appeal mechanism and the cost implications. The comparative complaints models in Scotland and Wales were also discussed.

11:34am Mr Weir joined the meeting.

The briefing was recorded by Hansard.

9. Local Government Bill – Departmental briefing on the draft Code of Conduct for Northern Ireland Councillors

Ms Linda McHugh (Director, Local Government Policy Division), Ms Julie Broadway (G7. Local Government Policy Division), Mr John Murphy (Local Government Policy Division), Ms Mylene Ferguson (Local Government Policy Division), Ms Beverly Cowan (Local Government Policy Division) and Ms Fiona McGrady (Local Government Policy Division) briefed the Committee regarding the draft Code of Conduct for Northern Ireland Councillors.

The main areas discussed were the details of the draft code of conduct and the areas in which this code is to be applied.

The briefing was recorded by Hansard.

12:09pm Mr Eastwood left the meeting.

Members discussed extending evidence gathering on the Bill to other jurisdictions and considered an option paper detailing several recommendations.

Agreed: The Committee agreed to consider a visit to other jurisdictions to look at elements such as planning, the changing role of councillors, community planning

and performance improvement, after the end of the 2nd Stage of the Bill to facilitate its scrutiny of relevant subordinate legislation and statutory guidance.

[EXTRACT]

Thursday, 23 January 2014

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mrs Pam Cameron MLA (Deputy Chairperson)
Mr Tom Elliott MLA
Mr Ian McCrea MLA
Mr Ian Milne MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)
Ms Suzie Cave (Research Officer- item 5 only)

Apologies: Mr Cathal Boylan MLA
Mr Alban Maginness MLA
Mr Barry McElduff MLA

10:07am The meeting commenced in public session.

5. Assembly Research briefing on Local Government Bill research papers

Assembly Research briefed the Committee in relation to research papers arising from queries raised by members regarding the statement of ambition in Scotland; the lifting of the current disqualification on council staff from becoming councillors; the procedures for dealing with complaints about the conduct of councillors in other jurisdictions; and the possibility of placing the duty on Ministers, rather than on Departments, to participate in community planning.

The briefing was recorded by Hansard.

Agreed: The Committee agreed to request a further research paper on the sanctions for breaches on the code of conduct placed on councillors in other jurisdictions.

Agreed: The Committee also agreed to request advice from Assembly Legal Services on the difference in Northern Ireland legislation between the respective roles of Ministers and of Departments.

6. Belfast City Council briefing on the Local Government Bill

Mr Peter McNaney (Chief Executive, Belfast City Council), Mr Ronan Cregan (Director of Finance, Belfast City Council), Mr Stephen McCrory (Democratic Services, Belfast City Council) and Mr John Walsh (Legal Services, Belfast City Council) briefed the Committee on the provisions of the Local Government Bill.

The main areas discussed were procedures for call in, performance improvement and how the reorganisation as proposed in the Bill will impact on the position of Belfast City Council.

The briefing was recorded by Hansard.

Agreed: The Committee agreed that Belfast City Council should forward a suggested definition of the circumstances in which call in may be used.

7. Departmental briefing on the Local Government Bill

Ms Linda MacHugh (Director, Local Government Policy Division), Ms Julie Broadway (G7, Local Government Policy Division), Mr John Murphy (Local Government Policy Division) and

Ms Mylene Ferguson (Local Government Policy Division) briefed the Committee on the Local Government Bill.

The main areas discussed were the implications of the removal of the blanket ban on council staff being councillors, positions of responsibility, executive arrangements, call-in and qualified majority voting, ethical standards, community planning and performance improvement.

The briefing was recorded by Hansard.

Agreed: The Committee agreed that the Department should provide the exact wording of the ruling in the court case when the prohibition on council staff being councillors was challenged.

[EXTRACT]

Thursday, 30 January 2014

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mrs Pam Cameron MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Barry McElduff MLA
Mr Ian Milne MLA
Lord Morrow MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)
Ms Éilis Haughey (Assembly Bill Clerk – item 6 only)

Apologies: Mr Ian McCrea MLA
Mr Peter Weir MLA

10:20am The meeting commenced in public session.

6. **Informal clause by clause consideration of the Local Government Bill**

Linda MacHugh (Director, Local Government Policy Division), Julie Broadway (G7 Local Government Policy Division) John Murphy (Local Government Policy Division) and Mylene Ferguson (Local Government Policy Division) attended the briefing to discuss outstanding issues in relation to the Local Government Bill.

10:51am Mr Eastwood re-joined the meeting.

Clause 1: Name of councils

10:58am Mr Elliott left the meeting.

Agreed: The Committee agreed that Departmental officials should provide a briefing paper on the determination of council names in relation to city or borough status.

Clause 2: Constitutions of councils

11:09am Mr Elliott re-joined the meeting.

11:10am Mr McElduff left the meeting.

Agreed: The Committee agreed that Departmental officials should provide details of a possible amendment to Clause 2(1)(b). Officials also agreed to provide a copy of the Model Constitution to be used by councils.

Clause 3: Qualifications

Agreed: The Committee was broadly content with this Clause.

Clause 4: Disqualifications

Agreed: The Committee agreed that Departmental officials should provide details/ regulations relating to the potential barring of certain council employees as councillors. The Department also agreed to forward details of other posts funded by DOE that would be affected by this clause.

Clause 5: Penalties for acting as a councillor while disqualified

Agreed: The Committee was broadly content with the Clause.

Clause 6: Declaration on acceptance of office of councillor

Agreed: The Committee was broadly content with this Clause.

Clause 7: Resignation

Agreed: The Committee agreed that Departmental officials should provide the Committee with a briefing note on co-option to councils.

Clause 8: Vacation of office on account of non-attendance

Agreed: The Committee agreed that Departmental officials should provide a paper clarifying the exceptional circumstances in which an exemption could be made in relation to vacation of office in the event of non – attendance.

Clause 9: Declaration of vacancy in office in certain cases

Agreed: The Committee was broadly content with this Clause.

Clause 10: Positions of responsibility

Agreed: The Committee agreed that Departmental officials would provide the wording of a technical amendment to Clause 10(4). Officials also agreed to provide further information on the possibility of additional remuneration for certain positions of responsibility.

Agreed: the Committee agreed to defer further consideration of this clause.

Clause 11: Arrangements for discharge of functions of council

Agreed: The Committee agreed that the Departmental officials should reconsider the wording of 11(3)(b) in the light of a possible conflict with the Local Government Finance Act 2011.

Clause 12: Arrangements by one council for discharge of functions by another council

Agreed: The Committee was broadly content with this Clause.

Clause 13: Arrangements for discharge of functions by councils jointly

Agreed: The Committee was broadly content with this Clause.

Clause 14: Exercise of functions not prevented by arrangements under this Part

Agreed: The Committee was broadly content with this Clause.

Clause 15: Appointment of committees etc. for the purpose of discharging functions

Agreed: The Committee was broadly content with this Clause.

Clause 16: Appointment of committee to advise on discharge of functions

Agreed: The Committee was broadly content with this Clause.

Clause 17: Appointment of councillors to committees, etc.

Agreed: The Committee was broadly content with this Clause.

11:49am Mr Eastwood left the meeting.

Clause 18: Joint committees: further provisions

Agreed: The Committee was broadly content with this Clause.

Clause 19: Disqualification for membership of committees

Agreed: The Committee was broadly content with this Clause.

Clause 20: Declaration required of persons who are not members of councils

Agreed: The Committee was broadly content with this Clause.

Clause 21: Voting rights of persons who are not members of councils

Agreed: The Committee was broadly content with this Clause.

Clause 22: Termination of membership on ceasing to be member of council

Agreed: The Committee was broadly content with this Clause.

Clause 23: Permitted forms of governance

Agreed: The Committee agreed that Departmental officials should consult with the Minister on proposals for the regulations for operation of executive arrangements and the allocation of functions between the council and its executive and the minimum number for an executive streamlined committee.

Clause 24: Power to prescribe additional permitted governance arrangements

Agreed: The Committee was broadly content with this Clause.

11:54am Mr McElduff rejoined the meeting.

11:59am Mr Eastwood rejoined the meeting.

12:03pm The meeting was suspended for a short break.

12:21pm The meeting recommenced in public session with the following members in attendance: Ms Anna Lo MLA, Mr Cathal Boylan MLA, Mr Colum Eastwood MLA, Mr Tom Elliott MLA, Mr Barry McElduff MLA, and Mr Ian Milne MLA.

Clause 25: Council executives

12:28pm Lord Morrow re-joined the meeting.

Agreed: The Committee agreed that Departmental officials should consult with the Minister on the role of the Chair and Vice Chair in a council executive and whether they would have voting rights. Officials also agreed to consider the minimum number specified for executive committee members.

Clause 26: Functions which are the responsibility of an executive

Agreed: The Committee was broadly content with this Clause.

Clause 27: Functions of an executive: further provision

Agreed: The Committee was broadly content with this Clause.

Clause 28: Allocation and discharge of functions

Agreed: The Committee was broadly content with this Clause.

Clause 29: Discharge of functions of and by another council

Agreed: The Committee was broadly content with this Clause.

Clause 30: Joint exercise of functions

Agreed: The Committee was broadly content with this Clause.

Clause 31: Overview and scrutiny committees: functions

12:42pm Mr Maginness re-joined the meeting.

Agreed: The Committee was broadly content with this Clause.

Clause 32: Overview and scrutiny committees: supplementary provision

Agreed: The Committee was broadly content with this Clause.

Clause 33: Scrutiny officers

Agreed: The Committee was broadly content with this Clause.

Clause 34: Reference of matters to overview and scrutiny committee etc.

Agreed: The Committee was broadly content with this Clause.

Clause 35: Dealing with references under section 34(1)(c)

Agreed: The Committee was broadly content with this Clause.

Clause 36: Duty of council or executive to respond to overview and scrutiny committee

Agreed: The Committee was broadly content with this Clause.

Clause 37: Publication etc, of reports, recommendations and responses: confidential and exempt information

Agreed: The Committee was broadly content with this Clause.

Clause 38: Meetings and access to information etc.

Agreed: The Committee was broadly content with this Clause.

Clause 39: Meetings and access to information etc.: further provision and regulations

Agreed: The Committee was broadly content with this Clause.

Clause 40: Meetings and proceedings

Agreed: The Committee was broadly content with this Clause.

Clause 41: Standing orders

Agreed: The Committee was broadly content with this Clause.

Clause 42: regulations about standing orders

Agreed: The Committee was broadly content with this Clause.

Clause 43: Simple majority

Agreed: The Committee was broadly content with this Clause.

Clause 44: Qualified majority

Agreed: The Committee was broadly content with this Clause.

Clause 45: Power to require decisions to be reconsidered

Agreed: The Committee agreed that Departmental officials should report back to the Committee, after discussions with the Minister, on the criteria for a call in and guidance on the use of a solicitor/barrister in the procedure for the reconsideration of a decision or recommendation from a committee.

The Departmental officials also agreed to provide a summary of the latest drafts of the subordinate legislation needed to implement the Bill.

The briefing was recorded by Hansard.

[EXTRACT]

Tuesday, 4 February 2014

Room 29, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mrs Pam Cameron MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Mr Ian Milne MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)
Ms Eilis Haughey (Assembly Bill Clerk)

Apologies: No apologies were received.

12:38pm The meeting commenced in public session.

2. **Informal clause by clause consideration of the Local Government Bill**

Linda MacHugh (Director, Local Government Policy Division), Julie Broadway (G7 Local Government Policy Division) John Murphy (Local Government Policy Division) and Mylene Ferguson (Local Government Policy Division) were in attendance to discuss outstanding issues in relation to the Local Government Bill.

Clause 46: Admission to meetings of councils

Agreed: The Committee was broadly content with this clause.

Clause 47: Access to agenda and connected reports

Agreed: The Committee was broadly content with this clause.

Clause 48: Inspection of minutes and other documents after meetings

Agreed: The Committee was broadly content with this clause.

Clause 49: Inspection of background papers

Agreed: The Committee was broadly content with this clause.

Clause 50: Application to committees and sub-committees

Agreed: The Committee was broadly content with this clause.

Clause 51: Additional rights of access to documents for members of councils

Agreed: The Committee agreed that Departmental officials would provide the wording of a technical amendment to Clause 51(5) changing the resolution of regulations from negative to draft affirmative.

Clause 52: Councils to publish additional information

Agreed: The Committee was broadly content with this clause.

Clause 53: Supplemental to provisions and offences

Agreed: The Committee was broadly content with this clause.

Clause 54: Exempt information and power to vary Schedule 8

Agreed: The Committee agreed that Departmental officials would provide the wording of a technical amendment to Clause 54(2) changing the resolution of regulations from negative to draft affirmative.

Clause 55: Interpretation and application of this Part

Agreed: The Committee was broadly content with this clause.

12:59pm Mr Maginness left the meeting.

12:59pm Mr Milne joined the meeting.

Clause 56: Code of conduct

Agreed: The Committee was broadly content with this clause.

Clause 57: Guidance

Agreed: The Committee was broadly content with this clause.

Clause 58: Investigations

Agreed: The Committee agreed that Departmental officials would provide the wording of a technical amendment to Clause 58 to deal with the issue of minor complaints.

Agreed: The Committee further agreed to seek assurance from the Minister that the role of the Commissioner will be reviewed in 3-4 years, as previously indicated by his predecessor.

Clause 59: Investigations: further provisions

Agreed: The Committee was broadly content with this clause.

Clause 60: Reports, etc.

13:18pm Mr Elliott left the meeting.

Agreed: The Committee was content for Departmental officials to raise the possibility of a moratorium on complaints raised immediately prior to an election with the Minister for consideration.

Clause 61: Interim reports

Agreed: The Committee was broadly content with this clause.

Clause 62: Decision following report

Agreed: The Committee was content for Departmental officials to raise the issue of a right of appeal to the High Court with the Minister for consideration.

Clause 63: Decisions on interim reports

Agreed: The Committee was broadly content with this clause.

Clause 64: Recommendations

Agreed: The Committee was broadly content with this clause.

Clause 65: Disclosure and registration of councillors' interests etc.

Agreed: The Committee was broadly content with this clause.

Clause 66: Extension of 1996 Order

Agreed: The Committee was broadly content with this clause.

Clause 67: Expenditure of Commissioner under this Act

Agreed: The Committee was content for Departmental officials to raise with the Minister the issue of how the Commissioner of Complaints is to be funded.

Clause 68: Interpretation

Agreed: The Committee agreed that Departmental officials would provide the wording of a technical amendment to Clause 68 to clarify the position of a councillor who has been disqualified from the council and its committees/sub-committees, but continues to represent the council on outside bodies.

Clause 69: Community Planning

13:57pm Mr Eastwood left the meeting.

13:57pm Lord Morrow left the meeting.

13:58pm Mr Milne left the meeting.

Agreed: Deferred for further consideration.

The briefing was recorded by Hansard.

[EXTRACT]

Thursday, 6 February 2014

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mrs Pam Cameron MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Ian Milne MLA

10:08am The meeting commenced in public session.

2. Ministerial briefing

The Minister and Departmental officials briefed the Committee on a range of issues including the Local Government Bill, taxi legislation, the report on Illegal Waste Activities in Northern Ireland, climate change and the Exploris strategic case.

Local Government Bill

Clause 4: Disqualifications. The Minister confirmed that consideration was being given to the inclusion (in subordinate legislation) of employees up to a certain rank to be disqualified from being councillors in council areas in which they work.

10:38am Mr Elliott joined the meeting.

Clause 10: Positions of Responsibility. The Minister confirmed that he did not plan to make any amendments to Clause 10 or the accompanying schedules.

Clause 23: Permitted forms of governance. The Minister indicated to the Committee that he had no objections to a possible amendment to clarify the position regarding instances where call in or Qualified Majority Voting.

Clause 25: Council Executives. The Committee expressed its concern regarding the proposed role of the Mayor and Deputy Mayor excluding their attendance at council executive meetings, even in a non-voting capacity.

Clause 45: Power to require decisions to be reconsidered. The Committee highlighted areas of practical difficulty in specifying a solicitor or barrister to support a call-in.

Clause 62: Decision following report. The Minister agreed to bring forward an amendment to introduce a mechanism for an appeal to the high court.

11:04am Mr Eastwood left the meeting.

3. Informal clause by clause consideration of the Local Government Bill

Agreed: The Committee agreed to return to its informal consideration of the Local Government Bill later in the meeting.

11. Informal Clause by Clause consideration of the Local Government Bill

Clause 69: Community planning

12:38pm Mrs Cameron re-joined the meeting.

Agreed: The Committee agreed to request an assurance from the Minister at Consideration Stage that the role of the voluntary and community sector will be outlined in statutory guidance and subordinate legislation.

12:42pm Mr McElduff left the meeting.

12:45pm Mr McCrea re-joined the meeting.

12:53pm Lord Morrow re-joined the meeting.

Agreed: The Committee agreed that Departmental officials should report back to the Committee, after discussions with the Minister, on a possible amendment to this clause to include equality and good relations.

12:55pm Mrs Cameron left the meeting.

12:56pm Lord Morrow left the meeting.

1:07pm Mr Eastwood left the meeting.

Clause 70: Community planning partner

Agreed: The Committee was broadly content with this clause.

Clause 71: Production of community plan

Agreed: The Committee was broadly content with this clause.

Clause 72: Duty to review community plan

Mr McCrea left the meeting at 1:41pm. The quorum dropped to four members; the informal clause by clause scrutiny continued as a briefing session.

The Committee discussed issues raised by stakeholders on this clause.

Clause 73: Review of community plan

The Committee discussed issues raised by stakeholders on this clause.

Clause 74: Monitoring

The Committee discussed issues raised by stakeholders on this clause.

Clause 75: Implementation

The Committee discussed issues raised by stakeholders on this clause.

Clause 76: Community involvement

The Committee discussed issues raised by stakeholders on this clause.

It was suggested that Departmental officials should discuss with the Minister a possible amendment to clause 76(1) to insert 'reasonable' before arrangements.

Clause 77: Guidance

The Committee discussed issues raised by stakeholders on this clause.

Clause 78: Duties of departments in relation to community planning

The Committee discussed issues raised by stakeholders on this clause.

Departmental officials advised the Committee that an amendment would be made to remove 'aim to' from Clause 78(a). Members requested officials to supply details of the amendment to the Committee.

Clause 79: establishment of bodies corporate

The Committee discussed issues raised by stakeholders on this clause.

Clause 80: Amendments of the Planning Act (Northern Ireland) 2011

The Committee discussed issues raised by stakeholders on this clause.

[EXTRACT]

Tuesday, 11 February 2014

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mrs Pam Cameron MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Mr Ian Milne MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: No apologies received.

12:40pm The meeting began in closed session.

1. **Consideration of legal advice**

The Committee noted legal advice in connection with the Local Government Bill on whether a power or duty can be “designated upon” a Minister of the NI Executive or if such a power or duty rests solely with the Department in question.

12:42pm The meeting continued in public session.

3. **Informal clause by clause consideration of the Local Government Bill**

Linda MacHugh (Director, Local Government Policy Division), Julie Broadway (G7 Local Government Policy Division) John Murphy (Local Government Policy Division) and Mylene Ferguson (Local Government Policy Division) attended the briefing to discuss outstanding issues in relation to the Local Government Bill.

Clause 81: Interpretation

Agreed: The Committee was broadly content with this clause.

Clause 82: Council’s general power of competence

Agreed: The Committee was broadly content with this clause.

Clause 83: Boundaries of the general power

Agreed: The Committee was broadly content with this clause.

Clause 84: Limits on charging in exercise of general power

Agreed: The Committee was broadly content with this clause.

Clause 85: Powers to make supplemental provision

Agreed: The Committee agreed that the powers expressed in clause 85(1) should be made subject to the super affirmative procedure and a consequential amendment made to clause 125(4)(g.)

12:49pm Mr McCrea joined the meeting.

12:51pm Lord Morrow joined the meeting.

Clause 86: Limits on power conferred by section 85(1)

Agreed: The Committee was broadly content with this clause.

12:58pm Mr Maginness joined the meeting.

Clause 87: Improvement: general duty

Agreed: The Committee was broadly content with this clause.

Clause 88: Improvement objectives

Agreed: The Committee was broadly content with this clause.

Clause 89: Improvement: supplementary

Agreed: The Committee was broadly content with this clause.

Clause 90: Consultation on improvement duties

Agreed: The Committee was broadly content with this clause.

Clause 91: Appropriate arrangements under sections 87(1) and 88(2)

Agreed: The Committee was broadly content with this clause.

1:07pm Mr McElduff left the meeting.

Clause 92: Performance indicators and performance standards

Agreed: The Committee was broadly content with this clause.

Clause 93: Collection of information relating to performance

Agreed: The Committee was broadly content with this clause.

Clause 94: Use of performance information

Agreed: The Committee was broadly content with this clause.

1:11pm Mr Elliott left the meeting.

Clause 95: Improvement planning and publication of improvement information

Agreed: The Committee agreed that Departmental officials should return with a possible amendment to amend the reporting dates specified in the Bill.

1:18pm Mr McElduff re-joined the meeting.

1:19pm Mr Boylan left the meeting.

Clause 96: Improvement information and planning

Agreed: The Committee was content that the Minister would introduce an amendment which would reviews the audit process after 2-3 years and the officials also agreed that the Minister would give an undertaking on this at Consideration Stage.

Clause 97: Improvement assessments

Agreed: The Committee was broadly content with this clause.

Clause 98: Audit and assessment reports

Agreed: The Committee agreed that Departmental officials should return with a possible amendment to amend the reporting dates specified in the Bill.

Clause 99: Response to section 98 reports

Agreed: The Committee was broadly content with this clause.

1:21pm Mr Boylan re-joined the meeting.

Clause 100: Annual improvement reports

Agreed: The Departmental officials agreed to consult with the NIAO on a possible amendment to the requirement for the Local Government Auditor to be obliged to produce an annual improvement report every year on all councils.

Clause 101: Special inspections

Agreed: The Committee was broadly content with this clause.

Clause 102: Reports of special inspections

Agreed: The Committee was broadly content with this clause.

Clause 103: Powers of direction, etc.

Agreed: The Committee was broadly content with this clause.

Clause 104: Power to modify statutory provisions and confer new powers

Agreed: The Committee was broadly content with this clause.

Clause 105: Application of certain local government audit provisions

Agreed: The Committee was broadly content with this clause.

Clause 106: Partnership Panel

Agreed: The Committee agreed that Departmental officials would provide the wording of a technical amendment to clause 106 to give every council the power to nominate a representative to the Partnership Panel.

Part 14: Control of councils by Northern Ireland Department

Agreed: Departmental officials agreed to consider the removal of the word 'control' from the name of this section of the Bill.

Clause 107: Power of any Northern Ireland department to intervene in case of default by council

Agreed: The Committee was broadly content with this clause.

Clause 108: Inquiries and investigations

Agreed: Officials agreed to communicate to the Minister Committee concerns that the Bill does not include a right of appeal for a council against the findings of an investigation.

Clause 109: Power of any Northern Ireland department to intervene in case of default by council

Agreed: The Committee was broadly content with this clause.

1:32pm Mr McCrea left the meeting.

Clause 110: The local government auditor

Agreed: The Committee was broadly content with this clause.

Clause 111: Power to repeal provisions relating to surcharge, etc.

Agreed: The Committee was broadly content with this clause.

Clause 112: Minor and consequential amendments

Agreed: The Committee was broadly content with this clause.

Clause 113: Guidance

Agreed: The Committee was broadly content with this clause.

1:33pm Mr Milne left the meeting.

Clause 114: Transitional rate relief in consequence of changes in local government districts

Agreed: Departmental officials stated that the wording of a DFP amendment would be provided to the Committee to allow for transitional rate relief in consequence of changes in local government districts.

Clause 115: Commencement of the Local Government (Boundaries) Order (Northern Ireland) 2012

Agreed: The Committee was broadly content with this clause.

Clause 116: Exclusion of non-commercial considerations

Agreed: The Committee was broadly content with this clause.

Clause 117: Control of disposals and contracts of existing councils and their finances

Agreed: The Committee was broadly content with this clause.

Clause 118: Persons ceasing to hold office

Agreed: The Committee was broadly content with this clause.

Clause 119: Validity of acts done by unqualified person

Agreed: The Committee was broadly content with this clause.

Clause 120: Insurance against accidents to councillors

Agreed: The Committee was broadly content with this clause.

Clause 121: Schemes for transfers of assets and liabilities

Agreed: Departmental officials agreed to provide the wording of an amendment to allow for the transfer of Armagh County Museum to the new council.

Clause 122: Compensation for loss of office or diminution of emoluments

Agreed: Departmental officials agreed to provide the wording of a technical amendment to clause 122 to cover any statutory provisions and not just those specific to the Local Government Bill.

1:40pm Lord Morrow left the meeting.

Clause 123: Supplementary and transitional provisions for the purposes of this Act and other purposes

Agreed: Departmental officials agreed to provide the wording of a new clause to replace this current clause.

Clause 124: Interpretation

Agreed: The Committee was broadly content with this clause subject to consequential amendments to Clauses 122 and 123.

Clause 125: Regulations and orders

Agreed: Departmental officials agreed to provide the wording of amendments to this clause to include clauses 51 and 54 are subject to draft affirmative resolution and to remove clause 85 from this list.

Clause 126: Minor and consequential amendments and repeals

Agreed: The Committee was broadly content with this clause.

Clause 127: Commencement

Agreed: The Committee was broadly content with this clause.

Clause 128: Short title

Agreed: The Committee was broadly content with this clause.

Schedule 1: Disqualifications for being elected or acting as councillor

Agreed: The Committee was broadly content with this schedule.

Schedule 2: Declaration of councillor

Agreed: The Committee was broadly content with this schedule.

Schedule 3: Positions of responsibility

Agreed: The Departmental officials agreed to return to the Committee with clarification the wording of 'from the district' at Part 3(14).

Schedule 4: Appointment of councillors to committees, etc.

Agreed: Departmental officials agreed to investigate the possibility of independents being excluded from committees using the Quota Greatest Remainder process.

Schedule 5: Declaration on appointment to committee of person who is not a councillor

Agreed: The Committee was broadly content with this schedule.

Schedule 6: Overview and scrutiny committees: voting rights of co-opted members

Agreed: The Committee was broadly content with this schedule.

Schedule 7: Meetings and proceedings

Agreed: The Committee was broadly content with this schedule.

Schedule 8: Access to information: exempt information

Agreed: The Committee was broadly content with this schedule.

Schedule 9: Minor and consequential amendments relating to local government audit

Agreed: The Committee was broadly content with this schedule.

Schedule 10: Transfer schemes

Agreed: Departmental officials agreed to provide wording of an amendment to paragraph 2(3)(d)

Schedule 11: Minor and consequential amendments: general

Agreed: The Committee was broadly content with this schedule.

Schedule 12: Repeals

Agreed: The Committee was broadly content with this schedule.

Agreed: Departmental officials stated they would provide the wording of an amendment to allow for the abolition of the Local Government Staff Commission and an amendment to the transfer of functions grant.

[EXTRACT]

Thursday, 13 February 2014

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mrs Pam Cameron MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Ian Milne MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)
Ms Éilis Haughey (Bill Clerk)

Apologies: Mr Barry McElduff MLA

10:13am The meeting commenced in public session.

9. **Formal clause by clause consideration of the Local Government Bill**

The Committee returned to agenda item 7.

10:32 Mr Eastwood joined the meeting.

Linda MacHugh (Director, Local Government Policy Division), Julie Broadway (G7 Local Government Policy Division) John Murphy (Local Government Policy Division) and Mylene Ferguson (Local Government Policy Division) attended the briefing to discuss outstanding issues on clauses where Committee members had requested further information.

Clause 2: Constitutions of councils

Departmental officials provided the Committee with the wording of a technical amendment to Clause 2(1)(b) to clarify that the Code of Conduct referred to is the one in the Bill.

Departmental officials also indicated that the Minister was not minded to bring an amendment to specify a date by which the first draft of a constitution would be published as had been requested by the Committee.

Agreed: The Committee was content with the proposed Departmental amendment to Clause 2(1)(b).

The Committee also agreed to draft an amendment to specify a date not later than April 2015 for the publication of a council's constitution.

Clause 4: Disqualifications (also Schedule 1)

Departmental officials confirmed that the Minister has given his assurance to the Committee that subordinate legislation will specify the posts or grades of staff who will continue to be disqualified from being elected as a councillor.

Agreed: The Committee was content with this Ministerial assurance.

Clause 10: Positions of responsibility

Departmental officials provided the wording of technical amendments to Clause 10 (4) to define 'external representative'.

10:47am Mr Elliott joined the meeting.

10:47am Mrs Cameron joined the meeting.

Agreed: The Committee was content with the Departmental amendments.

Agreed: The Committee also agreed that that the Department should provide clarification whether an amendment would be required to ensure that the posts specified at 10 (1)(a) - (e) may be allocated for the entire term of the council, or if these could be specified in guidance.

Clause 11: Arrangements for discharge of functions of council

Departmental officials provided the wording of a technical amendment to address a possible conflict with the Local Government Finance (Northern Ireland) Act 2011.

Agreed: The Committee was content with the Departmental amendment.

Clause 23: Permitted forms of governance

Departmental officials assured the Committee that information would be detailed in guidance and in standing orders on whether committees outside the executive, exercising quasi-judicial functions such as licensing or planning, would be subject to call-in or qualified majority voting.

Agreed: The Committee was content with this assurance.

Clause 25: Council executives

Departmental officials advised the Committee that the Minister was not minded to make an amendment to this clause in respect of the role of Mayors or Deputy Mayors in a council executive and whether or not they would have voting rights. Officials also advised that the Minister was not minded to amend the minimum number of members in a cabinet-style or streamlined committee executive.

Agreed: The Committee agreed to draft amendments on both of these issues.

10:54am Mr Weir left the meeting.

Clause 34: Reference of matter to overview and scrutiny committee etc.

Departmental officials provided the wording of a technical amendment to this clause to replace 'excluded' with 'prescribed'.

Agreed: The Committee was content with the Departmental amendment.

Clause 45: Power to require decisions to be reconsidered.

Departmental officials advised the Committee that the Minister was not minded to make an amendment to this clause on the criteria for a call in and guidance on the use of a solicitor/ barrister in the procedure for the reconsideration of a decision as this will be specified in guidance.

Agreed: The Committee agreed to accept this explanation.

10:54am Mr Weir re-joined the meeting .

Clause 50: Application to committees and sub-committees

Departmental officials provided the wording of a technical amendment to this clause to remove the word 'be'.

Agreed: The Committee was content with this proposed amendment.

Clause 58: Investigations

Departmental officials provided the wording of an amendment to widen the powers of the Commissioner to enable him to refer minor complaints back to a local council for resolution or mediation. Officials also advised the Committee that the Minister intends to review the role of the Commissioner within three or four years.

Agreed: The Committee was content with the amendment and the Ministerial assurance.

Clause 60: Reports etc.

Departmental officials advised the Committee that the Minister was not minded to make an amendment to this clause to provide for a moratorium on complaints 2-3 months in advance of an election.

Agreed: The Committee was content with the Department's explanation and agreed to highlight its concerns in its report on the Bill. The Committee also requested information on how this problem is managed by the Welsh system where no moratorium exists.

Clause 62: Decision following report

Departmental officials provided the wording of a technical amendment to this clause to introduce an appeals mechanism for complaints through the High Court.

Agreed: The Committee was content with this amendment. The Committee also agreed to draft an amendment to set out additional grounds of appeal.

11:12am Mr Eastwood left the meeting.

Clause 63: Decisions on interim reports

Departmental officials provided the wording of a consequential amendment to this clause regarding appeals to the High Court as specified in Clause 62.

Agreed: The Committee was content with this amendment.

Clause 64: Recommendations

Departmental officials provided details of a proposed technical amendment to this clause.

Agreed: The Committee was broadly content with the proposed amendment.

Clause 67: Expenditure of Commissioner under this Act

Departmental officials advised the Committee that the Minister would move an amendment at Consideration Stage to replace apportionment of the Commissioner's costs between councils with top-slicing from the local government grant.

Agreed: The Committee was broadly content with the proposed amendment.

Clause 68: Interpretation

Departmental officials provided the wording of a technical amendment to this clause clarifying the position of a councillor who is disqualified, but who has been appointed to an outside body.

Agreed: The Committee was content with the amendment.

11.22am Mr Eastwood rejoined the meeting.

Clause 69: Community Planning

Departmental officials advised the Committee that, although the Minister has not decided to amend this clause, he will give an assurance at consideration stage that the role of the voluntary and community sector will be outlined in statutory guidance. Officials also indicated that an assurance that well-being, equality and good relations will also be specified in statutory guidance.

11.29am Mr Weir left the meeting.

Agreed: The Committee was content with this assurance, but agreed that they would welcome the inclusion of reference to social deprivation and poverty in guidance.

Clause 76: Duty of departments in relation to community planning

Departmental officials indicated that the Minister had agreed to an amendment to clause 76(1) to insert 'reasonable' before arrangements for consultation.

Agreed: The Committee was broadly content with this proposed amendment.

Clause 78: Duty of departments in relation to community planning

Departmental officials provided the Committee with details of an amendment to strengthen this clause by removing 'aim to' from Clause 78(a).

Agreed: The Committee was content with the amendment.

Clause 85: Powers to make supplemental provision

Departmental officials provided the Committee with details of an amendment to strengthen Assembly control of this power by making it subject to the 'super-affirmative' resolution procedure.

Agreed: The Committee was content with the amendment.

Clause 95: Improvement planning and publication of improvement information

Departmental officials provided the Committee with details of a proposed amendment to bring forward the date by which council performance improvement information must be published to 30 September.

11.33am Mr Weir rejoined the meeting.

Agreed: The Committee agreed that it was broadly content with the proposed amendment, but that it would wish to receive the views of the NIAO on this.

Clause 96: Improvement information and planning

Departmental officials provided a technical amendment to replace the reference to '95(6)' with '113'.

Officials also stated that the Minister would bring forward an amendment on the required frequency of the audit process and would give an assurance at Consideration stage that the audit process will be reviewed after 2-3 years.

11.39am Mr Elliott left the meeting.

Agreed: The Committee was content with the proposed amendments and also content that the Ministerial assurance will be given at Consideration Stage.

Clause 98: Audit and assessment reports

Departmental officials provided a technical amendment to replace the reference to '95(6)' with '113'.

Officials also stated that the clause would not be amended to delay the date by which the Local Government Auditor must issue a report.

Agreed: The Committee agreed that it was content with the amendment, but that it would wish to receive the views of the NIAO on the reporting date.

Clause 100: Annual improvements

Departmental officials stated that an amendment would be provided to the Committee amending the annual requirements to publish a report on all councils.

Agreed: The Committee agreed that it was broadly content with this proposed amendment.

11:44am Mr Milne left the meeting.

Clause 101: Special inspections

Departmental officials advised the Committee that it would not be appropriate to amend 101 (4) to replace the word 'direct' with 'request' as this would misrepresent the nature of the Department's relationship with the Local Government Auditor.

Agreed: The Committee agreed that it was content with this explanation.

Clause 106: Partnership panel

Departmental officials provided the Committee with four amendments to ensure that the new 11 councils will each be able to nominate a representative to the Partnership Panel.

Agreed: The Committee agreed that it was content with the amendments.

Part 14

Departmental officials advised the Committee that the Minister has agreed to remove the word 'control' and replace it with 'supervision' as a printing change since no formal amendment is required.

Agreed: The Committee agreed that it was content with this proposed change.

Clause 108: Inquiries and investigations

The Committee had requested that an amendment be made to this clause to include the right of appeal for a council against the findings of an investigation.

Agreed: The Committee agreed that Departmental officials should follow up on this issue.

11:51am Mr Milne re-joined the meeting.

Clause 111: Power to repeal provision relating to surcharge

The Departmental officials provided the Committee with the wording to a technical amendment to this clause.

Agreed: The Committee was content with the amendment.

Clause 115A: Transferred functions grant

Departmental officials provided the Committee with the wording of a new clause to allow for transitional rate relief on consequence of changes in local government districts.

Agreed: The Committee agreed that it was content with the amendment.

New Clause after 119: Power to dissolve Local Government Staff Commission

Departmental officials provided the Committee with the wording of an amendment to allow for the abolition of the Local Government Staff Commission.

Agreed: The Committee agreed that it was content with the amendment.

Clause 121: Schemes for transfer of assets and liabilities

Departmental officials provided the Committee with five amendments to allow for the transfer of Armagh County Museum to the new councils.

Agreed: The Committee agreed that it was content with the amendments.

11:54am Mr Eastwood left the meeting.

Clause 122: Compensation for loss of office

Departmental officials provided the wording of two technical amendments to this clause.

Agreed: The Committee agreed that it was content with the amendments.

Clause 123: Supplementary and transitional provisions

Departmental officials provided the wording of a new clause to replace this clause.

Agreed: The Committee agreed that it was content with the amendment.

Clause 124: Interpretation

Departmental officials provided details of three consequential amendments to this clause.

Agreed: The Committee agreed that it was content with the amendments.

11:57am Mr Elliott re-joined the meeting.

Clause 125: Regulations and orders

Departmental officials provided the wording of six amendments to this clause to ensure that clauses 51 and 54 are subject to the draft affirmative rather than the negative resolution procedure.

Agreed: The Committee agreed that it was content with the amendments.

11:57am Mr Eastwood re-joined the meeting.

Schedule 3: Positions of responsibility

Departmental officials provided clarification on the wording at Part 3 (14) regarding the absence from the district of the chair of a council.

Agreed: The Committee agreed that it was content with this explanation.

11:59am Mr Maginness left the meeting.

Schedule 4: Appointment of councillors to committees

Departmental officials advised the Committee that they were still investigating the difference in outcome for independent councillors being appointed to council committees between using the Quota Greatest Remainder process on an annual basis or over the four year term of the council.

Agreed: The Committee agreed that officials should provide examples of how this system will work in practice.

The Committee also recommended that an amendment to this schedule should be drafted to ensure that the formula for appointments to committee be run for all committee positions at once and for the duration of the council term based on the number of seats each party has immediately after the election.

Schedule 9: Minor and consequential amendments relating to audit

Departmental officials provided details of a technical amendment to this schedule.

Agreed: The Committee agreed that it was content with the amendment.

Schedule 11: Minor and consequential amendments

Departmental officials provided details of a technical amendment to this schedule.

Agreed: The Committee was content with the amendment.

Schedule 12: Repeals

Departmental officials provided details of two technical amendments to this schedule.

Agreed: The Committee was content with the amendments.

The Committee also asked officials to clarify which aspect of the Bill related to councils' international obligations in relation to areas such as waste and biodiversity.

Agreed: The Committee was content with the officials' explanation that this would be included in performance improvement and related statutory guidance.

12:14pm The meeting went into closed session for members to receive advice from the Bill Clerk.

12:48pm Mr Elliott left the meeting.

13:10pm The meeting was suspended for a short break.

13:52pm The meeting resumed in public session with the following members in attendance:

- Mrs Anna Lo MLA
- Mrs Pam Cameron MLA
- Mr Cathal Boylan MLA
- Mr Colum Eastwood MLA
- Mr Ian Milne MLA

The Committee commenced its formal clause by clause consideration of the Local Government Bill.

Clause 1 – Names of councils

“Question: That the Committee is content with clause 1 put and agreed to.”

Clause 2 – Constitutions of councils

“Agreed: That the Committee recommends to the Assembly that clause 2 be amended as specified in Addendum 1(Committee amendments) and Addendum 2 (Departmental amendments)”.

Clause 3 – Qualifications

“Question: That the Committee is content with clause 3 put and agreed to.”

Clause 4 – Disqualifications

“Question: That the Committee is content with clause 4 put and agreed to.”

Clauses 5 –9

“Question: That the Committee is content with clauses 5 to 9 put and agreed to.”

Clause 10 – Positions of responsibility

“Agreed: That the Committee recommends to the Assembly that clause 10 be amended as specified in Addendum 2 (Departmental amendments)”

The Chairperson recorded her opposition to the use of the D’Hondt mechanism, rather than Single Transferable Vote, in allocating positions of responsibility.

Clause 11 – Arrangements for discharge of functions of council

“Agreed: That the Committee recommends to the Assembly that clause 11 be amended as specified in Addendum 2 (Departmental amendments)”

Clauses 12 – 24

“Question: That the Committee is content with clauses 12 to 24 put and agreed to.”

Clause 25 – Council Executives

“Agreed: That the Committee recommends to the Assembly that clause 25 be amended as specified in Addendum 1 (Committee amendments).”

Clauses 26 – 33

“Question: That the Committee is content with clauses 26 to 33 put and agreed to.”

Clause 34 – Reference to matters to overview and scrutiny committee etc.

“Agreed: That the Committee recommends to the Assembly that clause 34 be amended as specified in Addendum 2 (Departmental amendments).”

Clauses 35 – 49

“Question: That the Committee is content with clauses 35 to 49 put and agreed to.”

Clause 50 - Application to committees and sub-committees

“Agreed: That the Committee recommends to the Assembly that clause 50 be amended as specified in Addendum 2 (Departmental amendments).”

Clauses 51 – 57

“Question: That the Committee is content with clauses 51 to 57 put and agreed to.”

Clause 58 - Investigations

“Agreed: That the Committee recommends to the Assembly that clause 58 be amended as specified in Addendum 2 (Departmental amendments).”

Clauses 59 – 61

“Question: That the Committee is content with clauses 59 to 61 put and agreed to.”

Clause 62 – Decision following report

“Agreed: That the Committee recommends to the Assembly that clause 62 be amended as specified in Addendum 2 (Departmental amendments) and to take account of the Committee’s view that it should include further grounds for an appeal to the High Court.”

Clause 63 – Decisions on interim reports

“Agreed: That the Committee recommends to the Assembly that clause 63 be amended as specified in Addendum 2 (Departmental amendments).”

Clause 64 – Recommendations

“Question: That the Committee is content with clause 64 put and agreed to.”

Clauses 65 – 67

“Question: That the Committee is content with clauses 65 to 67 put and agreed to.”

Clause 68 – Interpretation

“Agreed: That the Committee recommends to the Assembly that clause 68 be amended as specified in Addendum 2 (Departmental amendments).”

Clauses 69 – 77

“Question: That the Committee is content with clauses 69 to 77 put and agreed to.”

Clause 78 – Duties of departments in relation to community planning

“Agreed: That the Committee recommends to the Assembly that clause 78 be amended as specified in Addendum 2 (Departmental amendments).”

Clauses 79 – 84

“Question: That the Committee is content with clauses 79 to 84 put and agreed to.”

Clause 85 – Powers to make supplemental provision

“Agreed: That the Committee recommends to the Assembly that clause 85 be amended as specified in Addendum 2 (Departmental amendments).”

Clauses 86 – 94

“Question: That the Committee is content with clauses 86 to 94 put and agreed to.”

Clause 95

“Agreed: That the Committee recommends to the Assembly that clause 95 be amended as specified in Addendum 1(Committee amendments).”

Clause 96 – Improvement information and planning

“Agreed: That the Committee recommends to the Assembly that clause 96 be amended as specified in Addendum 2 (Departmental amendments).”

Clause 97 – Improvement assessments

“Question: That the Committee is content with clause 97 put and agreed to.”

Clause 98 – Audit and assessment reports

“Agreed: That the Committee recommends to the Assembly that clause 98 be amended as specified in Addendum 1(Committee amendments) and Addendum 2 (Departmental amendments).”

Clauses 99 – 105

“Question: That the Committee is content with clauses 99 to 105 put and agreed to.”

Clause 106 – Partnership Panel

“Agreed: That the Committee recommends to the Assembly that clause 106 be amended as specified in Addendum 2 (Departmental amendments).”

Clauses 107 – 110

“Question: That the Committee is content with clauses 107 to 110 put and agreed to.”

Clause 111 – Power to repeal provisions relating to surcharge, etc.

“Agreed: That the Committee recommends to the Assembly that clause 111 be amended as specified in Addendum 2 (Departmental amendments).”

Clauses 112 – 115

“Question: That the Committee is content with clauses 112 to 115 put and agreed to.”

Clause 115A – Transferred functions grant

“Agreed: That the Committee recommends to the Assembly that clause 115A be inserted as specified in Addendum 2 (Departmental amendments).”

Clauses 116 – 119

“Question: That the Committee is content with clauses 116 to 119 put and agreed to.”

Clause 119A – Power to dissolve Local Government Staff Commission

“Agreed: That the Committee recommends to the Assembly that clause 119A be inserted as specified in Addendum 2 (Departmental amendments).”

Clause 120 – Insurance against accidents to councillors

“Question: That the Committee is content with clause 120 put and agreed to.”

Clause 121 – Schemes for transfers of assets and liabilities

“Agreed: That the Committee recommends to the Assembly that clause 121 be amended as specified in Addendum 2 (Departmental amendments).”

Clause 122 – Compensation for loss of office or diminution of emoluments

“Agreed: That the Committee recommends to the Assembly that clause 122 be amended as specified in Addendum 2 (Departmental amendments).”

Clause 123 – Supplementary and transitional provisions for the purposes of this Act and other purposes

“Agreed: That the Committee recommends to the Assembly that clause 123 be amended as specified in Addendum 2 (Departmental amendments).”

Clause 124 – Interpretation

“Agreed: That the Committee recommends to the Assembly that clause 124 be amended as specified in Addendum 2 (Departmental amendments).”

Clause 125 – Regulations and orders

“Agreed: That the Committee recommends to the Assembly that clause 125 be amended as specified in Addendum 2 (Departmental amendments).”

Clauses 126 – 128

“Question: That the Committee is content with clauses 126 to 128 put and agreed to.”

Schedules 1-3

“Question: That the Committee is content with schedules 1 to 3 put and agreed to.”

Schedule 4 – Appointment of councillors to committees etc.

“Agreed: That the Committee recommends to the Assembly that schedule 4 be amended to ensure that the formula for appointments to committee be run for all committee positions at once and for the duration of the council term based on the number of seats each party has immediately after the election.”

Schedules 5-8

“Question: That the Committee is content with schedules 5 to 8 put and agreed to.”

Schedule 9 – Minor and consequential amendments relating to local government audit

“Agreed: That the Committee recommends to the Assembly that schedule 9 be amended as specified in Addendum 2 (Departmental amendments).”

Schedule 10 – Transfer schemes

“Question: That the Committee is content with schedule 10 put and agreed to.”

Schedule 11 – Minor and consequential amendments: general

“Agreed: That the Committee recommends to the Assembly that schedule 11 be amended as specified in Addendum 2 (Departmental amendments).”

Schedule 12 – Repeals

“Agreed: That the Committee recommends to the Assembly that schedule 12 be amended as specified in Addendum 2 (Departmental amendments).”

Long Title

“Question: That the Committee is content with the Long Title of the Bill, put and agreed to.”

[EXTRACT]

Addendum 1

Committee draft amendments

Clause 2, page 1, line 17

After “that” insert “from 30 April 2015”

Clause 25 – Role of Mayors/Chairs in executive

Clause 25, page 11, line 29

Leave out subsection (3) and insert

‘(3) The chair and deputy chair of the council shall be ex-officio non-voting members of the executive.’

Clause 25, page 11, line 31

Leave out ‘four’ and insert ‘six’

[Clause 25, page 11, line 34

Leave out ‘four’ and insert ‘six’]

Clause 62 - recommend an amendment to the proposed departmental amendment to set out the grounds of appeal.

Clause 95, page 54, line 7

At end insert -

‘() The Department may by order amend the date in subsection (3)(a).’

Clause 98, page 55, line 20

At end insert -

‘() The Department may by order amend the date in subsection (3)(a).’

Schedule 4, recommend an amendment to ensure that the formula for appointments to committee be run for all committee positions at once and for the duration of the council term based on the number of seats each party has immediately after the election.

Addendum 2

Departmental draft amendments for Consideration Stage

Clause 2, Page 1, Line 14

Leave out 'council's code of conduct' and insert 'Northern Ireland Local Government Code of Conduct for Councillors'

Clause 10, Page 5, Line 25

Leave out 'subsection (1)(f)' and insert 'this Act'

Clause 10, Page 5, Line 26

Leave out 'prescribed public body or other association' and insert 'public body'

Clause 11, Page 5, Line 38

At end insert-

'() making a determination under section 13(1) of the Local Government Finance Act (Northern Ireland) 2011 (affordable borrowing limit) and monitoring an amount determined under that subsection;'

Clause 34, Page 18, Line 9

Leave out 'an excluded' and insert 'a prescribed'

Clause 34, Page 18, Line 17

Leave out subsection (4)

Clause 50, Page 28, Line 29

Leave out 'be'

Clause 58, Page 33, Line 17

At end insert-

"(1A) Instead of, or in addition to, conducting an investigation under this section, the Commissioner may take such action as appears to the Commissioner to be desirable to deal with any particular case falling within subsection (1)."

Clause 62, Page 36, Line 36

At end insert-

'(13) A person who is censured, suspended or disqualified by the Commissioner as mentioned in subsection (3) may appeal to the High Court if the High Court gives the person leave to do so.'

Clause 63, Page 37, Line 29

At end insert-

'(9) A person who is suspended (or partially suspended) by the Commissioner by notice as mentioned in subsection (1) may appeal to the High Court if the High Court gives the person leave to do so.'

Clause 68, Page 40, Line 11

At end add-

'(5) Where a councillor is an external representative of a council-

(a) any reference in this Part to a councillor being partially suspended from being a councillor includes a reference to that councillor being suspended from being an external representative; and

(b) if that councillor is suspended otherwise than partially or is disqualified from being a councillor that councillor is also suspended or disqualified from being an external representative.'

Clause 78, Page 45, Line 7

Leave out 'aim to'

Clause 85, Page 48, Line 41

At end insert-

'(5) Before the Department makes an order under this section it must consult—

(a) such associations or bodies representative of councils;

(b) such associations or bodies representative of officers of councils; and

(c) such other persons or bodies,

as appear to the Department to be appropriate.

(6) If, following consultation under subsection (5), the Department proposes to make an order under this section it must lay before the Assembly a document explaining the proposals and, in particular—

(a) setting them out in the form of a draft order; and

(b) giving details of consultation under subsection (5).

(7) Where a document relating to proposals is laid before the Assembly under subsection (6), no draft of an order under this section to give effect to the proposals (with or without modification) is to be laid before the Assembly until after the expiry of the statutory period beginning with the day on which the document was laid.

(8) In preparing a draft order under this section the Department must consider any representations made during the period mentioned in subsection (7).

(9) A draft order laid before the Assembly in accordance with section 125(3) must be accompanied by a statement of the Department giving details of—

(a) any representations considered in accordance with subsection (8); and

(b) any changes made to the proposals contained in the document laid before the Assembly under subsection (6).'

Clause 96, Page 54, Line 15

Leave out '95(6)' and insert '113'

Clause 98, Page 54, Line 33

Leave out '95(6)' and insert '113'

Clause 98, Page 55, Line 1

Leave out '95(6)' and insert '113'

Clause 106, Page 60, Line 6

Leave out 'appointed by the Department'

Clause 106, Page 60, Line 8

Leave out "(4)" and insert "(3A)"

Clause 106, Page 60, Line 8

At end insert-

'(3A) Each council may nominate a councillor to serve as a member of the Panel.'

Clause 106, Page 60, Line 9

Leave out subsection (4)

Clause 111, Page 62, Line 25

Leave out 'Article' and insert 'Articles 18(1) and'

New Clause

After Clause 115 insert -

'Transferred functions grant

Transferred functions grant

115A.-(1) In the Local Government Finance Act (Northern Ireland) 2011, after section 27 (rates support grant) there shall be inserted the following section-

"Transferred functions grant

27A.-(1) The Department shall for any prescribed financial year make a grant under this section to councils.

(2) In this section "transferred functions grant" means the grant payable under this section for any financial year.

(3) The transferred functions grant is payable only to a council which is a new council within the meaning of Part 2 of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010.

(4) The amount of the transferred functions grant payable to a council for any financial year is the amount equal to the difference between-

(a) the amount of the product of the district rate for that year (within the meaning of the Rates (Northern Ireland) Order 1977) so far as it relates to the rateable net annual values of the hereditaments in the district of that council; and

(b) the amount which would have been the amount of that product if the total of the rateable net annual values of the hereditaments in the district of that council had been increased by a prescribed amount.

(5) Subsection (4) is subject to section 28 (reductions in grants).

(6) Payments in respect of transferred functions grant shall be made to a council at such times as the Department may determine.'.

(2) In section 28 of that Act (reductions in grants), in subsections (2)(a) and (6)(b) and in the heading for “or 27” there shall be substituted “, 27 or 27A”.’

New Clause

After clause 119 insert-

‘Power to dissolve Local Government Staff Commission

Power to dissolve the Local Government Staff Commission for Northern Ireland [j1diss]

*. In section 40 of the Local Government Act (Northern Ireland) 1972 (Staff Commission), after subsection (8) there shall be added the following subsection?

“(9) The Department may by order make provision for, and in connection with, the dissolution of the Staff Commission and such an order may—

(a) provide for the transfer of the functions, assets and liabilities of the Staff Commission to any other body or person; and

(b) contain such incidental, consequential, transitional or supplementary provisions (including the modification or repeal of any statutory provision (including a provision of this Act)) as appear to the Department to be necessary or expedient.

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

Clause 121, Page 66, Line 14

Leave out lines 14 to 21 and insert-

‘121.-(1) The power conferred by subsection (4) is exercisable where it appears to any Northern Ireland department necessary or expedient as mentioned in section 123(1) or (2).’

Clause 121, Page 66, Line 30

At end insert-

‘(6A) The Department of Culture, Arts and Leisure may make one or more schemes for the transfer of designated assets or liabilities of the Board of Trustees of the National Museums and Galleries of Northern Ireland relating to Armagh County Museum to the council for the district of Armagh, Banbridge and Craigavon.’

Clause 121, Page 66, Line 40

Leave out from ‘means’ to ‘that’ in line 42

Clause 121, Page 67, Line 1

Leave out ‘it’

Clause 121, Page 67, Line 3

Leave out ‘it’

Clause 122, Page 67, Line 11

Leave out from ‘means’ to ‘includes’ in line 15 and insert ‘includes the Local Government Staff Commission and;’

Clause 122, Page 67, Line 18

Leave out from ‘Act’ to the end of line 22 and insert-

‘or any other Act mentioned in subsection (1) of section 123;

(b) any transfer of functions or any statutory provision falling within paragraph (a) or (b) of subsection (2) of that section.’

Clause 123, Page 68

Leave out lines 12 to 39 and insert-

‘**123.** -(1) The Department may by regulations make such incidental, consequential, transitional or supplemental provision as appears to the Department to be necessary or expedient for the purposes of, or otherwise in connection with -

(a) this Act;

(b) the Local Government (Boundaries) Act (Northern Ireland) 2008; or

(c) the Planning Act (Northern Ireland) 2011.

(2) Any Northern Ireland department may by regulations make such incidental, consequential, transitional or supplemental provision as appears to that department to be necessary or expedient for the purposes of, or otherwise in connection with -

(a) any transfer of functions to a local government body, whether they are functions of that department or not, coming into operation on or before 1st April 2015; or

(b) any statutory provision coming into operation on or before 1st April 2015 which confers functions on a local government body, whether this is expressed as transfer of functions or not.

(3) In this section “local government body” includes the Northern Ireland Housing Executive.

(4) Nothing in this section is to be taken as limiting the generality of any other statutory provision (including a provision of this Act) and nothing in any other statutory provision (including a provision of this Act) is to be taken as limiting the generality of this section.

(5) Regulations under this section which amend any statutory provision must not be made unless a draft of the regulations has been laid before, and approved by, resolution of the Assembly.’

Clause 124, Page 69, Line 12

At end insert-

‘ “external representative”, in relation to a council, has the meaning given by section 10 {j?} (4);’

Clause 124, Page 69, Line 17

At end insert -

‘ “local government body” means a local government body within the meaning of Part 2 of the Local Government (Northern Ireland) Order 2005;’

Clause 124, Page 69, Line 27

Leave out ‘section 103’ and insert ‘sections 103 and 123’

Clause 125, Page 70, Line 5

Leave out ‘making’ and insert ‘a Northern Ireland department makes’

Clause 125, Page 70, Line 6

Leave out 'the Department' and insert 'it'

Clause 125, Page 70, Line 10

Leave out 'the Department' and insert 'it'

Clause 125, Page 70, Line 12

Leave out 'made by the Department' and insert 'under this Act'

Clause 125, Page 70, Line 27

At end insert-

'() section 51;

() section 54;'

Clause 125, Page 70, Line 40

Leave out 'Department' and insert 'Northern Ireland department making them'

Schedule 9, Page 89

Leave out line 20

Schedule 11, Page 93, Line 8

At end insert-

'Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 (c.7)

3A. In section 17 (power to modify legislation), in subsection (2) in the definition of "local government legislation", after paragraph (cc) insert-

" (cd) the Local Government Act (Northern Ireland) 2014;".'

Schedule 12, Page 93, Line 19

At end insert-

'In section 104(1), the words "any other council or", and in both places where they occur the words "the other council or, as the case may be,".'

Schedule 12. Page 93, Line 33

At end insert-

'The Local Government (Best Value) Act (Northern Ireland) 2002 (c.4) The whole Act.'

Tuesday, 18 February 2014

Room 29, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mrs Pam Cameron MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Colum Eastwood MLA
Mr Ian Milne MLA

12:37pm The meeting began in closed session.

1. Briefing by Assembly Bill Clerk

The Committee received a briefing from the Assembly Bill Clerk on the proposed Committee amendments to clauses 95 and 98 of the Local Government Bill.

12:42pm Mr Maginness joined the meeting.

The Committee also discussed the admissibility of further submissions from NILGA and Community Places in relation to further amendments to the Local Government Bill.

Agreed: The Committee agreed it was unable to consider further submissions as the formal clause by clause consideration of the Bill concluded on the 13th February 2014. The Committee agreed to write to both groups to explain this.

12:47pm Mr Weir joined the meeting.

12:48pm The meeting continued in public session.

3. Matters arising

3.1 The Committee noted further information from the Department in response to outstanding Committee queries on the Local Government Bill and details of further amendments.

3.2 The Committee noted correspondence from NILGA and Community Places on the Local Government Bill.

3.3 The Committee reconsidered proposed amendments to clauses 95 and 98 of the Local Government Bill.

Agreed: The Committee agreed to withdraw these proposed amendments

12:53pm The meeting continued in closed session for consideration of the draft Committee report.

4. Consideration of the draft Committee report on the Local Government Bill

The Committee gave consideration to the draft report on the Planning Bill.

The Committee considered the Executive Summary section of the report.

Agreed: The Committee was content with the Executive Summary section of the report subject to a minor amendment.

12:58pm Mr Weir left the meeting

The Committee considered the Recommendation section of the report.

Agreed: The Committee was content with the Recommendation section of the report as drafted.

The Committee considered the Consideration of the Bill section of the report.

Agreed: The Committee was content with the Consideration of the Bill section of the report as drafted.

The Committee considered the Clause by clause consideration section of the report.

Agreed: The Committee was content with the Clause by clause consideration section of the report as drafted.

Mr Elliott asked for it to be recorded that he wishes to reserve his position on the Committee report.

[EXTRACT]

Thursday, 20 February 2014

Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MLA (Chairperson)
Mrs Pam Cameron MLA (Deputy Chairperson)
Mr Cathal Boylan MLA
Mr Tom Elliott MLA
Mr Alban Maginness MLA
Mr Ian McCrea MLA
Mr Barry McElduff MLA
Mr Ian Milne MLA
Lord Morrow MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: No apologies were received

10:07 pm The meeting began in public session.

10. Local Government Bill – Agreement of Committee report

The Committee considered a draft report on the Local Government Bill

Agreed: The Committee agreed the draft report and ordered it to be printed.

Agreed: The Committee was content to include in its report the relevant extract of minutes of this meeting without further approval.

Question put and agreed:

‘That the Report be the Sixth Report of the Environment Committee to the Assembly.’

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

26 September 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Ms Pam Brown (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Tom Elliott
 Mr Ian McCrea
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Julie Broadway *Department of the*
 Ms Linda MacHugh *Environment*
 Mr Tommy McCormick
 Mr John Murphy

1. **The Chairperson:** I welcome from the Department Linda MacHugh, John Murphy, Tommy McCormick and Julie Broadway. This is a long-awaited piece of legislation and we are all just stretching our necks, waiting for this and wanting to listen to you. Have members interests to declare?
2. **Mr Weir:** As you can probably guess, I declare an interest as a member of North Down Borough Council.
3. **Lord Morrow:** I declare an interest as a member of Dungannon and South Tyrone Borough Council.
4. **Ms Brown:** I declare an interest as a member of Antrim Borough Council.
5. **The Chairperson:** Ian, you as well?
6. **Mr I McCrea:** I declare an interest as a member of Cookstown District Council.
7. **The Chairperson:** Can you take us through it in five or 10 minutes?
8. **Ms Linda MacHugh (Department of the Environment):** It is a pleasure to be here for this long-awaited Bill, and I have no doubt that this will be the start of a frequent and detailed engagement with you on its contents. As many of you know, this has had a very long gestation

period. I thought that it might be helpful to remind everybody about the stages that we have gone through to get to this point.

9. I suppose that this kicked off following devolution in May 2007, when the previous Executive agreed to review the review of public administration (RPA) decisions relating to local government reform in the context of a fully functioning devolved Assembly and Executive and in the context of the strategic direction of the review of public administration as a whole. At that time, an Executive subcommittee was set up to oversee the review, and it comprised Ministers from Departments that were transferring functions to local government. That membership also ensured representation from each of the political parties in the Executive.
10. In October 2007, the subcommittee published its emerging findings and sought views on a draft vision for the future of local government, the number of councils and the package of functions to transfer from central to local government. Following publication of the report, there was a stakeholder engagement process, in which over 500 individuals took part and a further 60 written responses were received. The results of that, the views of MLAs expressed during a take-note debate and, indeed, the views of this Committee were carefully considered by the Executive subcommittee and facilitated further discussions on what the final recommendations should be. Those were put to the Assembly in March 2008 by the then Environment Minister, Arlene Foster.
11. The Department then established a structure to take forward the development of policy and the implementation of the proposals. The top tier of that was the strategic leadership board, which was chaired by the Environment Minister with the

- president of the Northern Ireland Local Government Association (NILGA) as vice chair. It was supported by three policy development panels, which also comprised elected members along with central and local government advisers. They were charged with developing policy and implementation proposals within three broad remits: governance and relationships, service delivery, and structural reform.
12. The policy proposals developed through this partnership approach were the subject of a public consultation that was launched in November 2010 and closed at the end of March 2011, and to which 77 responses were received from a wide range of stakeholders. A departmental response to the consultation was issued on 5 July. The responses that we got were really the final stage in formulating the Bill.
 13. I know that that was a fairly lengthy explanation, but I thought it important because, with the passage of time, I think that some of that preparatory work has been forgotten. For anybody involved in the policy development stage of the Bill, the contents of the Bill will be, by and large, very familiar, with just one or two small changes to what was consulted on. So, at this point, I will pass over to my colleague Julie Broadway, who wants to take you through the overarching contents of the Bill and draw out some of those particular differences.
 14. **Ms Julie Broadway (Department of the Environment):** As Linda said, I will run through the main features of the Bill and identify the major differences between the proposals that were consulted on and those that now feature in the Bill. I think that the best way to go is Part by Part.
 15. Part 1 of the Bill makes provisions about the names of councils and provides a mechanism for the name of a council to be altered. It also requires each council to publish a constitution and ensure that it is available for inspection by the public.
 16. Part 2 of the Bill, together with schedules 1 and 2, largely re-enacts provisions that are already in the Local Government Act (Northern Ireland) 1972, which deal with individuals being elected and being councillors. The main changes from the provisions in the 1972 Act are really in relation to the disqualification provisions and the declaration that a councillor is required to make before taking office. The Bill places a bar on MPs, MEPs and MLAs being councillors and removes the blanket prohibition on council employees being councillors. The ban will continue to apply for officers who work directly with and provide advice to the council or one of its committees. The declaration set out in schedule 2 now requires a councillor to affirm that they will observe the mandatory code of conduct.
 17. A major part of this Bill is the new governance arrangements, and Parts 3 to 8 will update the governance arrangements of councils and make provision for the sharing of positions of responsibility amongst political parties and independents represented on a council using either the d'Hondt or Sainte-Laguë formula approaches or the single transferable vote. The d'Hondt process will be the default position if parties on a council cannot agree a method, and, to ensure consistency in the application of the alternative methods, the operation of each of them is set out in the schedules to the Bill.
 18. Membership of committees will also reflect the political balance of a council through the use of a specified method, and a system of checks and balances on council decision-making will be introduced to provide protections to ensure fair treatment for everyone represented on a council. Those will comprise a call-in procedure and the use of qualified majority voting in specified circumstances.
 19. New decision-making structures will also be available to councils in addition to the current committee system to provide for efficient and effective decision-making, and those new structures will allow for a range of decisions to be devolved to an executive of the council. A council that chooses to

- adopt executive arrangements may establish either a single committee or a number of committees as part of the executive. The Bill will provide an enabling power for the Department to specify which functions may or have to be carried out by an executive, and internal scrutiny arrangements will be introduced to provide a check and balance on the operation of devolved decision-making. A council that adopts executive arrangements will be required to establish one or more overview and scrutiny committees. There will also be provision in the Bill about public access to meetings and information of councils for more transparency.
20. Part 9 of the Bill establishes a new ethical standards framework for councillors, which will include the introduction of a mandatory code of conduct for councillors, with supporting mechanisms for investigation and adjudication. That is one of the main areas that differ from the provisions that were consulted on. The mandatory code will consist of the seven Nolan principles as well as the four additional principles that have already been adopted by the Assembly, and, importantly, the code will include a section on planning and the ethics around the planning duty. Before the code can come into force, it must be laid before and approved by the Assembly. The Northern Ireland Commissioner for Complaints will be responsible for investigation and adjudication, and, following an investigation, if a person is found to have failed to comply with the code, there will be a range of remedies available and decisions that the commissioner can make.
21. Part 10 of the Bill makes provision for council-led community planning. Councils will be required to initiate, maintain, facilitate and participate in community planning for their districts, and specified statutory agencies will be required to participate in and support community planning. Departments will be required, as far as practicable, to promote and encourage community planning and to have regard to the implications of a community plan in the development of policies and the exercise of their functions. There is also a statutory link made between a council's community plan and the preparation of its local development plan.
22. One of the other major changes from the proposals that were consulted on is the introduction of a general power of competence. That was introduced because of a considerable amount of lobbying by local government. We had previously consulted on a power of well-being. Part 11 of the Bill now provides councils with a general power of competence, and, instead of having to find a statute that would allow a council to act, councils would be required to satisfy themselves that there was nothing that would prevent them using that power. So, it is a much wider power than the power of well-being would be. In broad terms, it will give councils the type of freedom that an individual has, unless there is a law to prevent them from doing something.
23. Part 12 introduces an updated performance improvement regime to help bring about improvement in the delivery of council services, and councils will be required to publish an annual improvement plan to enhance accountability to the local community. A power is included for Departments to specify performance indicators, and the intention is that such indicators will be developed with local government. The Bill provides an external assurance that, in preparing the improvement plan, a council has complied with the requirements of the performance improvement framework. That role will be undertaken by the local government auditor. A power is also being provided for Ministers, individually, to intervene in the operation of a council if it is shown that the council is failing to deliver its services to meet appropriate standards within that Minister's area of responsibility.
24. Part 13 makes provision for the establishment of a partnership panel, which will comprise Ministers — in particular those who have a significant

- policy relationship with local government — and councillors. It will provide a forum for discussion of matters of mutual interest and concern between the two tiers of government.
25. Part 14 basically re-enacts the supervision powers that are already in the 1972 Act but makes them available to all Departments rather than simply DOE. That is because, with the transfer of functions, it is felt that those supervision powers may be needed by other Departments, not just DOE.
26. I will move on to some of the more technical issues. Part 15 addresses a technical issue in relation to the Local Government Audit Office. It is really to allow for the restructuring of the Local Government Audit Office to bring the local government audit aspect of that more into line with the rest of the Northern Ireland Audit Office.
27. Part 16 of the Bill deals with a number of miscellaneous technical issues, but the two important issues to do with local government reorganisation that it addresses are those in relation to placing controls on council expenditure in the run-up to reorganisation and to do with both the asset liability and the staff transfer schemes. In terms of the controls, it really enhances those provisions that are already in the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010. It supplements them to take account of the Local Government (Finance) Act, which came in in 2011 after the previous Act was made. Controls in respect of borrowings and reserves will be introduced in addition to the controls that the 2010 Act places on contracts and disposals. The Bill also extends the controls provisions to cover the incoming councils during the shadow period, as well as during the statutory transition committee (STC) period.
28. In relation to the transfer of assets, liabilities and staff in the reorganisation, the Bill will make provision for the development of schemes to affect those transfers. Those relating to staff will provide for the protection of contractual employment rights, terms and conditions of service, and pensions and will apply statutory protections, including those enshrined in the Transfer of Undertakings (Protection of Employment) Regulations (TUPE).
29. As I have said, the two main areas where there are changes from what was consulted on are those in relation to ethical standards and the general power of competence. The Bill simplifies the ethical standards proposals that were consulted on. A mandatory code of conduct and the supporting principles of conduct that will apply are the same, but the investigation and adjudication provisions have been simplified, so that the Office of the Commissioner for Complaints will be responsible for dealing with all cases now. That means that we are not setting up standards committees in councils or appointing independent monitoring officers.
30. The reasons for that simplified system are that it is less bureaucratic than the framework that was consulted on. It is also more cost-effective. The PricewaterhouseCoopers (PwC) report that came out in October 2009 estimated the cost of the ethical standards framework at about £800,000. The revised system will be half that cost. It also takes account of some comments that were made during the consultation. If you set up standards committees in councils, how independent will they be? Even if you have independent members on them, what perception might there be of their independence? Those are the major reasons for changing those. I will finish there and take any questions.
31. **The Chairperson:** Thank you both very much. It was very useful to go through the history and have a run-through of all the policies. I am sure that we will be looking at them in more depth.
32. One of the first items in matters arising that we looked at earlier was the difficulties that some councils had encountered in nominations to STCs. It will be a similar structure for the new councils when they look at positions of

- responsibility. How will you ensure that we will not see problems such as those we see now?
33. **Ms MacHugh:** I think that the interpretation of the statutory transition committee regulations has been an art rather than a science in some cases. I did not know that there were so many different ways to interpret d'Hondt or any of the other forms of power sharing. That is why the exact form of d'Hondt and of Sainte-Laguë will be specified in the Bill. If there is no agreement in councils on which of the three options they choose, the fallback position will be d'Hondt.
34. The other big difference is that the Bill will make provision for any of those power-sharing agreements to be run at the start of a council term and each position of responsibility will be chosen at that time. It is not the case that d'Hondt will be run again every year from scratch; it will start at the beginning of the term, so decisions about what positions will be taken by which party for the life of that council will be taken at the very beginning of the council's life. The provisions in the Bill will be much stronger than the provisions in the statutory transition committee regulations.
35. **The Chairperson:** That is reassuring.
36. **Ms Broadway:** The Bill sets it out in detail.
37. **Lord Morrow:** Thank you for your presentation. An employee of a council being a member of a council was mentioned. On first hearing of that, I did not think that it sounded very transparent. Will you tell us how you see that? For instance, I suspect that the chief executive of a council could hardly be a member of a council, could he?
38. **Ms Broadway:** That is right; he could not.
39. **Lord Morrow:** At what level is that cut-off?
40. **Mr John Murphy (Department of the Environment):** A chief executive or any other statutory chief officers would be disqualified. For example, the finance Bill requires a council to appoint a chief finance officer. In England and Wales, a director would not be able to be elected as a councillor. That is where you start working down to the level of who would be working directly and providing advice to the council as a whole or the committee. That really came about as a result of a case that was taken to the European Court of Human Rights by a number of individuals in England. It ruled that a blanket ban on all employees of the council standing for election and being a councillor was unlawful. We sought advice from the DSO, which said that we could be subject to a successful challenge if we did not amend our provisions, and that is why we brought that in. The positions that will continue to be disqualified will be set out in regulations, which will be subject to consultation. We will be able to determine the most appropriate level at which we stop people being able to be elected as a councillor.
41. **Lord Morrow:** I am thinking of heads of departments who would not be directors. I am also thinking of someone who is in building control; for example, a building control officer at a mid-level. Would such a person be able to be a member of a council?
42. **Mr Murphy:** Something that we will need to tease out through the consultation and with the Committee is how to determine the most appropriate level at which to draw the line.
43. **Lord Morrow:** I will move on to the matter of triggering a vote. I suspect that it will be on a mini scale of what happens here in the Assembly and that the same mechanism or procedure will be adopted for a call-in vote to protect minorities.
44. **Mr Murphy:** Yes, but, in the call-in mechanism that we are proposing for councils, there will be no designation, so the 15% will not be required to be from a particular party. It can be 15% of the membership, and that view was expressed by the policy development panel that was looking at the governance arrangements, and it

- was supported in the responses to the consultation.
45. **Lord Morrow:** Could the 15% come from one party?
46. **Mr Murphy:** It could come from one party.
47. **Mr Weir:** I will roll a number of points into one. I appreciate that our hands are slightly tied on the employee side of things. It is fairly easy to differentiate some of the folk at the very top end of the council organisation, but the problem will come at a slightly different level over, for instance, declarations of interest where a council employee is also a councillor. For example, virtually any financial decision will have an impact of the budget. Maurice gave the example of the building control officer. Are they agreeing a budget that gives a certain amount to that department? I think that there will be problems, but I appreciate that it is not a problem of any of our making.
48. I welcome the shift towards the power of general competence and the simplification of some the standards regime. As John and Julie will know, there were a lot of concerns about the issues around scrutiny committees and scrutiny officers in that you would be putting a scrutiny officer in an impossible position and so on.
49. I have three questions, the first of which is on the ethical standards regime. I note from your briefing that, essentially, you have adjudication by what really is a commissioner of complaints, who hands down some form of sentence or whatever. Is there any form of appeal mechanism for the person?
50. The second issue that I want to touch on again requires a bit of clarification. Obviously, we will have a lengthy debate on Tuesday, so it is something to get in the Hansard report, and I will be raising it in the Chamber to get it on the record as well. Reference is made to councillors being nominated or, at least, appointed by the Department of the Environment to the partnership panel. Can you outline what is envisaged by that? If this is simply a technical of
- issue of a list of names being given that has to be signed off by the Department, I do not think that there will be any particular problem. I think that there will be concerns if local government as a whole is almost providing a pool of names from which the Minister could then select. It is not quite of this nature, but, for example, with the Library Authority, there are a number of names and the Minister then carries out a selection process. I think that the people who are involved, effectively, in the appointment or selection have to come from local government. Whether that is purely from the 11 councils, from the likes of NILGA or from a combination of the two, the councillors, in that broader sense, have to be self-selecting from within local government.
51. The final point is on what Maurice said about qualified majority voting. A concern has been raised about there being a clear implication from a community interest point of view. Without getting into the ins and outs of this, clearly, as part of what has been recognised in legislation, that can only be a qualified majority vote if it is regarded as a legitimate call-in and, therefore, is not abused. I note that the system is that you will simply determine whether it is a legitimate call-in by way of the chief executive referring it to any barrister or solicitor who the chief executive selects, essentially, and I am not entirely comfortable with that. I am not sure whether that is the ideal route. There had to be somebody independent and outside the council to rule on whether it was a legitimate call-in. What alternatives were considered to provide that independent scrutiny?
52. **Mr Tommy McCormick (Department of the Environment):** With regard to the Commissioner for Complaints dealing with the ethical framework, there is provision in the Bill for the commissioner to conduct an investigation, which would be lengthy. The commissioner is well placed and has good experience in conducting investigations. Once the commissioner decides that there was a breach of the code, and at what level, as

- with any public body, that person has the right to a judicial review. The decision of the ombudsman involves quite an intensive investigation. Whether it would be just a review —
53. **Mr Weir:** I am sure that would cope in a complaints procedure with a councillor being found guilty of whatever. I do not know whether this would leave us open to a legal challenge, but a judicial review can be on only limited grounds that are not, for instance, whether the decision was right. I have not studied the details of the powers. For example, if the commissioner said that a breach was so serious that his verdict was that a councillor should be banned from a council for six months, when it came to the harshness or leniency of that sentence, or whether the commissioner came to the right decision, a judicial review would show only whether the procedures were correct or whether the commissioner had lost his senses, for want of a better term, in coming up with such an unreasonable verdict. I am not sure that having a situation where the only appeal mechanism is on the narrow grounds of a judicial review when you are dealing with almost a professional conduct-type hearing —
54. **The Chairperson:** It looks only at the process rather than the decision.
55. **Mr Weir:** Yes, and I have reservations about that. We may have to look at that when we come to scrutinise the Bill.
56. **Ms MacHugh:** That is something that we can ask the Commissioner for Complaints and the ombudsman's office. They are currently making decisions and must have some provision for an appeal mechanism. We maybe need to look at that in the context of local government.
57. **Mr Weir:** Where this becomes complicated and maybe runs into a bit of difficulty is that the ombudsman, with the best will in the world, can come to a conclusion and admonish a Department or whatever. Generally speaking, however, that does not have a massive impact on an individual's livelihood or reputation in the community. Largely speaking, the ombudsman's role at the moment largely tends to be one of wrist-slapping a Department or whatever. It is very limited from a purely sanction point of view, whereas being barred from a council and having your reputation shot to pieces could have a severe implication for someone. There may need to be some mechanism in the Bill to address that.
58. **Ms Broadway:** We can look into that and discuss it with the commissioner, and also see how that works in other jurisdictions so that we will have that information for you when we come to scrutiny of the Bill.
59. **Mr Weir:** And on the appointments to the partnership panel?
60. **Mr Murphy:** That is a technical issue. The Department would not be looking for a range of nominations from each council. It would be a matter for a council and the other representative bodies of local government to come forward with the names of the people who they feel should be there to represent each of those councils on a partnership panel.
61. **Mr Weir:** Maybe that should be more explicit in the legislation.
62. **Mr Murphy:** We looked at three obvious avenues for the verification of the call-in, none of which we felt was appropriate. The first was the Department, but it would be totally inappropriate for the Department to become involved in that process. The other two were the local government auditor and the Commissioner for Complaints. Again, the role that we envisage would not fit comfortably with their existing role or their proposed role in local government. So it was felt that an external legal side was needed. The question is whether you have one individual or a panel, and, again, we can look at that in more detail.
63. **Mr Weir:** Whether it is in guidance or regulations, presumably you intend to clearly define or give, as best as you possibly can, high-level guidance on what counts as a call-in. If you

- simply leave it up to whomever this is thrown to, it will be open to very wide interpretation one way or the other, either very narrowly or very widely, and that could create major problems.
64. **Mr Murphy:** Various aspects of the call-in procedure will be specified in and a mandatory element of the standing orders, which will be specified in the regulations that will be approved by draft affirmative procedure. So, there are a number of steps along the way where we can ensure that what we have for the call-in procedure meets all the requirements to ensure that it acts as the appropriate check and provides protection for minority communities.
65. **Mr Boylan:** Thanks very much for the overview. I am sorry that I am third because all the questions have been asked.
66. Thanks for the clarification on that, because the decision-making process is a major part of it. We had some concerns about legitimate call-ins, so it is good that that will be covered in the regulations. You dare not mention the word “guidance” at the minute, bearing in mind what has been said about the transition committees. So I do welcome that clarification.
67. In respect of the commissioner’s role, the costs involved and all that, can you expand a bit on who will be responsible for that?
68. I also welcome the community planning element. Is it down to the councils to draft the criteria for who should be involved in that process? How will that be done? Will it be done independently, or will it include the community, given all that you want to achieve through community planning? Can you expand on that a bit, please?
69. **Ms Broadway:** Subordinate legislation will set out the specified bodies that have to be involved. There will be a major piece of guidance on community planning, setting out how engagement with communities should take place.
70. **Mr Murphy:** Community planning is not just about organised bodies and community groups; it is about the individual. The guidance that exists in Scotland and Wales sets out, in very broad terms, how you can ensure that, as far as individuals are concerned, there is engagement right across the board. It is not just about going to the groups that say that they represent a particular community. It is about trying to get individual members of the community involved, so that the plan reflects the interests and aspirations of everybody living in a council district or a local area, because a community plan is likely to be made up of thematic plans looking at local areas within a district.
71. **The Chairperson:** Sorry, Cathal, for jumping in. We heard before about capacity building for community organisations and individuals. Is that included in the Bill?
72. **Ms MacHugh:** No, it is not. A capacity-building programme is being developed. Just last week, the community planning working group delivered its scoping of the capacity-building requirements. I have to say at this stage that the key priority is capacity building for elected members, local government officers and central government officials. I think that that will have to extend not just to officials from the Departments that are transferring functions but to all the other key Departments that are going to be required to have some sort of input into the community plan. I am thinking of people who are involved in health, education and justice. There are a lot of regional strategies that will need to be considered in developing and amalgamating those strategies into one complete, cohesive community plan.
73. **The Chairperson:** You need to have the right level of staff to be involved in that work.
74. **Ms MacHugh:** Exactly. There is a lot to be done in the next 18 months to prepare local and central government for what will be quite a fundamental change. We are also talking to the community and voluntary sectors

- because they have a role to play in preparing themselves and communities for their effective participation in this process.
75. The Department is looking at the best way to provide support to the statutory transition committees and their transition management teams. We will look at how to build their capacity to effectively engage with their communities. That is one specific element of the capacity-building programme.
76. The other question was about the cost of the commissioner's role. The Bill will make provision for the cost to be covered by local government, on the basis that the initial plan was that each council would be responsible for setting up its own committee and appointing its own independent monitoring officer. That would come with a set of costs. We feel that this is a much more cost-effective and efficient way of doing it, certainly in the early stages of the new local government system. It will be reviewed after three to four years to see how it is rolling and whether it is appropriate to continue with the arrangement, or whether, at that point, we reconsider asking each council to set up its own independent scrutiny mechanism.
77. **Mr Boylan:** I see that the Bill contains only 128 clauses, which should make for interesting scrutiny.
78. Is the commissioner's decision final? Is there no appeal process?
79. **Mr Weir:** I just asked that question.
80. **Mr Boylan:** I am sorry.
81. **Mr Weir:** Great minds think alike.
82. **Mr Boylan:** That is why I should have got in first; I am sorry.
83. **The Chairperson:** Will the commissioner's costs be shared out equitably among the councils?
84. **Ms MacHugh:** The costs will be apportioned, probably on the basis of size. We are looking at apportioning the costs of running councils in the shadow period on the basis of size. We will be looking for an equitable way of sharing out those costs, at least until a body of work and a caseload has been built up. Again, that might need to be revised later on, but for the initial phase, it will be apportioned.
85. **Mr Elliott:** Thank you very much, folks. I hope that you are in no hurry home this evening; we could be here for quite a while.
86. There is quite a lot in this, to be fair, and we are not going to get through a lot of it at the moment. I would like a couple of quick clarifications. There is an issue around non-councillors being allowed to serve as members of a committee. Is that a transfer over? Was that in the old legislation? I was not aware that it was.
87. **Mr Murphy:** It was, but there is a limit on the number of non-councillors who can be on a committee. It is in the 1972 Act.
88. **Mr Elliott:** OK. I want to ask about executive arrangements and the committee system. Must you have both? It appears from the wording of the legislation that you have executive arrangements, a committee system or what are called prescribed options. Must you have executive arrangements and committee systems?
89. **Mr Murphy:** There is either the committee or the executive, but if a council feels that there is an alternative structure that it thinks would be more appropriate, it can come to the Department and we can bring that forward in regulations. Even under executive arrangements, however, an executive will not be responsible for every function of a council, so you will end up having an executive that will deliver certain functions and responsibilities of a council as set out in the regulations.
90. Other issues such as licensing will still be a matter for the full council, which can then use the provisions in Part 3 of the Bill for the discharge of functions, as councils do now, where a council can delegate a function to a committee that will be brought back to the council

- for ratification. There would still be a range of matters that will fall that way alongside the executive. As I said, the executive will be there simply for that specified range of functions. It will operate within a policy and budgetary framework agreed by the full council, and it will then take the decisions on those issues as they come up without further reference back to the council.
91. **Mr Elliott:** OK, but my specific query was whether the council must have executive arrangements.
92. **Mr Murphy:** No.
93. **Mr Elliott:** The legislation is not clear about that. Under the heading “Permitted forms of Governance” it states:
- “23.—(1) A council must operate—
(a) executive arrangements;
(b) a committee system; or
(c) prescribed arrangements.”*
94. Between clause 23(1)(a) and clause 23(1)(b), it does not say “or”. From my reading of that, it states that a council must have executive arrangements and then either a committee system or prescribed arrangements.
95. **Ms Broadway:** No, if a council wants to have what is the current committee system —
96. **Mr Elliott:** That is fine, but the legislation, in the way in which it is written, does not appear to state that. It states that a council “must” have executive arrangements and one of the other two. It was only a point of clarification.
97. **The Chairperson:** I am very surprised that it states that the two top posts are not to be in the executive.
98. **Mr Elliott:** Yes.
99. **The Chairperson:** It is very strange that an executive will not have the two top people —
100. **Mr Elliott:** It does not have the chair or vice-chair.
101. **Mr Murphy:** They will still be the chair and vice-chair of the council.
- It is just that the executive, as the decision-making body, is separated from the operation of the council. You are ensuring that separation of responsibilities.
102. **The Chairperson:** They are supposedly the two most senior people in a council. The mayor is the chair and the deputy mayor is the vice-chair. Are they not in it? I suppose that they change as well every year.
103. **Mr Weir:** Without wanting to answer on behalf of the Department, I suppose that part of it is that the executive system, which is largely what operates, for instance, in England, will tend to be made up of what might be described as the political leadership of either the ruling party or a coalition of parties — whatever way it works out. The mayor and deputy mayor positions are more ceremonial, so, essentially, the political leadership, for want of a better phrase, would be in the executive. As the other things will change from year to year, you would not necessarily equate those with a Cabinet-style arrangement.
104. **The Chairperson:** That is new. At the moment, you do not have that Cabinet style in councils.
105. **Mr Murphy:** No.
106. **Mr Elliott:** We talked about guidance this morning. You said that there will be quite heavy guidance on community planning. For how much else of the Bill can we expect guidance? I am thinking about issues such as qualified majorities. I assume that it is going to be almost top-heavy with guidance. When can we expect whatever guidance is going to be produced? Will we have it before we are finished Committee Stage?
107. **Ms Broadway:** The Bill also contains quite a lot of enabling powers for subordinate legislation. Our intention is that, when we get to the stage at which we are going through clause-by-clause scrutiny with you, you will have received a first draft of all the subordinate legislation, guidance and any of the delegated powers that we are using. If

- we cannot get you a first draft, we will at least provide you with details of exactly what is going to be in it. Our intention is to have a first draft of everything for you for when we are going through the clause-by-clause scrutiny.
108. **Ms MacHugh:** The guidance on community planning will be available even before the Bill comes in. As part of the preparation and capacity building, we have been working on a foundation programme. It is non-statutory guidance, because, clearly, until they get the powers through the legislation, there will not be a statutory duty. It will, however, act as informal guidance at this stage to help transition committees to get their heads round what they need to do to start to prepare for community planning. It will be a really important foundation for them to start the thinking process in each of the clusters about where their priorities might lie for their community plans. We hope to launch that within the next week or two.
109. **The Chairperson:** They do not know what is going to hit them.
110. **Ms Broadway:** If it would help the Committee, we can send you a copy of all of the various delegated powers, details of the subordinate legislation and guidance that we will have to bring forward to you.
111. **Mr Elliott:** That would be useful.
112. **The Chairperson:** Remind us of the timeline. We are having Second Stage next Tuesday, and then the Committee will ask for an extension, which will bring us to some time in December.
113. **Ms MacHugh:** We hope that you will be in a position to produce your report some time in February to allow the final stages of the Bill to go through by early to mid-March. It then goes for Royal Assent. Ideally, we would like the Bill in before the date of the next election, which is 22 May. If we do not get Royal Assent by then, it does not mean that the elections cannot go ahead, and it does not mean that the new councils cannot form themselves. However, we would like to start to apply some of the new governance arrangements from the outset of the new councils. That is the timeline. We know that it is challenging, and we know that there are 128 clauses and 12 schedules.
114. **Ms Broadway:** We also need to remember that quite a lot of the subordinate legislation is draft affirmative, so we need to factor in debates in the Assembly before the date of the election as well.
115. **Mr Elliott:** It must go through all the stages of the Assembly to have the election, is that right?
116. **Ms MacHugh:** No. Clearly, the legislation regarding the elections is for the NIO, and that will go through Westminster in the next week or two. Most of the provisions for operation during the shadow period are being done under miscellaneous provisions. So, they will be able to run as councils. It is just that all the other governance arrangements would be, effectively, under the 1972 legislation as opposed to this. It would be much neater if the Bill had received Royal Assent and the subordinate legislation was in place, but if it is not, it will not mean that the elections cannot run and the councils cannot start working in their shadow form.
117. **The Chairperson:** Yes, the pressure is on.
118. **Mr Boylan:** Do you think that we will suspend Standing Orders for Tuesday?
119. **Mr Weir:** We do not need to; there is no time limit on Tuesday.
120. **The Chairperson:** Thank you very much. We will see you very soon.

14 November 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Ms Pam Brown (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Tom Elliott
 Mr Ian McCrea
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Suzie Cave *Northern Ireland Assembly
 Research and Information
 Service*

121. **The Chairperson:** Suzie, do you want to brief us on this and take us through?
122. **Ms Suzie Cave (Northern Ireland Assembly Research and Information Service):** OK. Like you said, I am just referring to the tabled paper rather than the one that was originally in your packs, because a few changes and updates have since been made. The paper was written as more of an introduction to the Local Government Bill, so this may provide more of a recap for members.
123. **The Chairperson:** Sorry to stop you. Someone has their phone on, which is interfering with the recording. I remind members that the session is being recorded, so phones should be off. OK, Lord Morrow?
124. **Lord Morrow:** It is not on, Chair. Not guilty this time. Sometimes I might be but not on this occasion.
125. **The Chairperson:** OK. Cathal, is anybody's phone on?
126. **Lord Morrow:** Guilty man.
127. **Mr Boylan:** I am trying to answer this call here, Chair. *[Laughter.]*
128. **The Chairperson:** We have just been told that it is interfering with the recording. There you go, it is all done.
129. **Mr Boylan:** I am only in the door. *[Laughter.]* Do not record that.
130. **The Chairperson:** It is not going to be minuted. Sorry, Suzie, for the disruption.
131. **Ms Cave:** OK. It turned into quite a large paper, so I will not go in and out through the individual clauses of the Bill, of which there is a brief overview provided at the beginning of the paper. I will focus on highlighting and pulling together some of the areas of concern that have been expressed during the consultation exercise, and those that have been discussed during the initial consideration of the Bill.
132. The table and information in section 3 gives a comparison of the legislation in other jurisdictions and shows that similar provisions to the Bill are in fact provided in a suite of different pieces of legislation in Scotland and England. The Republic of Ireland published an action programme for reforms across all main areas of local government in 2012, and just recently those issues have been addressed under the Local Government Bill 2013, which is currently at Second Stage.
133. The final section of the paper considers some of the areas of the Bill that may be of interest for further consideration, including some of the main changes that have appeared since the consultation document. There have been two main areas of change. One is a revised ethical standards regime, where the Bill simplifies and streamlines the system so that the Commissioner for Complaints deals with all investigations into breaches of the code of conduct. That is opposed to what is in the consultation document, which suggested that the commissioner would deal with higher-profile cases, and the local councils with less serious cases. That is similar to the situation in England under the Localism Act 2011, one of the main aims of which was to streamline

- the standards regime, while maintaining high ethical standards, by removing the need for councils to adopt a model code of conduct. However, they still have to develop their own individual code of conduct.
134. The second change is the use of a general power of competence rather than a power of well-being. The consultation document suggested the use of a power of well-being instead. However, according to the Department, the change was made to the Bill due to lobbying by local government, which wanted a power of competence similar to that which is in the 2011 Act in England. The power of well-being would require a council to find a statute to allow the council to act, whereas the general power of competence is a much wider power, giving councils the same freedom as an individual, unless there is a law preventing them from carrying out the action.
135. By way of a recap, one of the other areas about which concerns have been raised so far is the fact that there is a need for a multitude of subordinate legislation and guidance. Some of that is detailed in section 4.2, but it is by no means a definitive list. It includes the production of further information and guidance on models for decision-making under clauses 43 and 45, such as simple majority and qualified majority voting for decisions on standing orders. It has also been suggested that the call-in mechanism — referred to in the Bill as the power for reconsideration of a decision — which must be requested by 15% of members, will be provided under standing orders in the regulations.
136. Another area is the lack of an appeal mechanism provided for breaches of the code of conduct. It is unclear what right of appeal a person has against a decision made by the commissioner. As clauses 58 and 59 state, the person under investigation should be given the opportunity to comment on the allegation that is put to the commissioner. However, during the briefing to the Environment Committee, departmental officials clarified that,
- once the commissioner makes a decision, the person has the right to a judicial review. Concern has been expressed about that provision, as it is felt that the judicial review is limited only to challenges regarding unfair procedures, thereby offering too narrow a ground for appeal, say, for sanctions made against a councillor.
137. The explanatory note states that the Bill will place a marginal additional financial burden on the public purse as a result of the introduction of the ethical standards regime. The Bill provides that the cost to resource the commissioner's office, currently estimated at £380,000, will be covered by local government. In a briefing to the Environment Committee on 26 September, departmental officials said that the commissioner's costs would be apportioned according to the size of councils.
138. Community planning is another area that has been raising questions. Clause 77 states that guidance will be produced which councils must have regard to. As to the lack of clarity provided in the Bill surrounding the roll-out of community planning, further information and guidance may be heavily relied on. Many stakeholders suggested that the use of the term "regard to" in the guidance is too soft a requirement. Subordinate legislation is also to be produced, listing the statutory bodies and participants that local councils must involve in community planning. At this stage, it is not detailed whether a level of flexibility will be provided for, as the make-up of communities across Northern Ireland varies greatly on a spatial capacity. For background information, the Assembly research paper entitled 'Community Planning' explores the definition of community planning and considers examples in England, Scotland and Northern Ireland. Where information is available, it gives the outcomes of the process and findings from reviews conducted at both a local and national scale.
139. Although costing and funding are not directly dealt with in the Bill, it may be worth considering that, in February

- 2013, the Executive announced a package worth £47·8 million to help fund and support the implementation of the reform programme. It will have three elements to it, one of which is an estimated £30 million for rates convergence to protect those whose rates bills may experience an increase due to merging with councils at a higher level.
140. Clause 114 of the Bill proposes a transition scheme for managing rates convergence where there are wide disparities, but no further detail on how that will operate has been provided as yet, nor has anything been provided on debt inheritance.
141. By way of illustration, members will have received a couple of copies of the maps. I think that those are in the tabled papers.
142. **The Chairperson:** Yes. There is just one page.
143. **Ms Cave:** Those show the current council domestic and non-domestic rates for 2013-14 and how they might compare to one another in the newly merged councils, which are represented by the colour code. They have come out quite a bit brighter than I had originally intended.
144. Finally, I want to address a few other areas. Those include how the Department will ensure that problems that were raised about obtaining political representation on the STCs do not arise with the establishment of the new councils. There is a need for further clarification on employees of the councils also being members, the transfer of assets and liabilities, and ensuring gender equality. In its response to the consultation, the Department stated that it is investigating whether it has the legislative authority to introduce gender quotas for election candidates.
145. In relation to ensuring that a cohesion, sharing and integration plan is embedded in councils following reform, the Minister at the time, Alex Attwood, suggested that, should it be needed, an RPA council initiative will be considered. More recently, concern has been expressed about the appointment of chief executives of the new councils. We require more clarity about how that will be rolled out, what will happen to unsuccessful candidates and whether any form of protection will be afforded to them and any other staff who are transferred between Government bodies.
146. As I said, this presentation is more of a revision before the Committee's consideration of the Bill. Should there be any areas that members may want further information on, I am happy to discuss how I can facilitate that. Thank you.
147. **The Chairperson:** Thank you. Your paper covers a lot of the issues that we need to look at.
148. Community planning is very much a new thing and is much hailed as being good for local councils. I understand the concept, but I was involved with the South Belfast Partnership Board for neighbourhood renewal, and I know that there is a difficulty in getting Departments to do anything or commit to anything. The voluntary sector spends months and months doing consultations and coming up with what you could maybe say are unrealistic wish lists, and then the Departments just say that they cannot do this or that.
149. It is about how we can strengthen the partnership or make Departments commit to doing more. We need to look at that in the clauses of the Bill. The voluntary sector has been telling me that it is not strong enough, given the experience of neighbourhood renewal. It is all right to say that they will be part of a group, but we need to be able to copper fasten; to say, "Right, you have agreed to do this, this is what you will do, this is the timetable, this is going to be your output, this is going to be your outcome", rather than just very vaguely saying that they will participate.
150. **Mr Boylan:** Suzie, thank you very much. I have a couple of points. Community planning will obviously be a major issue. You looked at the Localism Act 2011 that the English got?

151. **Ms Cave:** Yes.
152. **Mr Boylan:** How have you found that to be working? Do they call it neighbourhood planning?
153. **Ms Cave:** Yes. It is very different to the community planning that is in our Bill. Neighbourhood planning is much more based on the development and use of land, so it has more of a land use planning base. The community planning here is making that connection between spatial planning or the land use aspect and the provision of services in general to support communities.
154. **Mr Boylan:** I know that the statement of community involvement and the Planning Bill itself is how they are going to deal with the development end of it.
155. I have a couple of other points, especially in relation to the commissioner. In relation to the commissioner's role, have you looked at the Localism Act? Is there an opportunity to widen the role of the commissioner into other bodies like, say, policing and community safety partnerships (PCSPs), neighbourhood renewal or Peace III? Is there a role for the commissioner in those? Could you look at that for us?
156. **Ms Cave:** Yes. Certainly.
157. **Mr Boylan:** I think that there may be a role.
158. In terms of the formation of the committees, obviously the d'Hondt and the Sainte-Laguë systems use practically the same formula, really. Could you look at an action model for the single transferable vote and how that equates to the election process within councils?
159. **Ms Cave:** OK.
160. **Mr Boylan:** There are formulas out there for the first two models, but I would like to see how that would be rolled out for elected positions on committees.
161. **The Chairperson:** The default position is to use d'Hondt if there is no voluntary agreement.
162. **Mr Boylan:** I know that both systems are nearly the same. I would just like to find out about STV. Thank you for your paper.
163. When I look at the rates, I see that I will have to move out of Armagh. I might move further south or over your way.
164. **The Chairperson:** What colour are those? Purple?
165. **Mr Boylan:** Dungannon looks good on paper.
166. **The Chairperson:** That is a lovely, trendy colour.
167. **Mr Boylan:** They are not lovely, trendy rates. Do not record that, by the way.
168. **The Chairperson:** The domestic rates are not too bad. The differences are not that great, except one or two. Actually it is the non-domestic rate where you can see the big difference.
169. **Ms Cave:** The thick black line around the Belfast/Lisburn/Castlereagh area represents the outline of the new councils. There is a black line running through the Belfast area, but that is just the Lagan. There will be a change in the rates where part of Lisburn projects into the Belfast area, and I am not sure how that will be calculated. That is where the new boundary for Belfast will encroach into Lisburn. Whoever was originally in that area in Lisburn will take on the new Belfast rate. There is a similar picture in Banbridge between Newry and Mourne and Down.
170. **Mr Elliott:** Thanks for the paper, Suzie. I have a couple of points. The first is about the issue of the qualified majority. Would it be possible to get a bit more work done on that? The 80% seems fairly straightforward. That mechanism can only be used if it is in standing orders, and I assume that it will be up to the councils to agree what goes into the standing orders. The aspect of the 15% call-in is slightly more difficult to interpret. It states:
- "the clerk of the council a requisition on either or both of the following grounds".*

171. **The Chairperson:** What page is that on, Tom?
172. **Mr Elliott:** Sorry, I am reading from the legislation here, but it relates to section 4.2 on page 21 of Suzie's paper.
173. The legislation states:
- “Standing orders must make provision requiring reconsideration of a decision if 15 per cent. of the members of the council ... present to the clerk of the council a requisition on either or both of the following grounds -*
- (a) that the decision was not arrived at after a proper consideration of the relevant facts and issues;*
- (b) that the decision would disproportionately affect adversely any section of the inhabitants of the district.”*
174. It goes on to state:
- “Standing orders must require the clerk of the council to obtain an opinion from a practising barrister or solicitor before reconsideration of a decision on a requisition made wholly or partly on the ground mentioned in subsection (1)(b).”*
175. We need more clarification — or I do, sorry. Maybe other members understand that more fully, but I certainly need more clarification on how that can be interpreted and on what grounds the clerk would have to get legal advice. It is very ambiguous. Clarification on that and a bit more work around it would be very useful.
176. **The Chairperson:** There will be a raft of guidance coming through as well.
177. **Mr Elliott:** The second issue was around the general power of competence. The process sounds very open, and you can basically do what an individual can do, provided that it is within the law.
178. **The Chairperson:** I find it difficult to interpret.
179. **Mr Elliott:** I know that Peter is in the Northern Ireland Local Government Association (NILGA), and it is something that NILGA has been very proactive in promoting.
180. **The Chairperson:** What does that mean when you drill down into it?
181. **Mr Elliott:** Maybe Suzie can help us with that. There might be scope for more investigation and research into that.
182. **The Chairperson:** Give us some examples of what they mean. Peter, what is it, do you know?
183. **Mr Weir:** Prior to the Department for Social Development funding various things, when Down District Council did a lot of work on Newcastle, there were certain things that it wanted to fund, and, although Roads Service was keen enough to do some of the realignment issues around local roads if the council was funding it, legally, it was not allowed to as it fell outside its direct powers of remit. John McGrillen was chief executive of Down District Council at the time. I suppose that it is to ensure that there is no direct legal restriction in that regard, but there may be more direct, concrete examples. To be fair, it strikes me that, as regards NILGA, some of the chief executives may be able to give more concrete examples of where that would make a positive impact. It is a bit like the Localism Act with the general idea of place shaping. The constraints are there in the budget, but provided that nothing illegal is being done, there can be more flexibility in doing things. I appreciate that that is not the ideal explanation.
184. I am jumping a bit on Tom's comments, but I think that it is a fair comment that the broad remit, which was agreed on a cross-party basis under the strategic leadership board and the policy development plans is largely reflected in the legislation and the qualified majority voting and the call-in mechanism. There is a very legitimate point because, arguably, whether we can do that in the legislation or via regulation has not been fully scoped out. Broadly speaking, it was agreed that the two circumstances in which that can be triggered was a judicial review-type situation, where it is a failure to process and the question mark over that, or, essentially, a situation where a very large unionist

- majority is trying to push something on a small nationalist majority unfairly or vice versa with a large nationalist majority. That was the community impact bit. The slight complication is that a lot of that had been agreed, and with the timescale last time around, there were to be further discussions on how precisely they would be tied down and what constituted a community advantage issue.
185. However you define things and however clear it is in legislation or guidance, there always has to be somebody to interpret that. We may have to look at a range of options. I expressed concern that the idea of a chief executive simply getting the legal opinion of a local barrister or solicitor is not particularly satisfactory because I think that you could get wildly differing interpretations.
186. **Mr Elliott:** As you do from the legal profession.
187. **Mr Weir:** With respect, it is a bit like getting a consultant in, but it is maybe not quite as bad as that. The concern is that you could get a chief executive wanting to achieve a particular purpose and going to whomever he or she considers to be a friendly solicitor or barrister who will give them the opinion that they want. There are question marks over it.
188. **The Chairperson:** It depends who answers the question.
189. **Mr Weir:** There will be a lot of stuff that we will need to delve into on the lines of demarcation on community planning. It is a very good paper, and Suzie has raised that as well. There are issues around how you tighten the legislation. There is also the issue in community planning about where you see the demarcation line between the primary legislation and what, in the more detailed requirements, should be in regulations. I think that work can be done to tighten things. What strikes me is the extent to which community planning will work in an area. Whatever is in the legislation, an awful lot of it will depend on the goodwill of the statutory bodies in particular. You might, for the sake of argument, get the Housing Executive in one area taking it really seriously; the manager might be there the entire time listening very closely to what is said and following it. In a neighbouring area, no matter what the legislation directly says, it could, essentially, just pay lip service to the thing. A lot of it is going to be very difficult to put in legislation. It depends on that.
190. **The Chairperson:** The difference, from what I understand from what people tell me, is that the Bill is very much a copy and paste from England's legislation on local authorities. However, local government in England and Wales and other places has a lot more responsibilities; it has housing, education and health to quite a large extent, whereas our councils have so little power. It is not in the setup at the moment for them to be able to say, "We want to do this in terms of education or health."
191. **Mr Weir:** That can have different implications for community planning because the idea of community planning is largely as an influencer and that type of thing. To some extent, that sits more comfortably with what is there in Northern Ireland. The flip side of the coin is that, if you are doing partnership things — in England, the remit of local government is a lot wider — you may make an argument that, sitting round the table, the representative of local government is a much bigger player and therefore arguably has more muscle. The slight danger is that you get local government having a very small section of the budget and sitting down with organisations that might have bigger budgets or very large budgets compared with local government.
192. One other issue is related to the legislation. It is something that we maybe need to keep a wee eye on. It probably will not be in the legislation, but it might be under subordinate legislation. It came up at the Finance Committee, and there is a link. I appreciate people's concerns about the broader issue of rates convergence

and all the bits around transition costs and convergence costs. Arguably, the biggest issue is the long-term financial side of it for local government, which is the issue of how any form of rebalancing between local and regional rates goes. If you are talking about £100 million-worth of departmental functions coming into local government, the way to do that is probably through some form of rebalancing between the two. It was mentioned when we had representatives in to talk about certain rates changes generally. Mention was made of that issue at the Finance Committee yesterday. Work is going on to produce an option for that shift or whatever way it is going to be done between the Department of Finance and Personnel (DFP) and the Department of the Environment (DOE). The DFP side indicated that, whenever that is agreed by the Ministers and is brought through the Executive, the detail would be explained. It strikes me that that is a fairly important thing. With the best will in the world, all the convergence issues and that type of thing will affect the first three or four years, but what happens to any potential rates arrangements could be relevant to the next 30 years. Although they are not in that position, we need to flag it up with the Department that we need to be kept in the loop when there is agreement on that.

193. **The Chairperson:** The grant for the rates convergence is a one-off thing at the moment. It is not included in the £50 million. What are you going to do after the first few years? Who is going to subsidise the differences?
194. **Mr Boylan:** Peter has raised very valid points. One is the issue of getting statutory bodies to buy into what you want to do in the first place. The other element of that is that councils will be working on a certain level of budget. There may be some other bodies out there with bigger budgets that want to do more. We need clear lines as to what we want to achieve and what they can do. A statutory body out there could be aiming high, and the council may not be able to achieve what it wants to do.

I do not know whether you put that in legislation, but we need to consider that as part of the process.

195. **The Chairperson:** I think that would be very hard.
196. **Mr Boylan:** Maybe Suzie could look at how it has worked in the Localism Act and things like that, because it is part of the question.
197. **The Chairperson:** We have found that DOE has so much difficulty in getting other Departments to do what it wants them to do. For example, the Department of Agriculture and Rural Development (DARD) does not want to do very much on the rescue plan for Strangford lough.
198. **Mr Boylan:** It is about the expectation of what we will transfer down and what local councils think they can achieve. That is part of it. It is a very valid point.
199. **The Chairperson:** Do members want to raise any other issues that Suzie can look into? Everyone seems happy enough. Thanks very much indeed, Suzie.

21 November 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Ms Pam Brown (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Tom Elliott
 Mr Ian McCrea
 Mr Barry McElduff
 Mr Peter Weir

200. **The Chairperson:** A list of all the organisations that have made submissions after the Committee's call for evidence under the Local Government Bill is at page 136 of members' packs. Copies of all the submissions received are in the packs at pages 138 to 342. That is your homework for the weekend, members, before the stakeholder event next Thursday. The initial oral evidence sessions have been scheduled for the meetings on the 5 and 12 December. Are members content that representatives of the Northern Ireland Local Government Association (NILGA), the local government auditor, Community Places and NIPSA be invited to brief us?
201. **Mr Boylan:** I agree that there is plenty of homework. I got a chance to look at some of the submissions, and this is a good opportunity for us to tease out the issues. As we are doing only one stakeholder event, we should try to group people who have the same issues with the clauses. That is how we normally do it.
202. **The Chairperson:** That will mean more work for the staff this week rather than for us.
203. **Mr Boylan:** I take it that some questions have been formulated to be asked in addition to the ones that we will be asking so that we get a breakdown on where the main issues are. Community planning is a main issue, and, from what I have read, the code of conduct has also raised its head. It would be good to get a broad overview of the main issues raising their heads.
204. **The Committee Clerk:** That will be in the pack next week.
205. **The Chairperson:** What pack will that be in?
206. **The Committee Clerk:** The pack for the meeting on 28 November. The stakeholder event will be a formal meeting.
207. **The Chairperson:** Can we have that well in advance? Members usually get it on the Monday.
208. **The Committee Clerk:** Yes.
209. **The Chairperson:** OK. Then, you can have a look. We will go with separate discussions on different parts of the Bill.
210. **The Committee Clerk:** Yes.
211. **Mr Boylan:** That is a good enough format.
212. **The Chairperson:** With the Planning Bill and the Marine Bill, we asked one organisation to do a quick presentation. Are we going to do the same this time?
213. **The Assistant Committee Clerk:** I am not sure about the timing.
214. **The Committee Clerk:** We could, but it would be very short notice.
215. **Mr Weir:** A presentation is not particularly necessary. There are 200-odd pages of comments. The stakeholders will object to and agree with various things. The sheer wealth of the responses means that the issue at the event will be containing people. With the best will in the world, a briefing session would eat into time when the big problem will be the time constraint. When we do the clause-by-clause scrutiny, there will be briefings. At this stage, we have to try to get people to deal with the more thematic side of the Bill. There will be a temptation for

people to delve into vast amounts of detail on particular clauses. There is a lot of genuine stuff, but I suspect that a whole stable of hobby horses will be ridden as well.

216. **The Chairperson:** How will we go about it then? We are talking about parts or themes.
217. **The Committee Clerk:** We could ask some of the major people. We were thinking of asking Community Places, which represents quite a number of organisations, to take the lead initially on community planning, and then the other stakeholders can come in. That was the idea. We will get a lead stakeholder on each theme and ask them to start the discussion but not in a formal or lengthy presentation.
218. **The Chairperson:** Yes, a couple of minutes for them to talk about it. That was the form that we used with the other two Bills. We will give them two or three minutes to start up the discussion, and other people can then come in. We will have microphones for people.
219. **The Committee Clerk:** Hansard will be recording it for us.
220. **The Chairperson:** They can state their name and the organisation that they come from and then make their statement. Are members happy with that?

Members indicated assent.

221. **The Chairperson:** All the organisations that responded with written submissions have been invited to the stakeholder event on 28 November. Do members agree that the submissions that we received should be published on the website? There is no problem with that.

Members indicated assent.

222. **The Chairperson:** Are you content to have the Bill folder on a SharePoint SkyDrive, which is the same as the meeting packs, rather than in hard copy?

Members indicated assent.

223. **The Chairperson:** Anyone who wants a hard copy should let the Committee staff know.
224. **Mr Weir:** The number of responses looks pretty comprehensive; nobody immediately leaps out as missing. Are there any organisations that you are surprised did not send a response? Any ones that I can think of seem to have responded.
225. **The Committee Clerk:** There are a number of umbrella groups. Community Places represents, I think, about 25 organisations, although some of those organisations have provided their own submissions. Some people have sent in submissions to say that they agree with other submissions that they have contributed to, but, overall, I do not think that are any glaring omissions.
226. **The Chairperson:** I met the Woodland Trust yesterday, and it did not know that we were calling for submissions to the Local Government Bill. It has issues with tree cutting by local councils and wants to send a late submission. I just want to add that. I said that I would ask members if they agree.
227. **Mr Weir:** I appreciate that, and I am not sure that we will be glad to receive it. I met Patrick on other issues, but people have to be focused and understand that we are really looking for submissions on this legislation as opposed to them saying, "Here is an issue that we have with local government in general." People have to be aware that whatever is in legislation will not be a panacea on every issue out there in local government that they want sorted out.
228. **The Chairperson:** I think that it wants a bit more consistency between local councils. It said that some have tree protection officers who look at tree protection orders and all sorts of things. That would be in line with the planning function that will be given.
229. **Mr Weir:** It is very loosely connected with the legislation. I am not unsympathetic to the general point that you are making, but, in theory, if everything that everybody wants in local

government is put into the Bill, we will be here for the next 10 years.

230. **The Chairperson:** Anyway, it said that it would send it in, and I said that I would see whether members will accept it as a late submission. We will see whether it does.
231. Assembly broadcasting has asked members to keep tablets away from the microphones and to turn off phones, if anybody has their phone on.
232. Are there any other organisations that members want to invite to next Thursday's event?
233. **Mr Boylan:** As long as we have covered a broad spectrum of the people who need to respond to the Bill, it is OK. We have noticed in other circumstances that, for example, the green lobby was an amalgamation of some groups coming to speak on its behalf. It is grand. I think that we have covered it fairly well.
234. **The Assistant Committee Clerk:** It seems to be under the Community Places banner.
235. **Mr Boylan:** That is grand if Community Places is representing that side of things and is content.
236. **The Committee Clerk:** You can include them in the evidence sessions subsequently if we need to.
237. **The Chairperson:** Which ones?
238. **The Committee Clerk:** Any other organisations.
239. **The Chairperson:** OK.

28 November 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Ms Pam Brown (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Barry McElduff
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Anne Donaghy	<i>Ballymena Borough Council</i>
Mr Pat Cumiskey	<i>Banbridge District Council</i>
Mr Stephen McCrory Mr John Walsh	<i>Belfast City Council</i>
Ms Jonna Monaghan	<i>Belfast Healthy Cities</i>
Ms Louise McNeill	<i>Community Places</i>
Mr Nigel Lucas	<i>Construction Employers Federation</i>
Ms Linda MacHugh	<i>Department of the Environment</i>
Mrs Roisin Mallon	<i>Equality Commission for Northern Ireland</i>
Alderman Alan Graham Councillor Brian Wilson	<i>North Down Borough Council</i>
Mr Ken Smyth	<i>Northern Ireland Commissioner for Children and Young People</i>
Mr Derek McCallan Councillor Sean McPeake	<i>Northern Ireland Local Government Association</i>
Mr Bumper Graham	<i>Northern Ireland Public Service Alliance</i>
Ms Helen Harrison Mr Gavan Rafferty	<i>Royal Town Planning Institute</i>
Ms Anne Moore	<i>Save the Children</i>
Ms Angela Dunbar	<i>Turley Associates</i>

240. **The Chairperson:** Good morning, everyone. You are all very welcome to Stormont this morning. We are very pleased to see so many of you here. We have about three hours today, as we need to be out of here by about 12.00 noon. We will look at six areas of the Local Government Bill that have been highlighted consistently in stakeholders' written responses. So far, we have received 34 written submissions, and all the organisations and individuals who sent in submissions have been invited. We will start by asking organisations and individuals to kick off the discussion, and then other people can come in. Thank you very much for your written submissions, some of which are very detailed. We can see common themes from many organisations.

241. As you are all probably aware, the Bill was introduced in the Assembly on 23 September 2013 and passed its Second Stage on 1 October 2013. The Committee Stage began the next day, 2 October, and will conclude on 20 February 2014 when the Committee will report to the Assembly. It is expected that the remaining plenary stages of the legislative process will take place during March and April 2014.

242. Before setting out the format for the evidence session, I will quickly outline some housekeeping arrangements. Toilets on this floor are out any of the doors here. You turn left along the corridor, and they are on the right hand side of the corridor. In the unlikely event that the alarm should sound, please leave the building immediately. Do not use the lifts and follow instructions from Doorkeepers and Committee staff. If anyone feels unwell or needs assistance, please let a member of the Committee staff know immediately.

243. I now turn to today's evidence session. Members of staff have microphones for you when you want to speak. There are

- two members of staff on each side of the room. If you wish to speak, please indicate to me or to the members of staff. I remind everyone to turn off all mobile phones and electronic devices. We have our electronic devices on, but they are specially adapted so that they will not interfere with the recording.
244. I will now outline the format of the evidence session. I understand that the paper that sets out the order in which evidence will be taken has been provided to everyone. I will indicate which Part we will discuss and then hand over to the organisation that has been designated to outline the issues associated with that Part. They will speak for a few minutes, and I will then open the meeting up to comments from the floor. I ask you to be as brief as possible. If necessary, we will stop you after about two minutes to let everyone have the chance to present their views.
245. Anyone who wants to comment should indicate before joining the discussion. We are recording this session, so it is important that you state your name and which organisation you represent so that we can differentiate who said what. If you represent an umbrella organisation, please indicate the individual organisation that you are speaking on behalf of. That will be useful for us. Committee members will have the opportunity to ask questions or to seek clarification.
246. At the conclusion of the discussion of each part of the Bill, departmental officials will respond to the issues raised and answer any questions or points of clarification that Committee members may have. We will then move on to the next Part of the Bill; we will do it Part by Part. We hope to be able to discuss other areas of the Bill at the end of the session if we have time, although that depends on what time we finish our discussion of the six Parts that we wish to discuss.
247. I will now commence the session reasonably well on time. The first discussion is on Part 3, which deals with positions of responsibility. I invite the Northern Ireland Local Government Association (NILGA) to open the discussion.
248. **Mr Derek McCallan (Northern Ireland Local Government Association):** Thank you, Chair. My name is Derek McCallan, and I am the chief executive of the Northern Ireland Local Government Association. Thank you for the opportunity and for your introduction. As some members of the audience may not be aware, NILGA is the representative body for councils in Northern Ireland. We are led by them and supported by all the main political parties with party leadership positions. We combine all-party, all-council discussion into policy. In the future council arrangements, we will sustain, develop, improve and advocate local government
249. After that brief introduction and in regard to the format for this morning and our role in it, I hand over to Councillor Sean McPeake, one of NILGA's vice-presidents, to provide the lead on positions of responsibility.
250. **Councillor Sean McPeake (Northern Ireland Local Government Association):** Thank you, Derek. Thank you, Chair. I will talk a wee bit about Part 3 and the key issues in selecting positions of responsibility and committee membership. To do so, I will deal with clause 10 and schedules 3 and 4.
251. At the outset I should say that NILGA strongly supports the principle of proportionality suggested in the Bill via d'Hondt, Sainte-Laguë or single transferable vote (STV). It also believes that local solutions politically acceptable to all parties should be considered, perhaps through a requirement for local arrangements via the qualified majority voting procedure. I say that because there may be members who are particularly skilled or interested in specific roles in the council or outside bodies, and strictly applying the rules via d'Hondt, Sainte-Laguë or STV may not necessarily give them membership in those particular groups. That might be at the collective loss to councils. If agreement can be reached that a little

- tweaking could be included to allow more inclusivity, NILGA would strongly recommend that that be done. I reiterate that NILGA is firmly of the view that d'Hondt, Sainte-Laguë or STV are the main principles that power sharing should follow. Obviously, d'Hondt is the default mechanism if there is no agreement.
252. There may be a desire to include smaller parties or independents on committees. If the chosen process does not provide an effective opportunity for them to be represented, that is where a local solution may come in. Another alternative may be to provide a mechanism for coalitions to be formed and represented. As I said, there may also be councillors with specific interests or expertise in certain areas, whose contribution to a committee or outside body could be particularly valuable. It is also noted that the partnership panel is not explicitly considered in relation to positions of responsibility. I ask that that be looked at and included.
253. We give detailed examples of potential issues in our written response, particularly in relation to the operation of and relationship between schedules 3 and 4. Clarification is also required in relation to committee chairs, as it would seem impossible to choose the chair of a committee in schedule 3 Part 3 if the party concerned does not have a place on it under schedule 4. The logical scheduling of that would seem to indicate that the choice of committees would need to precede the position of responsibility. I hope that I have been clear on that.
254. Appointment by running a new list for each committee skews the arrangements in favour of the larger parties. Paragraph 2(2) of schedule 4 excludes independents. There may be a need to include smaller parties or independent councillors on committees if the chosen process does not provide an effective opportunity for them to be considered or represented.
255. There is no interpretation in schedule 4. Clarification is required as to whether schedule 4 is linked to the interpretation in schedule 3 Part 4.
256. No mechanism is specified for appointments to outside bodies that are not prescribed. The Department has informed NILGA that it intends to amend clause 10(1)(f) to ensure clarity. There is no intention to issue a prescribed list by regulation, so this matter requires attention.
257. There also appears to be no satisfactory method of supporting area-based working in the wider North of Ireland context; that may run the risk of raising equality concerns. Guidance will be required to set up satisfactory area-based mechanisms and governance arrangements.
258. Finally, it is noted that the partnership panel is not explicitly considered in relation to positions of responsibility. I ask that that be addressed. That concludes my remarks at this stage.
259. **The Chairperson:** Thank you, Councillor McPeake. Would anyone from the floor who wants to speak on this Part of the Bill on positions of responsibility please raise their hand?
260. **Mr Weir:** I want to ask NILGA about a couple of issues that it raised. First, Sean, you were saying about the schedules towards the end that they seem to imply that, potentially, you would set up the committees first and, then, put in the positions of responsibility. Arguably, if there were a degree of choice, that, probably, should be the other way round. That should be allowed to filter through. I assume that the intention would be — perhaps it is not explicit enough — that the appointment of committees is to be proportionate as a whole. Obviously, there is concern that if each is set up almost individually, that will exclude smaller parties in particular. Would an interpretation clause be sufficient to clarify that?
261. The second bit that I wanted to check was that you mentioned the flexibility of

- local arrangements with the safeguard of a qualified majority vote. If the whole council passed a particular arrangement on the basis of a qualified majority vote, would NILGA require that, in any way, to be endorsed or authorised by the Department, or do you feel that the fact that it has received a qualified majority vote in its favour is sufficient?
262. Similarly, if some arrangement were agreed, is there somewhere outside of the main, direct formulas where that would be lodged? We are all aware of occasions when there is apparent agreement in a council and, at a later stage, there is a falling out or some dispute about what was agreed and what was not, whether it is being applied properly and that type of thing. Perhaps you would comment on those couple of issues.
263. **Councillor McPeake:** I will deal with the first one, Peter, and then hand over to my colleague to deal with the second one more substantively. If there was interpretation or clarity in the Bill on the issue that you raised about committee membership not being skewed towards one party or another, that would go a long way to satisfying our members. I think that it should be proportionate.
264. **Derek will deal with the second issue.**
265. **Mr McCallan:** I suppose, succinctly, that if those conditions have been agreed, including qualified majority voting, we would say to the Department that, through evidence and application of the guidelines and interpretations, we have satisfied it. It would need to say, “We do not agree.” So we would point out to the Department that we have satisfied local governance and government and, in so doing, there has been all-party political agreement. We have followed the procedures and taken steps. The Department would then need to say, “Give us evidence why that would not be good enough.” We need to move this to a bottom-up governance, not a rigid top-down one.
266. **Mr Weir:** You feel that you still need some level of sign-off from the Department?
267. **Mr McCallan:** There should always be some flexibility; otherwise you cannot put the “local” into government.
268. **The Chairperson:** It is difficult to be highly prescriptive as well, is it not? There needs to be local agreement and solutions.
269. **Mr A Maginness:** Thank you very much, Councillor McPeake. With regard to the default position if local agreement collapses or the Department refuses to bless, as it were, the local arrangement, the default position is d’Hondt. Is that correct?
270. **Councillor McPeake:** That is correct.
271. **Mr A Maginness:** Is that position agreed by all parties on NILGA?
272. **Councillor McPeake:** It is. The default mechanism is d’Hondt; that is agreed throughout NILGA.
273. **Mr A Maginness:** And it is agreed that there could be local solutions in certain circumstances?
274. **Councillor McPeake:** That is what I am talking about: proportionality. There could also be qualified majority voting or Sainte-Laguë. However, in that, too — as in the examples that I gave — we do not want to exclude expertise from certain areas, as that might not allow a person to be nominated to a particular outside body or committee.
275. We are saying that, if all the parties agreed to it, there should be a wee bit of flexibility to allow for a local arrangement.
276. **Mr A Maginness:** Thank you. That is very helpful.
277. **Mr Boylan:** I thank Councillor McPeake for his presentation on those clauses. I am looking for clarity on the local solutions. Are you talking about giving somebody who is more qualified or has more experience the opportunity to sit as a chair?

278. **Councillor McPeake:** Not necessarily as a chair. It could be, for example, somebody who, wearing a particular hat, deals with waste management or environmental issues; it could be anything. If someone had a particular role on past councils and, to be quite frank, nobody else was interested in or capable of performing that role, but it did not then fall to that individual, corporately, that would be the council's loss. What I am suggesting is that there should be local agreement so that that person can be put on to that committee or outside body. That is where the wee bit of local flexibility applies. "Horses for courses" springs to mind.
279. **The Chairperson:** Are there any other comments from the floor?
280. **Councillor Brian Wilson (North Down Borough Council):** Thank you very much, Madam Chair. I am Brian Wilson, an independent councillor on North Down Borough Council. I am slightly concerned about the default situation being d'Hondt. I have been an independent small-party councillor for 20 years. If d'Hondt were in operation, I would be excluded from any opportunity to take one of the senior posts in the council. It could lead to a situation where, say, three or four independents would not have the same voting rights as major parties. If senior posts were allocated by d'Hondt, it could mean that, in many areas where the unionist vote or the nationalist vote is split, you would never have enough councillors to get the position of mayor or chairman of a committee. I would prefer to appoint such people by STV because it is fairer. That would mean that three or four independents, plus a couple of small parties, could get someone elected to the position of chair or take one of the senior posts in a council. Under d'Hondt, if there are divisions among a lot of small parties, the big parties dominate and take all the seats, and people are permanently excluded from holding any major posts. Thank you.
281. **The Chairperson:** Thank you. If there is no other input —
282. **Mr Stephen McCrory (Belfast City Council):** I have a supplementary point to what NILGA said. It seems clear to us that it would be a lost opportunity if the shadow councils that will be in operation from May next year do not have the opportunity to test and run some of the governance systems that will be available for the new councils from 2015 onwards. We wondered whether the Department would give some consideration, under the transitional and supplementary provisions order, to allowing councils, if not making it compulsory for them, to run d'Hondt perhaps for appointing streamlined executive models. What might be a bit more difficult is deciding whether you want to commence qualified majority voting and the call-in system for that period. However, it would be useful to allow at least some of the shadow councils to test that out before it goes live in 2015.
283. **The Chairperson:** Thank you, Stephen. If there are no more requests to speak, I will call the departmental officials to respond to the issues raised.
284. **Ms Linda MacHugh (Department of the Environment):** Thank you very much for the opportunity today. This will be a very useful process for the Department to listen to the views from a wide range of stakeholders about the Bill.
285. The sharing of power and responsibility across the political parties represented on a council is a significant issue in ensuring inclusivity in local governance. The Bill's provisions are based on proposals that were developed by the policy development panel on governance and relationships and agreed by the strategic leadership board in the previous iteration of the reform process. The panel and the board comprise elected representatives from the five main political parties. The proposals in the Bill by and large reflect the views and agreements that the board reached. The Bill provides a framework for governance. Clearly, there is more detail to be worked through, and that will appear in subordinate legislation or guidance. We are working closely

- with the local government sector on the detail of the subordinate legislation and guidance.
286. The three methods of sharing positions of responsibility — d'Hondt, Sainte-Laguë and single transferable vote — are included to provide flexibility for political parties to agree the most acceptable approach. Flexibility is also provided for the allocation of committee places through the ability to choose the Droop quota or the quota greatest remainder method. Although there is flexibility and choice in the method of power sharing, it was felt by the strategic leadership board that it was important that there was consistency in the application of the processes across all councils and that the opportunity is presented to parties with lower levels of representation and to independents to hold positions of responsibility. There was also consensus about that across all the main political parties involved in the policy development process.
287. There is potential for a coalition to be larger than a recognised party and to move away from the results of an election. That is why the ability to form a coalition is not in the Bill. Councillor Wilson asked about independents. The intention is to run the positions of responsibility across the full term of the council, so that should provide mathematically for the inclusion of independents in positions of responsibility. Positions of responsibility will be allocated prior to the allocation of committee places across the political parties. It is recognised that the process for the appointment of members to a committee does not make specific reference to independents. That is now being considered.
288. The appointment of people with specific expertise to outside bodies should not be an issue because the appointment of councillors to non-statutory bodies will be a matter purely for the council. Each council has a differing range of bodies on which it is represented, so it was felt that it would be very difficult to legislate for that. It will be up to councils. The appointment by political parties to committees of people with specific expertise or knowledge will be a choice for the parties in those councils.
289. There was a question about councillor representation on the partnership panel. The panel will be a statutory body, so it will be covered by the provisions of clause 10. There was also a question about the interpretation of schedule 3 and whether it extends to schedule 4. The answer is “No, it does not”. The interpretation of schedule 3 is to cover only schedule 3. However, the Department will look at the issue of the interpretation of schedule 4.
290. Finally, on the shadow arrangements, it is the intention to apply the governance arrangements to the shadow council. That will clearly be dependent on the Bill's being through in time for the shadow councils. However, we all know the timetable for the Bill. Providing that there is no major delay in the Assembly process, it should be doable. So, we will apply the governance arrangements from the outset.
291. **The Chairperson:** Thank you, Ms MacHugh. We move on to the next Part.
292. **Mr A Maginness:** May I ask the departmental representative a question? I am not certain whether the Department, in the context of the Bill, is accepting the idea of a local solution as a further position. I just want that clarified. Maybe the Department does not have a view on that. I am just not certain.
293. **Ms MacHugh:** That would be a departure from what is in the Bill and what was consulted on. The Minister would have to consider that if there were going to be an amendment to that.
294. **Mr A Maginness:** So, the Bill would have to be amended to include what NILGA suggests.
295. **Ms MacHugh:** Yes.
296. **The Chairperson:** Sorry; are you saying that the Bill would have to be amended for that? People can have local solutions, but the default position is still d'Hondt.

297. **Ms MacHugh:** They could have local solutions based only on the three methods determined in the Bill.
298. **The Chairperson:** We move on to the next discussion, which is on Part 7: meetings and proceedings. Members, this covers clauses 40 to 42. I invite Belfast City Council to open the discussion.
299. **Mr McCrory:** Thank you, Madam Chairperson. I will try to be as brief as I can. I will focus my comments — which, I think, are completely in line with the comments that were submitted by NILGA in this regard — on two of the issues in Part 7: call-in and qualified majority voting.
300. I think that both NILGA and the council would support the broad principle of call-in being available in the new local arrangements. However, there is concern that the current broad definition of the two circumstances in which call-in could apply — that is, when a decision was not arrived at after proper consideration of the relevant facts and issues, or when the decision would disproportionately adversely affect any section of the inhabitants of the district — are so broad in the way that they are worded in the Bill that an interpretation of them could lead to a high percentage of decisions being subject to call-in, particularly on the second one, which I will call community impact for want of a more easily-worded phrase. There is the issue that what is disproportionate to one person is not to another, and the minority section of the community needs to be defined much more closely. Otherwise, a vast majority of decisions could be subject to this provision.
301. What officers are looking to do is get a political decision and then deliver services to ratepayers on the ground. Anything that prevents that happening in a timely fashion gives us cause for concern. We urge the Department — it has already indicated that it will do so — to liaise closely with local government practitioners in how they write any regulations and guidance in this regard, because, as ever, the devil will be in the detail as to how you have to apply those in a practical circumstance.
302. On qualified majority voting, we just make the general point that local government has operated for a number of years now with a process of simple majority. We accept — and I think that NILGA accepts — the proposition that, where there is a significant political minority within one of the new councils, some form of qualified majority voting would be acceptable. I know that that is also acceptable to all of the political parties. However, again, the circumstances in which qualified majority voting would apply need to be defined.
303. I know that they will be defined in regulation. However, the Minister commented — I think, in answer to a question for oral answer on the Floor of the Assembly — and gave some indication of the types of areas that might be covered, which include a broad context of major capital projects and projects that impact across a number of district electoral areas. That is about 90% of what we do in Belfast. We do not do things for district electoral areas. We have policies for the city as a whole and major capital projects. A lot of councils have a staged process, over a three- to five-year period, of allocating significant funding on capital projects. Where qualified majority voting would apply to that process of perhaps 10 stages needs to be defined a lot more clearly. Otherwise, in a council such as Belfast, for example, which is equally politically divided or shared, reaching an 80% threshold, if all members of our council were to vote, would require 48 people voting. A decision that does not reach that threshold would be a decision to do nothing. So, really, the devil is in the detail and we need some real engagement with departmental officials to make sure that it is workable and practicable. Thank you.
304. **The Chairperson:** You can foresee delays in the decision-making process.
305. **Mr McCrory:** Yes.

306. **The Chairperson:** Does anyone from the Floor wish to speak on this Part about meetings and procedures? Do any members wish to speak?
307. **Mr Weir:** I have two issues to put to the representative of Belfast City Council. I certainly agree with him that there is a need for a tighter definition. The concern is that QMV should be a safeguard, but one that is very much the exception to normal business. To say that it is the nuclear option is to overstate it, but it should not be one that is used to hold up virtually every decision. Do you feel that there needs to be a clear definition within the body of the legislation, or do you feel that guidance and regulations would be sufficient for that?
308. Obviously, QMV and call-in are effectively two sides of the one coin. The other issue is that, however you define it in legislation or regulations, once it is defined and somebody attempts a call-in, somebody has to arbitrate or to adjudicate — probably to adjudicate rather than to arbitrate — on whether it is a legitimate call-in. In the current legislation, that leads to a position where, for it to be a legitimate call-in, it would simply require the chief executive to refer it to a lawyer of some description. There might be a bit of concern, with the best will in the world to my former profession, that, depending on who the chief executive or the lawyer is, you could get widely differing interpretations. If a chief executive wanted to block all call-ins, he could go to a friendly lawyer who basically will agree with a very narrow interpretation. On the other hand, if the chief executive wants a very wide interpretation, he can get that. Are there any thoughts in Belfast City Council on the appropriate mechanism for a person or group to provide some level of consistent adjudication, rather than this relatively loose arrangement of simply referring it on for a legal opinion, and if the opinion suits, it becomes the final position?
309. **Mr McCrory:** I will try to deal with the first two points. My colleague John Walsh might wish to deal with the third issue about legal opinion. That is his field of expertise, not mine.
310. I take the point entirely. The option of defining something so tightly within the legislation could lead to practical difficulties in implementing it for councils using qualified majority voting. Let me deal with the issue of call-in first. The circumstances in which call-in can be triggered are specified in the Bill: either due process was not followed or there will be community impact. I am not sure whether there will be any further interpretation of that. Our concern is that that is so broad. I would have thought that, in any practical sense, that on any contentious issue in Northern Ireland coming through a council, if you went to a practising solicitor or barrister, they would be very reluctant to give an opinion that something would not have even a slightly disproportionately adverse effect on some minority in the council. I would be surprised if you could get many people who would say that that would not be the case.
311. Again, in the Bill, it simply seems to be enough for, in Belfast's case, nine members of the council to indicate that due process is not being followed. There does not appear to be a checking mechanism for the first circumstance. It simply stops a decision being actioned, and it is referred to the full council. You could argue that it delays decision-making by only a few weeks or months, but it is a delay nonetheless. I think that the overall spirit of the Bill was to try to make decision-making more open, transparent and timely in getting decisions taken for the good of the ratepayers who have elected the council.
312. On the matter of qualified majority voting, again, we know that it is going to be specified in regulation. It is just that, if the Bill or the regulations provide that an issue can be referred for qualified majority voting on a very loose interpretation, the experience is that, on some councils where debates on issues can become a little thorny and heated at times, it will be. Therefore, the broader the interpretation as to what the circumstances are for qualified

majority voting, you would think the more times that will be used by councils if it is available for them. Some of the indication given by the Minister on the Floor of the Assembly was so broad that major capital projects and projects that impact across a number of district electoral areas would effectively be — I am not exaggerating — 60% to 70% of what we do.

313. **Mr Weir:** From a policy decision point of view, is there, therefore, a great deal of need to specify the occasions when there is an automatic QMV, as opposed to simply relying on having the call-in mechanism reasonably well defined? The other difference that strikes me from a policy point of view — this will apply in a lot of areas of the country — is that, presumably, if you were adopting a policy on, say, playgrounds in Belfast, it would be a legitimate understanding of what calling a QMV should be if 90% of the playgrounds affected were in either unionist areas or nationalist areas and it was seen to be almost a sectarian policy. If, however, a particular playground was potentially being closed, that may well overwhelmingly be used by one community or other, but it would not necessarily be a sectarian decision in that regard. You could have a situation in which almost any facility decision would be impacted if you had a very wide context for calling a QMV.
314. **Mr McCrory:** Yes, again, it is understandable that, where there is a political majority and a sizeable political minority, those arrangements are there for a very good reason. Where it is equally divided and you have a project or policy, for example on playgrounds across the city of Belfast, the likelihood is that that would achieve an 80% qualified majority because it would be presented in such a way that it is across the city. It is all about the definition if it so broad. There is the process of getting the 80% and the ability for delay. When you are talking about major capital projects, there is a need to apply for loans and to put processes on the ground two years to three years before you actually start building anything.

It gives us cause for concern, and we would like to see the regulations defined in consultation with local government practitioners, rather than simply being sent to us.

315. **Mr John Walsh (Belfast City Council):** I am the town solicitor in Belfast City Council. I suppose that is a declaration of interest right at the outset in terms of the question that was posed. To be fair, we have not really considered the lawyer to whom those matters should be referred. I think that my council has faith in my role within the organisation to give advice straight down the middle, as it were. I think that we need clarity around that provision. With the way that it is currently drafted, it will be a plaything for lawyers. In an environment where politicians are expected to make difficult decisions in trying circumstances, it really needs to be spelt out with clarity. One has to ask whether it is really necessary. There are the protections of section 75. There are other protections in law. There is recourse to the courts in the event that decisions are so appalling that they can be challenged on grounds for judicial review.
316. **Mr Weir:** The point, though, is that, if you are going to have some form of call-in mechanism — I think that everybody accepts that there probably needs to be some form of call-in mechanism, albeit maybe in limited circumstances — someone will have to adjudicate on whether that is legitimate under whatever grounds are there. The concern is that, if it is so wide that it could go to any lawyer, you could get a wide range of interpretations. Is there an argument — I suppose that this is directed more towards the Department — that, as we have investigations by the Commissioner for Complaints, we should have another limb of that body, or a different route? Would it not be more satisfactory if it was the same body throughout Northern Ireland deciding on whether a call-in was legitimate, rather than it being simply anybody in the legal profession?
317. **Mr Walsh:** I do not know how we will ever get to any clear, agreed position on that. Lawyers are, within their

- intellectual capacity, entitled to express differing views, and who is to say whether or not a given view is right or wrong?
318. **Mr Weir:** Yes, that is the point that I am making.
319. **Mr Walsh:** And I am making the same point back. How do you select —
320. **Mr Weir:** We may be in violent agreement here. *[Laughter.]*
321. **Mr Walsh:** How do you select someone who is the final arbiter in all things?
322. **Mr Weir:** The point is this: is that not a flaw in the current draft of the legislation?
323. **Mr Walsh:** My point back to you is this: why do you need to have a call-in mechanism operating in this way when you have the protection supported by the courts?
324. **Mr Weir:** The whole point about call-in is that, on a political level, it was agreed that you simply cannot have a situation in which minorities are just overridden, and there needs to be some form of protection. It would be a fairly radical departure from the legislation if we were simply to scrap the call-in procedure and the qualified majority vote, which, I suspect, would not get support throughout the Assembly. If you are going to have it, you need some body or some individual who will adjudicate on whether that is legitimate or not legitimate.
325. **Mr Walsh:** I have to say that I am not a great fan of proportionality as being a legal test. There are sound legal tests, established in law through judicial review, that give some level of certainty around the legal parameters of decision-making. I am not sure that this disproportionate adverse effect really necessarily adds anything. I think that it would be preferable if this provision were given some real clarity and some real meaning and if some proper thought and consideration were given to who it is that will give that legal opinion.
326. **Mr Elliott:** What we have just heard between two legal people gives us some flavour of what may come out of this proposal. *[Laughter.]* It is quite interesting to listen to that, because, obviously, different legal people will have different opinions on this. I have been very concerned about the potential outworkings of this. We have a briefing note from the Research and Information Service that maybe the rest of the audience have not been privy to. It is quite clear where it says:
- “As yet the only clarity on the meaning of “section” - is any section of the community/ district that has a specified description.”*
327. I am sure that some boxing club could have a specified description or that some senior citizens’ club could have a specified description. I appreciate the comments that each of you made. What do you see that could be put in there? Mr Walsh, you indicated that there may be no need for it at all, and I am happy to listen to that view as well. What do you see that could be put in there that would make this more workable in practical terms? It is about trying to deliver government and a process that allows the councils to get on and do some work without being overly bureaucratic or stalled at every opportunity. I suppose that any group may feel that that applies to it, whereas others may take the view that all of those minority groups have a right. Where is the balance?
328. **Mr Walsh:** Having just advocated the removal of the provision, I am now being asked to comment on how we can make it better.
329. **Mr Elliott:** With all due respect, it is in the Bill, so we have to deal with what is there.
330. **Mr Walsh:** No, I take your point, which is very well made. I am slightly put on the spot, because it is not something that I had given any thought to before. Perhaps it might address some of Mr Weir’s issues if we were to look at it in the context of a panel of lawyers. It would not be the opinion of a lawyer but the agreed opinion of a panel of lawyers or a majority of a panel of lawyers. There could be, say, three, and a majority of two would be enough to say whether

- it does adversely impact or not. I am not a fan of “disproportionately affect adversely”. I am just using that phrase because that is the phrase that is currently in the Bill.
331. **Mr Elliott:** So, do the decisions of the lawyers come down to 15% call-in as well? *[Laughter.]*
332. **Mr A Maginness:** That is their fee.
333. **Mr Boylan:** Do we have to take a vote on that now, Chair?
334. **Mr Walsh:** I have to say that there is probably a more fundamental point here. Politicians put their hands up for election to make hard and difficult decisions, so is it right that a lawyer, ultimately, is the arbiter of whether or not those decisions that you make on behalf of your constituents are right or wrong?
335. **Mr Elliott:** Clearly, you believe that it should not be the position of the lawyers.
336. **Mr McCallan:** I want to echo a previous suggestion from Belfast City Council. The development of scenarios during the shadow council period will rinse out some of the real fear of these sorts of things. We need to be proportionate, and we need to determine the political sovereignty of councils and councillors to take decisions. We need to take the fear out of this sort of thing because it is in practice in other jurisdictions, and practise makes perfect. The shadow council opportunity should be a testing ground to make sure that all those very well-made scenarios are put through a system.
337. **The Chairperson:** I will ask Ms MacHugh to respond to all the issues that have been raised. Obviously, we need clarity. We cannot leave it to the solicitors and barristers to work it all out.
338. **Ms MacHugh:** The question of the balance has been a constant in my time in this job. In this whole process, there is a need to strike an appropriate balance between setting a specific and consistent framework in which local government should and could work and providing the degree of local flexibility that underpins so much of this reform process. That is a challenge, because that balance lies at a different point in everybody’s minds.
339. However, the principle that underpinned this section of the legislation is the Department and the Executive’s commitment to protecting the interests of minority communities in council decision-making. Indeed, that commitment was supported by the main political parties that were engaged in the policy development panel and the strategic leadership board in the development of these governance proposals. At that time, there was consensus across the political parties that were involved that a standard system for checks and balances to protect the interests of minority communities should be applied across all new councils, irrespective of their political make-up. There was clearly much debate around the trigger for call-in. Eventually, those levels were agreed and set at 15% of the members of the council being able to call something in. The threshold for qualified majority voting would be 80% of members present and voting. That was seen to strike the appropriate balance between protections and enabling business to proceed on a consensual basis.
340. These are new concepts for councils in Northern Ireland, and we have to accept that there will be a bedding-in period. Clearly, the Department will work very closely with local government and political parties to further develop the list of decisions that will be specified as requiring a qualified majority vote and the criteria for the call-in procedure. Standing orders and further guidance will be provided on that by the Department.
341. If it becomes unworkable, there is a provision in the primary legislation to change the trigger points and the percentage for qualified majority voting through subordinate legislation. That may be something that we will have to consider further down the line if, indeed, it does prove to be unworkable.

342. Who should make the decision about call-in? Again, if we were to move dramatically away from what is proposed, that would be a policy change, so we would have to take that back, first to the Minister and then to the Executive. However, I hear the points that are being made and, as with many things in life, legal opinions on the same subject can differ widely. That is something that we would need to consider if that proposal comes forward.
343. **The Chairperson:** I presume that, when you are formulating the guidance, you will be working with local councils on it. We have received quite a few submissions saying that local councils need to work with you to develop the guidance.
344. **Ms MacHugh:** Yes. We have a legislation working group that pulls together representatives of local government. When we develop further ideas and proposals through that group, we will take them through the regional transition committee and the representative bodies, and we will talk to councils about the issues. As it is in subordinate legislation, it will also go out for full consultation.
345. **Mr Boylan:** I have two questions, one of which is for Linda. Linda, following on from Derek's question, can the call-in procedures be tested in the shadow form? Is there any format to do that to give us a better understanding? My second question is for the gentleman who spoke about call-in procedures. If we could see clearly the list of decisions or specified criteria, would that go some way to addressing some of the problems that you raised today?
346. **Ms MacHugh:** Yes, it can be tested in the shadow period. Clearly, we would have to recognise that, in the shadow period, councils in shadow mode will not make the full range of decisions that a full council would make. However, it would certainly be a useful testing ground for the decisions that the councils in shadow mode are required to make. So that is absolutely doable.
347. **Mr Walsh:** Could I ask you to restate your question?
348. **Mr Boylan:** My second question relates to the points that you raised about call-in procedures. If there were a clearly identified specified list of criteria or decisions that can be called in, would that go some way to addressing some of the problems?
349. **Mr Walsh:** That would go some way to alleviating some of my concerns.
350. **The Chairperson:** It would provide more clarity, really.
351. We need to move on to the next discussion. Part 9 is "Conduct of Councillors" and covers clauses 56 to 69. I ask NILGA to start the conversation, please.
352. **Councillor McPeake:** I will say at the outset that NILGA supports the Bill's proposals on the conduct of councillors. We look forward to the publication of the forthcoming consultation. However, the Bill does not contain a specific appeal mechanism and thereby leaves judicial review as the only potential review route. The judicial review procedure is limited in its scope and may not be available in some instances. The right of appeal is a fundamental part of a proper justice system, and NILGA believes strongly that such a procedure should be enshrined in the new legislation. The Committee also needs to consider to whom appeals should be directed. NILGA seeks the identification of a procedure for dealing with more minor complaints as, without that, the process could be exploited and become somewhat expensive.
353. NILGA members are also keen that the Committee explores a wider approach to monitoring and adjudicating on alleged cases of misconduct, for example, to utilise or apply the mechanism for policing and community safety partnership members and all formal partnerships that prevail in the councils that are crucial to safer communities and the local economy. So, we ask that that procedure is looked at and widened.

354. Clause 57 is on guidance. NILGA recommends to the Committee that a provision requiring the guidance to be issued for consultation should be inserted into the Bill in line with other provisions for guidance elsewhere in the Bill. Clarification is also required on the issuer of guidance.
355. On clause 58, NILGA members are keen that a full rationale for expanding the commissioner's role, further to the consultation on the policy proposals, is provided to councils and that an amendment requiring a review of the commissioner's role is made to the Bill.
356. An anomaly in clause 59 is noted. The clause covers a situation where a councillor has become a member of another council but does not cover a situation where a councillor ceases to be a member of a council prior to or during an investigation.
357. NILGA has made other comments on this part of the Bill that the Committee will have received in our written responses. The final issue that we will comment on today is related to cost. Clause 67 requires the cost of the service, as estimated by the commissioner, to be apportioned between all councils in such a manner as may be prescribed. NILGA seeks consultation with local government on the apportionment of such fees. There are a number of methods by which the apportionment could be carried out, and discussions should be held with the sector to agree the most appropriate method. NILGA also seeks to ensure that the legislation reflects a need for the commissioner to account to councils on how their contributions have been spent in each financial year.
358. **The Chairperson:** Thank you. Does anybody else wish to raise any other issues?
359. **Mr Bumper Graham (Northern Ireland Public Service Alliance):** I speak in my capacity as the trade union side lead on the Local Government Reform Joint Forum, which is the industrial relations body for RPA and local government.
360. Although we strongly endorse a code of conduct for councillors, we believe that there is a specific need to look at having a protocol that deals with the relationship between councillors and staff and, likewise, the reverse. It would be similar to the protocol that exists in the Assembly between MLAs and Assembly staff.
361. We do not believe that the Commissioner for Complaints is an appropriate route to deal with complaints either from or about staff. It is over-bureaucratic and too slow. We believe that there should be a standard industrial relations-type process that aims to resolve differences very quickly on an informal basis. If it needs to go to a formal basis, we need to look at having normal industrial relations structures within which to do that. We would have seen the Local Government Staff Commission providing the secretariat to that. That was until, of course, the Department came along and decided to cull the Local Government Staff Commission.
362. Another point that is not in the Bill came up at Second Reading, and that is the Minister's indication that he foresees a position where council employees could also be councillors. We need clear guidance on that and proper consultation on how that would be applied. If that arises, there will also be an issue in ensuring that there is clear blue water between someone acting in their capacity as an elected council member and acting as an employee.
363. **The Chairperson:** There could be a conflict of interests.
364. **Mrs Roisin Mallon (Equality Commission for Northern Ireland):** We strongly support the introduction of a mandatory code of conduct for councillors. We ask that consideration is given to placing a duty on the Department to issue a code rather than simply a power to do so. Secondly, we support the Department's proposal to ensure that the principles enshrined in the code go beyond the Nolan principles and include the additional concepts of equality and good

- relations. We note that the Minister has indicated that mandatory training for councillors will be given on a range of areas of responsibility. We recommend that, to ensure a visible commitment to equality and good relations, good relations training for councillors is also placed on a mandatory footing.
365. **Mr Boylan:** I have a question for Councillor McPeake on the role of the commissioner. I take it that you are asking for that role to be widened. Is that for the likes of PCSPs, or are you talking about Peace III groups, neighbourhood renewal and all that? Will you expand on that a wee bit, please?
366. **Councillor McPeake:** The Bill states that this will have to be funded by local government. I think that local government needs to get benefit from this even on a value for money basis. I know that, at the moment, there is no appropriate appeals or complaints mechanism for PCSPs. The Policing Board is not adequately resourced to deal with issues that may emanate from PCSPs on the conduct of members and all that. I ask that the Committee looks at expanding the role of the commissioner to include any arm's-length bodies that are in some way linked to local government. I imagine that there will be only very limited circumstances in which that will be relevant — PCSPs spring to mind. Local actions groups (LAGs) and Peace groups could also be looked at, although I am not so sure that there is as immediate an issue with those as there would be with PCSPs. All that we are doing is asking that the Committee looks into it in a wee bit of detail, because, as I said at the start, local government will be asked to fund this. So, rather than reinventing the wheel, local government needs to fully achieve the benefits from a commissioner's office.
367. **Mr Weir:** Sean, I can see where you are coming from on some of that stuff. I can see a possible problem on PCSPs or some other issues that effectively derive from separate legislation through the Department of Justice and other bodies. For example, I can see that disciplinary or complaints procedure could be a bit of a legal problem if we were to try to insert some of that in the legislation.
368. A number of folk have made the point about the lack of a direct appeal mechanism. It seems to me that, on the face of it, that is a pretty obvious omission and a fairly unfair omission. I will be interested to hear the Department address that issue. Without prejudice to anybody's position, I suspect that, across the Committee, we may well look to amend that during Committee Stage. The appeals process is restricted to judicial review, which is a very lengthy procedure and, realistically, shows not whether the decision is right or wrong but whether it is unreasonable in its nature. You could find a situation where a councillor is completely vindicated a number of years down the line, which is all very well, but someone else would be in their council seat by that stage and their reputation would have been dragged through the mud. I will be interested to hear the Department's view on whether it will be minded to accept some amendment of that to have a clear appeal mechanism. From what I have heard from local government across the board, there seems to be a fair degree of consensus that that is an omission from the legislation.
369. **The Chairperson:** OK, Ms MacHugh, can you make a response to the question on the appeal mechanism? Obviously, Linda, that has been mentioned in many of the submissions, so members will want to hear your view. Apportionment of costs has been mentioned in many submissions as well. Also mentioned was training and equality issues. Thank you.
370. **Ms MacHugh:** Before I address the specific questions, let me say that Northern Ireland is the only jurisdiction that does not currently have a mandatory code of conduct for councillors. That was highlighted in the 2005 report of the Committee on Standards in Public Life. Therefore, there is a need to establish an ethical standards framework for councillors, and that has been supported widely

- by the local government sector itself. The Bill simplifies the ethical standards proposals that were originally consulted on. A mandatory code of conduct and the supporting principles will still apply, but the investigation and adjudication provisions are modified so that the Office of the Commissioner for Complaints will be responsible for dealing with all cases, rather than just those alleging serious breaches and those that are complex.
371. There were a number of reasons for amending that from what was consulted on. First, the new framework will be less bureaucratic than was originally proposed. It was also felt that the commissioner would be able to draw on the experience of in-house investigation officers and that the commissioner could provide a uniform approach to all complaints and start to build up new case law, expertise and experience in this area. Also, it was felt that placing the role of the commissioner in this would give the public greater confidence in the independence of adjudication. The other issue was that this provides better value for money for local government. The original proposal was that each council would set up its own independent monitoring committee with an independent monitoring officer, and that was estimated at a cost of around £850,000 per annum to the local government sector. The current estimate from the Commissioner for Complaints is a cost of around £380,000 per annum, so, clearly, there is also a cost benefit to this.
372. The mechanism for the apportionment of costs is being considered. We are looking at options, probably related to the size of the new councils. We will need to consult on that before reaching a final conclusion.
373. I move on to the issue of minor complaints. The only time that the commissioner should become involved in a complaint is when an agreed person decides to make a complaint in writing to the commissioner. The commissioner will then decide whether a written complaint should proceed to investigation stage. However, that does not mean that councils should not take acceptable measures to resolve disputes between parties before it reaches the point of a written complaint being made. A local resolution does not necessarily require a legislative provision, so, again, we are trying to give some flexibility to local government to sort some of this out before it becomes a major problem.
374. We are clearly aware that the area of the appeal mechanism is causing concern, and we are giving this due consideration in the Department. We have had discussions with the commissioner, and the commissioner's view is that, to maintain consistency with his jurisdiction in maladministration cases, the same route should exist to challenge a decision by him in relation to local government ethical standards cases. This is quite a complex area, and I certainly do not want to speak to you on behalf of the Commissioner for Complaints. It may be an idea for you as a Committee to hear from the commissioner directly on this at some point. We are looking at that in the Department, and we will put forward proposals and discuss this with our Minister in the coming weeks.
375. There was a question about the clarification on guidance. There will be a suite of important documents on ethical standards to complement the framework. As well as the code of conduct, the commissioner will issue statutory guidance under clause 57. The Department is considering issuing guidance on planning specifically, and a revised code of conduct for officers is being drafted. That is through the Local Government Reform Joint Forum.
376. The answer to NIPSA's specific question is that the proposals in the Bill relate only to complaints against councillors, and the Commissioner for Complaints will not have a role in complaints against staff. That is really for councils to deal with under normal procedures.
377. A question was asked about the review of the governance arrangements. It is

- not normal to write a review commitment into legislation; however, my Minister has already given an undertaking to the Assembly that this will be reviewed after a period of time — three years, I believe.
378. NIPSA also raised the issue about employees who are also councillors. The reason for lifting the blanket ban was that it was considered to be against the European Convention on Human Rights, and there is case law in England that says that you cannot have a blanket ban. However, we are looking at the terms and conditions in the subordinate legislation to see how that might be implemented, and one solution could be that an employee of a council cannot become a member of his or her employing council. Again, we are looking at the detail of that, but that will be for the subordinate legislation.
379. Finally, on training, we are looking at specific training on the code of conduct. On the equality and good relations commitments in councils, the Bill specifies the seven Nolan principles as well as the five additional principles that apply to MLAs. Those include equality and good relations.
380. **Alderman Alan Graham (North Down Borough Council):** My point is to do with the blanket ban on council employees running for election. If that ban were lifted, surely it would mean that any elected councillor would be entitled to apply for a job in his council. That would be total nonsense. My colleague here tells me that I would have no chance of getting a job. If you lift the ban, it has to work both ways. I, therefore, think that you are heading for confusion. The suggestion that you could run for a council that you do not work in may be viable, but the other suggestion seems totally unworkable and ludicrous.
381. **The Chairperson:** It may get fairly confusing. Are they members of staff, or are they councillors?
382. **Mr Boylan:** I refer to something that Linda said about the role of the commissioner. Obviously, the commissioner's role will be to investigate councillors. That being the case, I take it that that includes the behaviour of councillors on outside bodies. Say an issue with Peace III or a PCSP had to be investigated, would the commissioner look at the behaviour of individual councillors or at the decision made by the body, which comprises councillors and other individuals? That is the point that I am trying to get at about the commissioner's role. If we were to go down the route of looking at decisions made by a PSCP, for example, are you saying that the commissioner's role would be to deal only with the councillors? Is that correct?
383. **Ms MacHugh:** It is not intended to deal with decisions of councils; it is about the conduct and behaviour of councillors and only that.
384. **Mr Boylan:** That is grand.
385. **The Chairperson:** We will move on to the next discussion.
386. **Mr Elliott:** Sorry, Chair, but someone wants in.
387. **The Chairperson:** Sorry, Mr McCrory.
388. **Mr McCrory:** Again, this addresses a point that a number of councillors have made about whether employees may stand for election to the council by which they are employed. We are expecting that the Bill will not have proceeded far enough towards Royal Assent to allow any provision on that to have any impact on the nomination process for the May 2014 elections. However, will consideration be given to extending the nomination process beyond the date of an election if a councillor either, sadly, passes away or resigns to make sure that there is no provision for someone from a local council to be put into the council through a party's nomination process? You need to consider the two sides of it where you have the party nomination allowing for casual vacancies to be filled. If you are going to say that the employee cannot stand for election in their council, surely it should follow that they cannot be party nominated to it either.

389. **The Chairperson:** Thank you. There are no more questions, so we will move to the next part. This is on community planning, which will be a new function for the new councils. I invite Community Places to make its views known.
390. **Ms Louise McNeill (Community Places):** Thank you, Chair. My name is Louise McNeill from Community Places. The comments that I make here today are supported by over 25 groups from across the region, as detailed in our written response to the Committee.
391. Although we are broadly supportive of Part 10, we have identified areas where, we feel, improvements could be made to enhance and strengthen the Bill. It is clear that the community plan will provide the overarching framework or the plan of plans, as it is being called, to set the vision and agenda for the work of the 11 new councils, their community planning partners and representatives from community and voluntary bodies.
392. One of the main areas where we feel that improvements could be made to the Bill is the inclusion of a reference to service provision. One of the real strengths of effective community planning is its ability to improve the coordination and delivery of public services in order to deliver real, improved outcomes for communities and individuals. Improving service provision is a fundamental aim of community planning elsewhere in Britain and in the Republic of Ireland, yet the Local Government Bill makes no reference to service provision in either the process or the definition of community planning in clause 69. We feel that that is a real weakness in the Bill and should be addressed.
393. Given that councils have fewer powers than those in other jurisdictions, it will be essential for the Bill to ensure that all statutory partners and Departments play an active and positive role in the implementation of the community plan. The Bill should, therefore, name the community planning partners and provide for the ability to alter those partners at a later date if necessary. We think that it should also link each partner's improvement performance to the strategic objectives of the community plan. That will ensure that each partner's role in the community plan is fully reflected in its own accountability and governance arrangements.
394. The current wording on the duties of Departments to promote and encourage community planning includes the term "aim to". We feel that that language is very passive and conditional, is unnecessary and unhelpful, and should be removed.
395. The second area where we feel that the Bill could be enhanced relates to making a difference and an outcomes-based approach. Minister Durkan's statement to the Assembly when presenting the Bill confirmed the Executive's view that council-led community planning provides a statutory framework to deliver on the objective of improving outcomes for everyone. However, that focus on outcomes should be explicit in the Bill. An outcomes-based approach will help councils and their partners to set clear goals and milestones and to identify and measure the progress made towards meeting the objectives of the community plan. It will also aid better integration and alignment of regional, council and local priorities and outcomes. We feel that a focus on outcomes should be reflected in the Bill. Reference to the collection of information relating to performance is fully focused on councils. Given that the community planning partners will play a major role in the delivery of community planning, they should also be required to report on performance to fully reflect their role in the implementation of community planning.
396. The third area relates to much more proactive community involvement. We know from our own experience and from good practice that meaningful community engagement is essential in effective community planning. It is crucial that engagement processes reach out to everyone living in a council area, including those often described

- as hard-to-reach groups. The Bill should ensure that a proactive approach to engagement is developed, as is required in legislation in Scotland and England. Active language should be used to ensure that the councils and their community planning partners actively seek and encourage participation in the process of developing, producing and reviewing community planning. The Bill states that:
- “partners must ensure that arrangements are made so that persons ... have the opportunity to express their views”.*
397. That passive and over-bureaucratic language is unlikely to encourage good practice.
398. The next area that we would like to highlight is the positive role that community and voluntary bodies can play in the delivery of community planning. Those bodies are important stakeholders in the delivery of community planning. They have experience, knowledge and assets, access to resources that are not available to statutory agencies, and experience in providing local projects, services and facilities. It is, thus, vital that they are active participants in developing and delivering community planning. To facilitate that, we feel that it is essential that community and voluntary bodies be included from the very outset of the community planning process and that councils and their community planning partners develop community planning in cooperation and conjunction with those bodies.
399. We are very pleased about and fully support the introduction of the statutory link between the community plan and the local development plan for the forthcoming plan strategy and local policies plan. The integration of both processes can help to achieve a much more coherent and responsive approach to community engagement, the identification of need, the delivery of services and evidence-based policymaking. Again, that will improve connections between regional, local and neighbourhood priorities and outcomes.
400. We also welcome the provision for the Department to issue statutory guidance. We feel that that will be very important in ensuring that effective and consistent community planning processes are developed across the 11 new council areas. We feel that the guidance should be developed after consultation with communities and should include and cover the following aspects: the aims and principles of community planning; engagement quality standards for community planning — a lot of learning can be taken from the Scottish national standards — proactive approaches to engaging with and reaching out to harder-to-reach groups such as low-income groups, the LGBT community and rural communities; and provision for developing thematic issue-based plans and local community plans.
401. We also feel that guidance could look at an outcomes-based approach in measuring progress and improvement, and cover aspects and practical examples of the use of the general power of competence. Thank you, Chair.
402. **Mr Nigel Lucas (Construction Employers Federation):** Thank you, Chair. We would like to see some detailed clarification on how community planning will be implemented and under what circumstances, as referenced in clause 69. We request clarification on how the long-term objectives of determining economic, social and environmental well-being will be identified.
403. Clause 70 refers to the community planning partners. I agree with the previous contributor that we need to see which bodies will be identified as planning partners of the council and what role they will play in the process. Clause 71 refers to the production of a community plan “as soon as is ... practicable”. We think that that is far too vague and that there should be a specific timescale in the Bill for the production of that plan. Otherwise, there will be far too much potential for slippage and even more uncertainty in the planning process.

404. Finally, I would like to make an observation. We heard discussion this morning about training issues for the councils. We have been talking to departmental officials about capacity building training to deal with planning issues, but we have heard this morning about training in other matters such as appropriateness, probity etc. It seems that, from the time the new councils are in place, they will be in full-time training for the next 12 months.
405. **Mr Ken Smyth (Northern Ireland Commissioner for Children and Young People):** As you are aware, the Northern Ireland Commissioner for Children and Young People (NICCY) has the responsibility to look after, safeguard and promote the rights of children and young people. A previous contributor spoke about community involvement and the involvement of community and voluntary bodies. NICCY believes that the Local Government Bill is a unique opportunity for the Northern Ireland Executive to enhance the participation of children and young people.
406. We wish to emphasise two proposals in the Bill that are particularly relevant. The first is community planning. NICCY believes that it is essential that you aim to ensure that the Bill reaches out to local communities as far as possible and that there should be a clear reference to reaching out to children and young people. That should be followed by clear guidance on how that will be enabled and achieved. In clause 67, NICCY suggests that a council and its community planning partners must seek the participation of children and young people and encourage them to express their views on community planning, the production of community plans for the district and the review of community plans.
407. Secondly, Part 4 of the Bill concerns the appointment of a committee to advise on the discharge of functions. NICCY recommends the inclusion in clause 16 of a specific requirement for the council to appoint a committee of young people resident within the council area to advise on matters affecting children and young people, including community planning issues. Several councils already have that in place through youth councils. Two major councils, Belfast and Derry, have youth councils, which are used to advise and support their work.
408. I advise the Committee that the Department of the Environment has endorsed NICCY's participation policy statement of intent. The statement of intent is a commitment to ensure the participation of children and young people in the decision-making process. To date, 10 local councils have also endorsed that participation policy statement of intent. Therefore, we believe that it is a natural extension of that to include provision for a regional youth council in the Bill. Thank you.
409. **Ms Jonna Monaghan (Belfast Healthy Cities):** Belfast Healthy Cities welcomes the introduction of community planning. In particular, we welcome the introduction of a statutory link between spatial and land-use planning and community planning. We feel that this is an opportunity to create significantly more effective decision-making, because planning fundamentally shapes people's lives and health. This offers an opportunity for a cross-cutting debate. I also echo the points of NICCY and Community Places with regard to engaging people of all ages and backgrounds in the process. The one comment I will make is that what is not mentioned in the Bill is how community planning will link to central government priorities or the Programme for Government. Because many Departments are key stakeholders in community planning, we feel that some sort of mechanism linking the two might make it easier for Departments to participate effectively, and may also ensure reasonable equity across the region. There are, of course, models for that. One of those is the Scottish single outcomes agreement model, which has been found to be very valuable. A particular point is that, in Scotland, there is a joint Scotland Performs framework that all tiers of government work within.

410. **Ms Anne Donaghy (Ballymena Borough Council):** In line with the NILGA response, Ballymena Borough Council and the mid and east Antrim district warmly welcome the community planning provisions in the Bill. We believe that community planning will be of immense benefit to the communities that we serve, especially when taken alongside and integrated with existing services and the transferring functions. We look forward to the real potential that it has to make a difference to people's lives on the ground.
411. We feel that the legislation should be strengthened to compel partners to participate fully and to ensure that they invest their time and budgets at a senior decision-making level. It is critical that the right people are in the room and around the table, and that those partners fully sign up to engage in that way. We encourage ensuring that the Bill strengthens compulsion of partners to be there and to participate in a meaningful way in the community plan. It is not just about writing a document; it is about a way of working, thinking and doing. That can make a real difference and we do not want to lose that opportunity. I underscore the importance of senior officers from the various partners being around that table and realigning their budgets and resources in accordance with the agreed community plan that everyone signs up to.
412. We also have some concerns in relation to the wording of the proposed duties of Departments. We feel that that needs to be strengthened to ensure that the parties relevant to the successful implementation of community planning on the ground are obliged to play their part, be accountable and put their shoulder behind it as necessary.
413. **Ms Angela Dunbar (Turley Associates):** We wholeheartedly support the statutory link between community planning and area plans, but we urge one note of caution about the fact that the Bill is silent on the timing between the two plans. There is a distinct difference between a community plan and a land-use area plan. We ask that the Committee look at the timing, particularly because in other regions in the UK, key outputs of a community plan inform a local area plan. In order to ensure a smooth transition in local government and the preparation of area plans, we ask that you give a little bit of thought to that.
414. **Mr Gavan Rafferty (Royal Town Planning Institute):** I am a lecturer at the University of Ulster, but I am here to represent the Royal Town Planning Institute (RTPI), which is the largest professional body that represents spatial planning and land-use spatial planners in the United Kingdom, with over 20,000 members, including 500 in Northern Ireland. Like other contributors this morning, we welcome the statutory link between land-use planning as set out in the Planning Act (Northern Ireland) 2011 and the community plan. It is an important milestone for Northern Ireland to clearly set out the link between those two planning enterprises and the potential that has, including better environments for local communities, both for shaping service provision and the social use of space.
415. I am joined by my fellow member of the RTPI Helen Harrison, who will mention some specific points from our organisation's perspective and echo some of the points that have been raised. I would also like to say that, in relation to a fellow contributor's point about capacity building, the RTPI runs events on land use planning. We will also be holding events on the interface between community planning and land-use planning, which will come on stream next year.
416. I mentioned my role at the University of Ulster, where we run training programmes in community planning. We offer an advanced diploma in civic leadership and in community planning, which support other training mechanisms provided by other organisations. I will hand over to Helen Harrison to say a few words.
417. **Ms Helen Harrison (Royal Town Planning Institute):** As Gavin has suggested and as other contributors

have said, we feel that the linkage between community planning and land use planning is currently open to varied interpretation, for example, in clause 69(5). We feel that there are significant benefits in establishing a stronger formal relationship between the community plan and the planned strategies, which councils are required to prepare under sections 8 and 9 of the Planning Act (Northern Ireland) 2011. The benefits of a more coordinated approach include but are not limited to the involvement of communities. In particular, we refer the Committee to the statement of community involvement that is required under section 4 of the 2011 Act but is not mentioned in the same way under the community planning provisions.

418. We also feel that there would be significant benefits, as has been discussed, from a coordinated approach to the involvement of the statutory agencies and the partners who will be central to the preparation and implementation of both the community plan and the plan strategies. We agree that there needs to be a clearer direction as to who those partners should be and the roles and responsibilities that they will have. That is important from the outset.
419. We also feel strongly that the coordinated plan-making approach will promote the potential for real efficiencies not only through the involvement of partners in the community but in the physical preparation of the council plans. That would reduce the potential for delay. Importantly, as Angela said, it would reduce the potential for plans to run out of sequence with one another.
420. **Ms Anne Moore (Save the Children):** I speak in support of the points made by the representatives of Community Places and the Northern Ireland Commissioner for Children and Young People. I do so against a backdrop of the prediction by the Institute for Fiscal Studies of a surge in child poverty levels to over 30% by 2020. You will know about developments in international law,

section 75, the Child Poverty Act 2010 and the child poverty outcomes model. You will also know about developments in OFMDFM in Delivering Social Change, particularly the plan to work within communities on action-based research. You know about the Children and Young People's Strategic Partnership, the outcome groups and the locality groups. Therefore, community planning offers an opportunity to us all to really work together in partnership to tackle child poverty and reach the target by 2020. As everyone has said, we should encourage the participation of low-income groups. However, in keeping with international law, you must seek and specify the right of low-income families and children to participate. Thank you.

421. **The Chairperson:** There are no more contributions at the moment. Thank you all very much. Obviously, there is a lot of interest in this, and people get quite excited about how community planning has the potential to shape and improve public services for citizens.
422. Linda, a lot of issues have been raised. We heard many times the call for meaningful engagement between the councils and statutory bodies as well as with communities, the voluntary sector and the hard-to-reach groups like children and young people.
423. **Ms MacHugh:** I welcome the excitement about community planning. I genuinely believe that it will be one of the key tools that councils will have in drawing up a vision for their area. It will turn councils into bodies that can set the direction of travel for that area. Council-led community planning will provide the framework for councils, statutory bodies and Departments to work together in a coordinated manner to deliver improved outcomes for everyone, with and after effective engagement with the community. Recognising that each of the new councils faces many different issues and circumstances, the Bill sets out a high-level framework to provide the flexibility that councils need to respond to those issues in a manner that they consider most appropriate. This is a section of the Bill where we

- had to walk a tightrope between setting a rigid enough framework to ensure that it happens appropriately, but also to provide the flexibility for all the elements that local community planning will require. The operation of that flexibility will be supported by guidance issued by the Department. That guidance will seek to set out the matters that require guidance, but also give councils enough leeway to determine how to develop this in their area.
424. The provisions on the deliverables of community planning must be taken in the round. In addition to identifying objectives for improving the social, economic and environmental well-being of a district, the Bill requires a council and its partners to take actions to deliver on those objectives and to report progress regularly. The significance of that will be expanded on in statutory guidance.
425. Community planning is, essentially, about the community. The legislation, as introduced, ensures that they are key stakeholders in the process, along with those responsible for delivering services. In respect of specifying bodies as community planning partners, those will be statutory agencies that deliver public services in the council districts. It is important that those bodies are specified to ensure, as far as practicable, the coordination of the delivery of those services. However, it will be a matter for each council to decide whether it wishes other non-statutory bodies to be considered as community planning partners.
426. It would be impossible to specify non-statutory bodies in drafting the legislation and also because each council has different priorities. A large rural council and an urban council will have very different priorities in their community plan. That flexibility needs to be provided for in the legislation.
427. The specification of community planning partners in subordinate legislation carries the same weight as them being specified in the Bill. Hopefully, that will allay some fears that the statutory bodies are not specified in the Bill. That decision was taken to ensure greater flexibility so that, if other statutory bodies are identified in future, they can be specified in subordinate legislation without having to introduce new primary legislation.
428. There was an issue about setting a timeline for the production of a council's first community plan. It was felt that to specify a timeline may place artificial constraints on the development of a plan that has widespread support. That issue needs to be addressed in guidance. Clearly, it will be important to the running of the new councils, and we would like to see early plans created. However, this will be an iterative process and I have no doubt that community plans will develop over time. As experience in Scotland has shown, it can take a couple of years for really effective community plans to take hold and start to show real results.
429. On outcomes, the procedures to be adopted in relation to the review of community planning and the monitoring and reporting of progress will be set out in statutory guidance. This also needs to be read in conjunction with the performance framework for councils and the role of the partnership panel. That panel will be very important in helping to bring Departments and statutory bodies to the table. I have no doubt that community planning will be one of the key areas that the partnership panel will address regularly.
430. The provisions for community engagement in the Bill are modelled largely on the Welsh model because that places a greater emphasis on engagement rather than consultation, which is the terminology used, for example, in the Scottish legislation. The guidance will provide more detail on engagement with the community, including issues around standards of engagement. There will be full consultation with all interested stakeholders on the guidance that will be issued to support the operation of community planning.

431. Guidance has also been a focus of the community planning working group, and I am pleased that Anne Donaghy, who chaired that group, is here today. That group worked very closely with the Department and developed a foundation programme that has already been introduced to statutory transition committees. It sets out, at a very early stage, a step-by-step guide to what transition committees and, eventually, shadow councils will need to consider to start the community planning process in earnest. The foundation programme will also be underpinned by a capacity-building programme. A lot of speakers raised the need to build capacity. Anne Donaghy's group looked, in some detail, at the capacity-building and skills requirements for community planning. As I am sure that you will be aware, community planning can cover so many different areas of life in council. The capacity-building skills framework for community planning runs to upward of 100 separate skills. So, we have a job of work to do to identify, quite quickly, the skills that we need to focus on in the very short term. We welcome the skills framework for community planning that has been set. That tool will be very useful for councils not only now but post-2015 as community planning develops. As I said, it was a very comprehensive piece of work that was produced by the working group.
432. A range of groups argued that they should be named in the Bill. We have also heard arguments that they should be equal partners. Clearly, setting communities or voluntary community groups as equal partners would, in effect, set a duty on them as well. That cannot be done in a piece of government legislation. Through guidance and working directly with councils, it will be for councils to determine their non-statutory community partners.
433. I think that I have covered most of the points. If I have not, I will be very glad to take specific questions.
434. **The Chairperson:** One point from Community Places is that the language is very passive. There are phrases such as “aim to promote”. Can we amend the language to make it stronger, so that statutory bodies will play a more active and meaningful role? I was the first chair of the neighbourhood renewal partnership in south Belfast. As others pointed out, people from other Departments come along and pay lip service; they do not really commit to aligning policies or bringing resources. How can we achieve that? There was one suggestion — I cannot remember from which organisation — asking whether we should put a statutory duty in the Bill for public bodies to align their policies.
435. **Ms MacHugh:** Yes. Indeed, there is already a provision in the Bill placing a statutory duty on statutory bodies to have regard for the community plan in the design and delivery of their services. We understand that this is the strongest piece of community planning legislation in these islands. The framework set in the primary legislation is attempting to balance a framework with flexibility. I have heard the arguments around the forcefulness of the language. We would be happy to talk to the Committee if you have any further recommendations or amendments that you want to consider. The placing of the statutory duty to have regard for the community plans in the delivery of services is much stronger than, for example, the very voluntary nature of strategies such as neighbourhood renewal.
436. **Mr McElduff:** Following on from what you were saying, Chair, what might the Department do, Linda, to make sure that the right people are around the community planning table, as the chief executive of Ballymena council has just said? I presume that it is a reference to the possibility that Roads Service, Planning Service and other Departments or agencies would not send senior people. Is there anything that the Department can do specifically to ensure that, at principal officer level or above — divisional manager level — or whatever, there will be active participation in the community-planning process and that it will not be delegated too far downwards?

437. **Ms MacHugh:** As regards ensuring that the right people are around the table, I suppose it depends on who you think are the right people. As I stated, there is a strong view that councils need to determine who the right people are for their own areas. Having said that, subordinate legislation will stipulate the key statutory bodies that will be required to participate. I am not sure that we could set very specific requirements into legislation about who those statutory bodies should send to the table. However, it is something that will have to be developed through the partnership panel at political level.
438. There is also a job of work to be done in the Civil Service to ensure that the duties and roles of other Departments in community planning are fully understood. It will not just be the Departments that are transferring functions to new councils, but key Departments, such as Health, Education and Justice, that will need to be involved in that process. So, there is a lot of work to be done.
439. **Mr Boylan:** Most of the points that I want to make are for Linda. This is a very big and important piece of work for us. I know that you said that each council will have its own priorities. However, clause 69(2) states that:
- “Community planning for a district is a process by which the council and its community planning partners—*
- (a) identify long-term objectives for improving—*
- (i) the social well-being of the district;*
- (ii) the economic well-being of the district; and*
- (iii) the environmental well-being of the district”.*
440. Those are three key elements, and we need all partners to be involved in that. When there are a couple of roles, I am concerned about how we set that in legislation to ensure that the statutory agencies fully implement and are responsible for their roles, which is the point that Barry made, and how to bring in other agencies and community-and-voluntary sector bodies that have ideas and input. If we do not put that down
- in legislation, how do we ensure that councils will invite those people and ensure that they are part of the whole community-planning process? I am concerned about that as well.
441. I want to pick up on another point. In the legislation, where it states, “may have regard”, I think that it should say, “must have regard”. There should be a duty in the terminology used in the legislation. I ask that we look at that.
442. Somebody mentioned the Scottish model; its single policy. Last night, I had a quick chance to read a Fife community-planning document, which I thought was very good. It would be a good starting point. I do not know whether the Department has looked at that document’s basic concept of a community plan. Have you any comments on that document?
443. **Ms MacHugh:** You have raised a number of issues. As I said at the outset, this will take some time to bed in. If community planning is to work in the way intended, serious consideration needs to be given by central and local government on how working together can help everybody to deliver on their key priorities. The key priorities for statutory agencies and Departments are set out in the Programme for Government. So, we need to look at how the Programme for Government and the delivery of those targets overlay the priorities of local government and what the specific issues are in local-government areas that relate back to the Programme for Government.
444. Linking those two together is the best way to ensure that agencies and Departments come to the table. If working together will help them to deliver on their targets, that will be a much more compelling way to do it than by forcing it through in legislation. That said, there is clearly a statutory duty being placed on Departments to have regard for the community plan, support and promote the community planning process and to be actively involved in it. It will be an interesting debate when it hits the Assembly, and it will

- be interesting to see how much the Assembly is prepared to look at local government having powers over central government regarding the community planning process.
445. In Scotland, there are many good examples, and, indeed, two representatives — an elected Member and a council officer from a Scottish council — are coming over on 3 December to a community-planning seminar and workshop, which is part of the capacity building programme for community planning. It will be very interesting to hear their experiences over the past 10 years on how it started out, what it looks like now and how they see community planning developing. I have no doubt that this policy area will need to be refined over time as we see how things work in the early stages of the process.
446. **The Chairperson:** We need to have it in our minds that we want to do what is best for the citizens through the services provided by councils or Departments. It will also be a matter of Departments maybe letting go of their powers and resources a bit so that local government can deliver services in a more efficient way or nearer the ground because they perhaps know the need better than Departments. Do you want to respond?
447. **Mr Rafferty:** I will respond to Linda's point about the need for local government to link with the strategic priorities such as the Programme for Government, emerging single planning policy statements and other strategic documents. Learning from elsewhere suggests that the community plan is the vehicle for linking local need with strategic priorities. That needs to be articulated more strongly in the legislation or in future guidance. We must stress the message to councils that that is one of the functions to meet the long-term objectives of creating environmental, social and economic well-being for the councils.
448. To support that, and linking back to some other points about the role of other stakeholders and organisations, it will be crucial in the new local government functions to clearly articulate a strong, strategic community engagement framework that builds on the learning from Scotland's national standards. However, we have a link in the legislation between land-use planning and community planning, and those two entities engage with a wide range of stakeholders. There is a common purpose between the two. The council then needs to clearly define a robust community engagement framework that allows stakeholders to feed into those two systems that symbiotically support each other in their outputs and directions. So, the spatial plan becomes the spatial articulation of the community plan. The community engagement framework in councils will be crucial to ensuring the success of both those functions.
449. **The Chairperson:** Linda, you mentioned capacity building for councillors and council officials. What about capacity building in communities? Who will fund that?
450. **Ms MacHugh:** That has been raised before, and we are talking to the Department for Social Development about how it might be taken forward. What can the Department fund? Our focus has to be on ensuring that elected Members, officers in local government and central government officials are prepared for the reform process. To date, that has been the focus of the capacity-building scoping that we have been doing. Some civil servants will, in less than 18 months, move to councils to become council employees, but civil servants in other Departments will have a changing and much stronger working relationship with local government. As I said before, there is a real need to expand the awareness and understanding of what community planning will mean for all Departments in government, not just those that are transferring functions.
451. There will be a changing role for the voluntary and community sector and for communities themselves, and there are many interesting debates on that

- subject. What role does a voluntary and community sector organisation have in representing its community compared to elected Members representing the communities that have voted them in? At times, there is also a feeling that the harder-to-reach groups are not represented through voluntary and community representative organisations. I concur with the previous contributor that a framework for each council on effective community engagement will be required, and, at this stage, we are looking at a way of providing expertise at a very early stage directly to statutory transition committees to handhold them through that community engagement process, because the legislation says that there needs to be effective community engagement. As I said before, that effective community engagement will look and feel different in each council.
452. **The Chairperson:** Mr McCallan, you can make a brief comment. We need to move on.
453. **Mr McCallan:** I am conscious of your time, Chair, and that of the Committee.
454. The Local Government Association is already delivering what is called a political skills framework, and, through our charter programme, which costs about £112 per councillor, we will be able to assist if we are asked. People referred to excitement about community planning, but excitement also has to be paid for. In order to simplify and reduce the complexity and fear of this process, we will partner the existing and new councils in developing what we are simply labelling a programme for local government. A core component part of that will be the community plan. Why are we doing a programme for local government? It is simply because unless we have a programme or a work plan for local government, we cannot be a component part of the new Programme for Government that has been espoused earlier today. We will simplify that and will practically and politically contribute to it in 2014.
455. **The Chairperson:** Thank you.
456. We will move on to the next two Parts. As I said earlier, we need to finish by 12.00 pm. The next discussion will be on Part 12 of the Bill, which on is performance improvement and covers clauses 87 to 104. I invite NILGA to open the discussion, please.
457. **Mr McCallan:** NILGA is keen for councils to be supported to improve their performance, but it has a number of concerns, which it has written about, registered and will develop. The performance improvement model proposals in the legislation, which are taken from the Welsh performance improvement model, is outlined in Part 1 of the Local Government (Wales) Measure 2009, but it does not consider the differences in Northern Ireland. Since councils here are largely financed through the rating system rather than through a central government grant, the approach outlined in Part 12, which is exacerbated in Part 14, creates a rigid top-down approach. There is no evidence of an appropriate performance management and improvement framework to complement those proposals. The association and its member councils were concerned about the list of objectives specified in clauses 88 and 92 in that there are already duties to report on fairness and sustainability. The list of duties, as lifted from Welsh legislation, must be re-examined, tailored and made relevant to Northern Ireland legislation.
458. Avoiding a selective approach to taking legislation from another jurisdiction is crucial to the development of the Bill. In the Welsh model, there is a requirement on directorates to work with the councils prior to intervention on performance improvement, and we strongly encourage the Committee to examine the Welsh legislation, from which Part 12 has been lifted, and ensure that the more constructive collaborative ethos in situ in Wales is replicated in Northern Ireland.
459. It is worth noting, Madam Chair, that the Welsh model is currently under criticism in practice, and it has proven to be overly bureaucratic and costly and, ultimately, has taken resources

- away from councils there. Bear in mind that the resource base in councils here is fundamentally different. So, we are strongly of the view that adopting a system that is perceived elsewhere to have problems would make it difficult to deliver the vision and transformation required.
460. We are willing and able to share the collaborative work that is being developed in Wales and which is derived from the Welsh Local Government and Communities Directorate and the Welsh Local Government Association. In partnership, they have reviewed the current performance improvement arrangements for local government and have developed an agreed new system. In other words, after their earlier legislation, they have realised that there are one or two flaws and they want to contemporise it and get it right. We should look at that as well as the old legislation.
461. We particularly request the Committee to consider the scale of powers provided to Departments on performance improvement so as to ensure that a proportionate approach is taken. It is the association's view that local government must determine how its own performance improvement is designed and managed. NILGA will return to the Committee with a further paper on this issue if it is able to do so before the end of the calendar year. We have already provided the Committee with a copy of the report of the recent review of the improvement, collaboration and efficiency (ICE) programme, which was agreed by members of the sector last Friday and which has also been sent, for courtesy, to the Minister.
462. As identified in our written response, further discussion is needed on this entire part of the Bill and especially on the future of performance improvement in Northern Ireland local government. Looking into the future and being cognisant of submissions made by others, we believe that an improvement body for local government is urgently required, but it is being dynamically developed. We need to make sure that people are aware that work is going on, even if, sometimes, that work can be overlooked because of, I assume, time pressures.
463. NILGA seeks to complete the consultation on the improvement collaboration exercise and improvement bodies, which is presently well developed, and report to the Committee and our other stakeholders before or during February 2014. We are very driven by timelines and the sense of urgency that needs to be adopted by us all.
464. Finally, it is vital that the local government auditor and the Northern Ireland Audit Office (NIAO) are properly resourced to perform the duties required for an agreed local government-designed performance management framework — I stress; an agreed local government-designed performance management framework — together with desirable training and development of NIAO staff in that regard. NILGA urges that, as I mentioned earlier in respect of Departments, the NIAO should, in the first instance, work with councils prior to intervening or carrying out special investigations.
465. **Mr Pat Cumiskey (Banbridge District Council):** I represent the Association of Local Government Finance Officers. The association's case, which is outlined in our submission to the Committee, is that the proposed legislation is being transposed from a very different UK experience. It represents a disproportionate statutory authority designed to control large, profligate UK local authorities with a history of resistance to central government control. The difference in scale in political and economic culture in Northern Ireland is such that we believe that the introduction of a full-scale best-value performance industry would be extravagant and unnecessary.
466. Among the submissions that we looked at, we were particularly interested in the one from the local government auditors. We agree with a number of their proposals. They suggested that they would prefer to act independently rather

than as a regulatory arm of central government. We concur with that. We believe that local government can play a very important role in a less prescriptive performance framework in Northern Ireland. We are in a position to see best practice and worst practice in operation, and we believe that, rather than tinker with the Welsh experience, we should look at the possibility of enhancing the existing legislation in Northern Ireland. We know that local government audit has a facility to carry out value-for-money audits but has not done so in the past 25 years. Certainly, there is an opportunity to invite it to extend the role that it can already play under existing legislation rather than going down the route of a very prescriptive role that is playing out in the UK and is probably coming to the end of its cyclical life in the UK.

467. **The Chairperson:** Any other comments?
468. **Mr Walsh:** I welcome Derek's comments. On behalf of the council, we agree. If you look at clause 87, you will see that the things specified regarding performance improvement are, in many cases, already a free-standing legal duty in any event. So, there appears to be a need to re-examine that part of the Bill regarding existing legal duties with regard to best value and other legal provisions, including section 75, because fairness is mentioned again. Our view is that it should be re-examined and, ultimately, so should the role of the local government auditor and the Department regarding the enforcement of it.
469. **Mr Weir:** This is perhaps directed more towards the Department. I heard from NILGA and from individual councillors a concern that, regarding performance management, there is a degree of cut and paste of what is in Wales. I suppose the concern is that what is potentially particularly inappropriate is the fact that, in Wales, as Derek indicated, there is a certain level of criticism of what has happened. However, given that, at least in Wales, there is a very wide range of powers exercised by local government, so there may be more of an argument for the appropriateness, does the Department not consider that clause 103, which gives a power of intervention and direction that potentially widens it beyond the DOE to basically any other Department, is potentially a bit over the top and excessive, particularly given the lack of powers in Northern Ireland? Is that really necessary in light of the fact that there are much more limited powers here? I am interested to get the reaction of the Department in connection with that point when it comes to your summing up.
470. **The Chairperson:** Linda, it is overly bureaucratic, top-down and needs to be re-examined. What is your view?
471. **Ms MacHugh:** The reorganisation and reform of local government provides the opportunity to restructure the performance improvement regime for councils, to support the delivery of high-quality services to ratepayers and to align that more closely with community planning. I mentioned that there is a clear link between the community planning process and performance improvement. The key features of the new regime were supported by elected members from the main political parties involved in the policy development panel, which had responsibility for service delivery issues, and were also endorsed by the strategic leadership board. It is on those decisions and agreements that the legislation is based.
472. The provision of a statutory framework for performance improvement is designed to provide a degree of consistency across councils, but as with many aspects of the Bill, there also needs to be a degree of flexibility within that framework to identify local issues that each council may need to address, particularly in the context of community planning and in recognition of the fact that it is accountable to its ratepayers. The link between the council's community plan and the setting of strategic improvement objectives is explicitly provided for in the Bill. The proposed new framework is designed to move the delivery of continuous improvement on from the provisions of the Local

- Government (Best Value) (Northern Ireland) Act 2002, with its more limited focus, and place greater emphasis on the issues that are likely to matter to those receiving the services. The proposal is that the 2002 Act will be repealed when the Bill receives Royal Assent.
473. The improvement objectives specified in the Bill are as relevant in Northern Ireland as they are in any other region. The Department will, however, work with local government to develop guidance to support the operation of the regime. I already said that, for the services that local government provides, they will be able to set their own performance improvement targets. However, to address the real concerns that I have heard here today and previously about the top-down approach, we are providing an enabling power for the Department, and, indeed, other Departments, to set performance indicators and standards. Those are anticipated to comprise a suite of performance indicators that will be specified in subordinate legislation. They will be high profile and limited in number. They will be developed in partnership with local government through the operation of the partnership panel.
474. There is also a need, clearly, to coordinate those with other Departments, and the intention is that it would only be other Departments that have transferred functions that would be able to set performance indicators for the new councils. The need for that is because we have listened very closely to local government about the financing of the transferring of functions. There was a real will, in central and local government, for it not to be done through a grant mechanism. So, the moneys will be calculated for each of the new council areas and released to those new councils in a block. No restrictions will be placed on how the money should be spent or what it should be spent on, but there needs to be a series of outcomes because that money has been voted into the Northern Ireland block for the delivery of services and the meeting of certain targets and outcomes. So, because of that, there is a requirement for other Departments to set performance indicators. That said, we are also aware that each Department needs to be working in conjunction with other Departments to make sure that the overall performance indicator framework is not overly bureaucratic, unwieldy or undeliverable. There will need to be a consistency across Departments in setting the terms.
475. Another Department will only be able to intervene in the operation of a council in connection with a function for which that Department has policy responsibility. The intervention powers would be a measure of last resort and would be invoked only if a service that has been transferred to local government is not being delivered. Clearly, if a Department still has policy and legislative responsibility, it also has responsibility to make sure that it is being delivered. So, that would be a power that would be used in extreme cases, and only if one particular council was absolutely failing to deliver the services that the ratepayer has paid for. That aspect of the operation of the new councils will technically be taxpayers' money, as opposed to ratepayers' money, because it is not money that has been gathered through the rating process. I hope that that has answered some of the questions.
476. **The Chairperson:** Are there any comments on Linda's response? If not, we will move on to the last part of our discussions: part 13, which relates to the partnership panel. I invite NILGA to comment first.
477. **Mr McCallan:** Yes, Madam Chair, and I am sure that we are all decided that this is the last part. The introduction of a partnership panel is welcome. It was cross-referenced today, so I do not think that anyone should understate the importance of getting it right.
478. NILGA is concerned that the proposed structure of the panel makes no reference to strategic, regional local government membership, and strongly recommends to the Committee that clause 106 is amended to ensure

- that any association representative of regional elected member leadership in district councils is included in the membership and operational arrangements for the panel. That is precisely the situation in Scotland and Wales.
479. I suppose that it is worth mentioning — briefly, because of time constraints — what we think the partnership panel should be for. That has been referred to today. We believe that it should provide a clear, two-tier negotiating framework that should, at a minimum, have the full 11-council geography when it comes to representation. It should also regionally appoint political leadership for all councils as a sector. My colleague, Councillor McPeake, referred to the fact that there may be specialists within local government at councillor level supported by officials. For example, we have them in existence on things like regional transportation and health. So, we want to be a contributor, not just part of a structure.
480. As I mentioned, that already exists, and the political partnership panel in Wales and Scotland is also co-designed and co-administered by the two tiers of government. It is about ensuring that policy and investment issues are developed and that we anticipate issues and work as political and practical partners.
481. We should also perhaps look beyond a single Department and this Bill. There is in existence a proposed framework for the development of a public sector improvement board, as espoused, as I understand it, by the recently appointed Minister of Finance and Personnel. We need to make sure that they are all integrated so that we can establish proper two-tiered government here, where we are all held accountable. It is important that we should not simply pursue getting things over the line, because we are about transformation, after all.
482. I should also make the point as a representative of the Local Government Association that this is not about NILGA.
- This is not about us wanting to be on anything; it is about the sector and its policy contribution across the totality of councils. The Local Government Association does not have any statutory, legislative or resource security as exists in other neighbouring jurisdictions. We are merely there by virtue of our output and our membership. Therefore, we are not talking about ourselves; we are talking about local government's credibility and negotiating partners.
483. Finally, we respectfully suggest that the clause enshrines the ability of local government to nominate its own representatives through an agreed appointment process. At present, the clause appears to give the Department control over these appointments, and all we are saying is that there should not just be a requirement to consult local government prior to making a decision. We should be able to appoint our own representatives, again, in keeping with the mechanism that exists in neighbouring jurisdictions.
484. **The Chairperson:** Thank you, Mr McCallan. Are there any other comments? If not, I will go to Linda. Why should the Department appoint the members? Why should local government not be able to do that?
485. **Ms MacHugh:** The establishment of a statutory partnership panel is designed to provide a forum for discussion and an exchange of views on matters of mutual interest and concern between elected representatives, councils and Ministers. In that spirit, the clear intention is that the Department will appoint the panel, but it will be based on the elected representatives nominated by each of the new councils. It is not that the Department will decide who should represent each of the 11 councils; that will clearly be a decision for the new councils. However, because it is a statutory body, the Department will have to formally make the appointments to the panel. It would not work if the Department was to determine who should be representing each of the 11 councils, so I want to allay everybody's

- fears by saying that this will be a decision of and for the 11 councils.
486. **Mr Weir:** Linda, I appreciate that, and I know that you have said that before, but I think that there is a concern because the wording of the legislation perhaps gives a misleading impression about that. Presumably, that could be covered by a slight amendment to the wording along the lines of including, “the Department will appoint the nominees of”, or words to that effect.
487. **Ms MacHugh:** We can certainly look at the wording if you believe that it would help.
488. The legislation cannot make provisions specifically related to a regional representative body for local government as it is not a public or corporate body. As Derek said, NILGA does not have a statutory footing. However, it would be for the new councils to determine whether a role for a regional representative body, and there are several of them in local government, is appropriate. It may like to nominate somebody from one of the regional bodies to represent the sector as a whole. Our understanding is that, in Wales, the Welsh Local Government Association president sits on the panel as an observer. That might be one solution, and I am hoping to look at that, but as I said, it would be for local government to determine who its representatives should be. That is not something that the Department would wish to determine for local government.
489. **The Chairperson:** Mr McCallan, do you want to come back on that?
490. **Mr McCallan:** I may be wrong, but my understanding is that he is vice-chair and he creates the agenda with the Minister who has responsibility for local government and community. The observer is the chief executive of the Local Government Association, but obviously, in all these situations, we can seek clarity and check facts.
491. **The Chairperson:** Are there any comments or responses from members?
492. **Ms Harrison:** I think that consideration needs to be given within the partnership panel and also in the discussion on improvement and performance to the performance and improvement of the partners who are involved in the delivery of the community plan. Ultimately, the delivery and implementation of that plan will, to a large degree, be determined by the performance of those partners. The RTPI is not clear about where the provision is in the legislation to improve or monitor the performance of those critically important partners.
493. **Ms MacHugh:** It would depend on what you determine a partner to be. I said that the partnership panel will be a useful forum to look at how other Departments are performing in their community planning duty. We also then need to consider the role and performance of the non-statutory partners. However, I am not sure, for all the reasons that I articulated, that that is something that a Department could or should legislate for. However, it will be an issue in local government and in developing a community planning policy that the Department will need to look at as we see how this rolls out.
494. **Alderman A Graham:** The partnership panel will be an important part of what happens in future. It is important that it is as right as it is possible to get. It is important that it does not become overly bureaucratic and is focused. With the best will in the world, when a body or panel covers the whole Province, sometimes its effectiveness becomes blurred. Great care needs to be taken that this partnership panel is an efficient and streamlined way to liaise between local and central government. That will be the key.
495. Very often, local government is what it is called. One cap does not fit all on some occasions. Therefore, representatives can spend a lot of time and energy getting bogged down in stuff that they are not interested in as far as their locality is concerned. Some things are generic, but other issues are more local. We have to remember, and Derek

- said it, that local government is local government.
496. **The Chairperson:** Thank you very much. We have about 20 minutes left. Are there any other burning issues that anyone wants to raise?
497. **Mr McCallan:** Madam Chair, with your indulgence, I want to raise an issue not about mechanics but about money. The association realises, and is keen to make the Committee aware, that the impact of many clauses in the Bill will lead directly to increased costs for new councils. The pragmatist in me says that, if you get responsibilities, you have to invest yourself. However, after reform in April 2015, we need to consider those among a suite of what are considered to be new burdens. Those new burdens need to be taken into consideration in investing in post-reform outcomes. This should all be about delivery, not process. They will include, as members of the Committee are aware, increased administration costs, for example, due to the new requirements on the provision and storage of information. That is a small issue, but it will have a cost. There will be new commissioner costs, increased auditor costs and increased and more formalised community consultation. They may all be good things, but they will come with a bill.
498. If you are a partner in government, as the community planning ethos suggests, you invest, you pay and you account for yourself; you do not dump and run. We are keen to highlight to all our MLA colleagues in central government that there needs to be a way in which the costs and impact of reform can be co-invested in. We make that point not as a criticism but as a fundamental reality of the funding structure of local government. It should not be largely driven by making transformation and improvement at the expense of front line services and ratepayers.
499. **The Chairperson:** That is a valid point. Obviously, with functions will come resources but, as you said, the other costs need to be taken into account.
500. Linda, do you want to respond?
501. **Ms MacHugh:** I am sure you are aware that the issue of who pays for reform has been much debated over the past few years. The original decision that local government would pay was overturned, and that was on the basis that, in the long term, the savings that would come with economies of scale would be met by local government, and local government would benefit from those. There was also a realisation that the reform process in and of itself would cost money, so £47·8 million was agreed eventually by the Executive to help to ease the reform process.
502. There is a challenge for local government to make savings. It will start now in decisions that the new 11 clusters will make, for example, about how they organise their services, look at economies of scale, and how they receive the transferring functions and make those work with their existing services. The transfer of functions working group, which is lead by the chief executive of Belfast City Council, has just appointed consultants to look at organisational design principles that will help the new clusters to work through the issues that they need to consider in order to look at how they best deliver services in the most efficient way possible.
503. The intention is not to produce a strict organisational design chart for every council, because again, the structure that is appropriate for Belfast will not suit a large rural council such as Fermanagh and Omagh. That work is continuing, but issues such as sharing services and joint procurement will and do have the ability to make real savings that can then be put into improving the lives of ratepayers.
504. We had one positive example at the regional transition committee yesterday from mid and east Antrim where, purely by looking at the three constituent councils that will form the new council, and looking at joint procurement strategies, they are able to save half a million pounds. That is on just one element of the operation. If you can

extrapolate that through to the potential that economies of scale will bring, you see that that is the sort of issue that we hope that statutory transition committees will start to think about in a serious way now, as mid and east Antrim has done.

505. **The Chairperson:** Thank you. If there are no other issues, it leaves me to thank everybody for their input and for attending, especially as we had such an early start. I am sure that I speak for other members when I say that it has been a valuable and productive event for us.
506. Hansard has recorded the meeting. All those who attended will receive a copy of the transcript in the next few days, and the final version will be on the Committee's web page under the section on the Local Government Bill. The final transcript will be included in the Committee's report on the Bill to the Assembly, which is scheduled for February or March 2014.
507. I draw your attention to an event that will immediately follow this one in the Long Gallery. The Assembly Research and Information Service has organised a seminar on RPA and community planning. Obviously, those topics are closely related to the Local Government Bill. A lot of you have probably been invited to the next event. You are obviously very welcome to stay and participate in it.
508. Finally, I would like to say a quick "Thank you" to the Assembly's official reporters for transcribing the event, Assembly Broadcasting for providing the recording service and the catering and support staff for their help.
509. Thank you very much for coming. The task in front of us is massive, not only the development of 11 councils, but the transfer of functions and new issues, ethics and codes of conduct. It is not an easy task. Best of luck to you all and ourselves. We will do our best to scrutinise the Bill. Thank you very much indeed.

5 December 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Ms Pam Brown (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Ian McCrea
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Councillor Myreve Chambers	<i>Northern</i>
Alderman Arnold Hatch	<i>Ireland Local</i>
Mr Derek McCallan	<i>Government</i>
Councillor Sean McPeake	<i>Association</i>

510. **The Chairperson:** I welcome Derek McCallan, chief executive of the Northern Ireland Local Government Association (NILGA); Alderman Arnold Hatch; Councillor Sean McPeake, who is no stranger to us; and Councillor Myreve Chambers. You are all very welcome. I am sorry that we have kept you for quite a while. I saw you sitting in the Public Gallery. We have quite a few briefings today. Derek, you will give us a five- or 10-minute briefing, and then we will take questions.

511. **Mr Derek McCallan (Northern Ireland Local Government Association):** Thanks, Madam Chair, but, as always, I will defer to the elected members, with our president commencing. We are conscious of the time, but, because this is the biggest Bill affecting local government since 1972, we have presented you with an issues paper to impress on you the particular issues.

512. **Alderman Arnold Hatch (Northern Ireland Local Government Association):** Thank you, Chairperson, for the opportunity to give some evidence, albeit that time is short today. The overarching purpose of our evidence is to encourage the Committee to cut

out any unnecessary bureaucracy and control from the Bill and to enshrine the intent of the vision for local government by creating strong local government and ensuring that councils can self-manage as a democratic part of government that is accountable to the citizen. We have already given detailed written evidence. I will speak on Parts 1 to 6 of the Bill and lead the discussion on Part 3.

513. Last week, we highlighted the Bill's highly prescriptive nature and the desirability of enabling more flexibility in how members may be selected for positions of responsibility and committee membership. We fully support the principle of proportionality but believe that local solutions that are politically acceptable, fully inclusive and agreed on should be permitted. We also noted that there is a need for clarification on committee chairs and on the relationship between schedules 3 and 4 on the prescription of outside bodies. Should the Committee so wish, we can further discuss the issues that we previously highlighted as arising in Parts 1 to 6 and possible solutions. After all, NILGA has become an improvement tool as well as an advocate for local government, should the Department care to co-design things with us.

514. In many respects, the crux of what we are saying today is that we need very clear guidance on how to deal with the issues. The Minister cited

“programmes that impact across a number of district electoral areas” — [Official Report, Vol 88, No 2, p64, col 1].

515. as one type of decision requiring a qualified majority vote (QMV). That could be interpreted as relating to many decisions that a council makes, and that is simply too wide and too vague. Therefore, we need some clinical guidance. NILGA encourages the Committee to ensure that the

- Department engages fully with local government in drafting those particular standing orders to explain exactly what we mean by something that impacts across district electoral areas (DEAs). It is not clear what that means or what it might be.
516. On the issue of call-ins in clause 45, there is a critical need to agree and clarify the definition of the requirements for call-in and to identify formally the range of circumstances to which call-in applies. We believe that the Department must be fully open to changing those arrangements through a formal review process. If use of call-in seems to be causing concern in the new councils, we need to be able to review the situation. The vision is to create a strong, empowered local government, not to imprison it in open-ended regulations.
517. Time constraints today mean that we would welcome an opportunity to come back to the Committee. Alternatively, may I suggest that a subgroup of the Committee take a day out, hosted by NILGA, and go through the Bill line by line. We are forced, because of your time constraints, to cut back on what we want to say and on allowing you to ask pertinent questions. Therefore, we invite you to consider that possibility early in the new year so that we get the time to go into the nitty-gritty of some of the clauses.
518. **The Chairperson:** Thank you. That is a good idea, and I will consult members to see whether they would be interested in forming a subgroup.
519. **Mr McCallan:** Madam Chair, with your indulgence, we will ask Councillor Chambers to continue as we work within your time constraints.
520. **Councillor Myreve Chambers (Northern Ireland Local Government Association):** NILGA is keen for the Committee to consider the financial impact and administrative burden that Part 8 of the Bill will have on councils. The main issue that requires solving for local government in this is in clause 50, which deals with access of the public and press to committees and subcommittees. NILGA would like the Committee to note that it is fully supportive of openness and transparency in government, and that includes openness and transparency in councils. We place value in the ability of elected members to have early policy discussions within subcommittee meetings, which are minuted but to which the public and press, by default, do not have access. Minutes of those subcommittees would be published and presented for open committee meetings. NILGA's view is that that allows for freer discussion and debate. To extend clause 50 to subcommittees would be damaging to the democratic process. NILGA strongly recommends that clause 50 be applied to committee meetings but not those of subcommittees.
521. Part 9 of the Bill deals with the conduct of councillors. Last week, NILGA led on the discussion about the code of conduct, which we strongly support. We look forward to its publication but again raise the issue of the need for a specific appeal mechanism, which I think is vital, that should be enshrined in the new legislation, as well as the need for a procedure for minor complaints. NILGA members are also keen that the Committee explore a wider approach to conduct; for example, to utilise and apply the mechanism for elected members on policing and community partnerships and other formal partnerships prevailing in councils that are crucial to safer communities and the local economy. Just because these are different governing departments does not mean that good conduct benchmarks cannot be transferred. That would be a good use of time and money, with good outcomes.
522. Part 10 addresses community planning, and its introduction will be of great benefit to councils and the communities that they serve, especially taken alongside other and existing transferring powers. It is good that the foundation programme, which was jointly developed with local government, has now been issued. To ensure that

- community planning can succeed in the Northern Ireland context, we believe that a number of key issues must be addressed.
523. There is widespread concern in the local government sector that the proposed legislation is not strong enough to compel partners to participate fully, ensuring investment of time and budget by senior decision-makers in order to fulfil the identified objectives. Although community planning is of course about building relationships and working together, financial resources will inevitably be required to deliver on the full range of necessary actions. Those resources should be found from all participating partners. Colleagues in Scotland with long-standing experience of operating a council-led community planning system have identified the omission of a clear reference to resources as a particular weakness in the Bill.
524. NILGA urges that the Bill be strengthened through the insertion of appropriately worded clauses — for example, at clause 69(3) — to provide the required reassurance to councils that partners will have to attend, sending senior officials, and, where required, to align their budgets accordingly. For example, it could explicitly state that the determination and implementation of a community plan would require specified and relevant partners to invest the human and financial resource to achieve a key performance target within the plan. That would be a good approach and would put plans on a businesslike footing, with the community as custodians, through council, of a local public purse.
525. There is a particular issue with how Departments have been included in the Bill. At present, Departments are tucked away under a miscellaneous heading rather than grouped with councils and partners that also have duties. The wording of the proposed duties of Departments needs strengthening to ensure that all parties that are relevant to the success of community planning have strong obligations placed on them. A reciprocal relationship with performance improvement is vital in a central government/local government partnership relationship.
526. Overall, community planning is, in many respects, an opportunity for councils to have responsibility for many of the things that we do not have the delivery power over. We are not in England, Scotland or Wales. We do not have one quarter of the public purse but one twentieth. Therefore, do not, please, give us weak community planning wording that places a responsibility on councils and a get-out clause for Departments and agencies. Thank you very much for listening.
527. **Councillor Sean McPeake (Northern Ireland Local Government Association):** I will touch on three issues: key performance improvement, the partnership panel and the proposed control of councils by Departments. The performance improvement model proposed in the Bill is largely taken, as you know, from the Welsh model, without consideration being taken of the differences between councils in Wales and those in the North. We believe that, since councils here are largely financed through the rates system rather than through a central government grant, the approach outlined in Part 12 is too top-down. Additionally, we are concerned about the objectives specified in clauses 87, 88 and 92, in that there are already duties to report on fairness and sustainability. The list of duties, as lifted from the Welsh legislation, must be re-examined to be relevant to us and to reflect the duties with which councils are already expected to comply.
528. The selective approach that has been taken to drafting Part 12 is also of serious concern to us. In the Welsh model, there is a requirement on directorates to work with the councils prior to interventions to do with performance improvement. We encourage the Committee to examine the Welsh model to ensure that the more constructive, collaborative ethos in Wales is replicated here.

529. The Committee is also encouraged to examine the policy proposals made by policy development panel B (PDP B) to the strategic leadership board in 2009. I understand that a memo was sent to you yesterday or the day before about the partnership approach to the development of future guidance and performance indicators. The Welsh model and other more top-down approaches to performance management in other regions have provoked criticism and have been largely abandoned in favour of a self-managed approach. That, coupled with a dedicated improvement body, would be less bureaucratic and less costly and would not take resources out of the front line and into the machinery of over-regulation. NILGA says that to adopt a system that is perceived to have failed elsewhere will be disastrous for the transformation of local government here. Ask Welsh local government and the Wales Audit Office.
530. Briefly, on the matter of an improvement body for local government, we suggest that that is urgently required. That is being dynamically developed and is timed to be in place in line with the new councils taking full effect by April 2015. NILGA seeks to complete the consultation on that, which is currently well developed, and to report to the Committee before or during February 2014. We recognise and support the work that has already been done by Dr Clive Grace, commissioned by Belfast City Council, earlier this year. It requires that a performance framework for councils be constructed as a whole system, taking into account not institutions but policies and the capacities of the sector. The improvement body could be funded through subordinate specified bodies legislation made under the Local Government Finance Act 2011. We enquired about that and understand that a working group has already been set up. We particularly request that the Committee consider the scale of powers provided to the auditor and Departments on performance improvement and ensure that a proportionate approach be taken. Council performance improvements must be self-managed.
531. Clause 103 must be amended to ensure that a Department can intervene in the work of a council only on matters pertaining to the policy function of that Department. The clause could be redrafted to echo the content of the supportive approach that is designed for Welsh Ministers, as previously highlighted.
532. Clause 97 in particular over-empowers the local government auditor. A policing role for the auditor is inappropriate, and the clause reduces the democratic role to a bureaucratic function. It is ultimately up to the electorate to decide whether a council is successful. There is potential benefit to the local government auditor being asked to provide assurance on the implementation of an agreed framework, but we suggest that it is inappropriate of the auditor to comment on work in progress or to make predictions about future workings of councils.
533. On the work of the partnership panel, which we touched on last week at the stakeholder event, we very much welcome the proposal. We reiterate our concern that the wording in the Bill makes no reference to strategic, regional, local government membership. Therefore, we suggest that clause 106 be amended to ensure that the association representative of district councils is included in the membership and operational arrangements for the panel, which, after all, is the case in Scotland and Wales. The Bill, as with the present mechanism, diminishes the role of the elected member. No regional body is a bad democracy. We also recommend that the clause enshrine the ability of local government to nominate its own representatives through an agreed appointment process.
534. Finally, NILGA is strongly opposed to the word "control" in Part 14, the title of which is "Control of councils by ... Departments". We believe that Departments should work with councils alongside the partnership panel rather

- than attempt to control. We will seek specific consultation on Part 14. The levelling and widening of control over councils as expressed in the Bill is costly in time and money to both parts of government and enshrines a punitive process rather than enabling outcomes.
535. **The Chairperson:** I forgot to say to all members and to you that the session is being recorded by Hansard.
536. **Mr McCallan:** Thank you for that. As I wrap up on behalf of the members of the association, let me express our gratitude not only for today but for the analysis and input that Committee members have made to something that is important for local democracy. Not since 1972 have we had a Bill placed in front of the people here that requires being studied forensically and got right. Our view, Madam Chair, is that local government is perhaps the most public-spirited area in public service in NI. Members will work across constituencies for constituents on any matters, even those that they are not responsible for, and, from the perspective of the Bill, we believe that our input is really important and that the legislation should be co-designed with us.
537. In conclusion, I think that we have to look at the outcome of the Bill rather than at the minutiae. It should be a triumph of local democracy, and, at present, a lot of it is good. We are a constructive organisation and a solutions provider, but some of the Bill will divide, control and diminish local government. Our public spiritedness and professionalism are limitless, but our capacity, resources and patience are not. Thank you for your time. We are happy to take questions.
538. **The Chairperson:** Thank you very much indeed, Derek, and the councillors. You have been very proactive in helping us to look at the Bill.
539. The issues that you raised today were all voiced at last week's stakeholder event. We heard that you think that the Bill is top-down, over-bureaucratic and too prescriptive and that you think that we do not have same power here, so the Welsh model does not apply. The departmental officials, mainly Ms Linda MacHugh, responded. How do you feel about her responses? Were you satisfied? Were you reassured by them? Do you want to make any comment to the Committee about the Department's responses to your queries last week?
540. **Mr McCallan:** I think that more work is needed, and that work involves cooperation, trust and partnership. We do not have all the right answers, but we have the capacity to provide solutions to make things better. There are enhancements to the Bill that would help local communities, local democracy and local investment. We are acceptant of the fact that the Department is required to do its function. We want to be enabled to do ours. The NILGA members may wish to strengthen that comment.
541. **Councillor McPeake:** There are many strands to what we have talked about today. The more that you talk about it, the more issues come up, and that was very relevant at the stakeholder event. I would welcome further engagement if you were to take up the offer of coming to meet us so that we can tease out all the issues. It is only through taking that holistic approach that we will get a desired Bill, which is one that will work for all of us.
542. **Mr McCallan:** In answer to your question, Madam Chair, the feeling that I get is that there is an attitude problem. There seems to be a reluctance to share, work together and work with, which are the words used in the Welsh and Scottish models. It seems that we will regulate and we will control. It is an overall attitude. We are not satisfied at this point that that has changed, despite the many meetings that we have had with the Department.
543. **Mr Weir:** Thank you for the presentation. The key points focus clearly on some of the issues. Without prejudice to the position that the Committee takes, I have seen NILGA's full submission, and where there are problems, they

- are reasonably fixable, but there is a lot of detail in it. The suggestion of a subgroup from the Committee doing the equivalent of the guts of a day with you to go through the Bill line by line would be very helpful.
544. I have a couple of comments to make before I ask a couple of questions. The appeal mechanism and the code of conduct seem to be a no-brainer and need to be put in place.
545. First, on direct regional representation on the partnership panel, do you envisage that level of amendment making specific reference to a regional body without necessarily naming NILGA?
546. Secondly, the issue of control of councils under clause 107 was raised, and Councillor McPeake said that that is, at best, fairly excessive. You referred to the fact that there is a potential amendment in connection to that. On the performance improvement proposals, you mentioned the cut-and-paste job from Wales. I wonder whether there has been any discussion with the Department around alternatives.
547. I will get all the issues out in one go. In Alderman Hatch's initial comments, he talked about proportionality and finding a local solution. Is that on the basis that, if there were an agreed solution, presumably, with a sufficient level of buy-in for QMV, that would be presented to the Department for ratification? It strike me that if you have something that everybody is agreed on, it seems a bit perverse to say, "No, you cannot have that".
548. On the QMV side of things, as you said, there is concern if things are too widely drawn on, for example, the capital investment side and projects crossing DEAs. Belfast, in particular, has made the point that virtually any capital project that it does will have an impact on a range of DEAs. That could become a factor. Do you think that QMV should be restricted purely to circumstances in which it is used as a call-in mechanism? On that point, if you have that mechanism, there must also be some device that qualifies whether a call-in is legitimate. In the legislation, it is, essentially, the chief executive getting the approval, or otherwise, of a lawyer. The concern is that that could create very different responses.
549. The final point is for Councillor Chambers. You mentioned community planning and the need to strengthen that provision. Do you have any thoughts on how that could be strengthened? It is legitimate to say that it needs to be strengthened to ensure that it works and that the appropriate people are at the table. My concern is that no matter what is in the legislation, a lot of community planning will depend on the willingness of groups to show up. There may be a legal requirement on somebody to be there, but what about the extent to which the Housing Executive, the local health trust etc buy into it? I wonder how we will crack that problem, because I am not sure whether there is a form of words in legislation that can automatically do that, although it might help. What do you have to say in response to that range of questions?
550. **Mr Boylan:** Thanks, Peter, for putting that on record on behalf of us all.
551. **The Chairperson:** Have you left anything for anybody else, Peter?
552. **Mr Weir:** If I have not, it will be a short session, Chair.
553. **Councillor Chambers:** My experience of bodies coming on board in partnership with local government has not been very good. Even the PCSP, for example, has not been very good. Maybe two of three or two of six turn up. They neither have an input nor do they appear, with the result that you are left with the elected members and the independents.
554. We will be heavily audited and performance managed. Community planning is massive, one of the biggest areas in which local government will be involved. However, there is nothing in the legislation that says that you "must" do this, "must" do that or "shall" bring your money to the table, or whatever the case may be. We will be audited on our

- performance in managing community planning, but it cannot be left to local government to fund it, and that is my fear. The public know that community planning is coming to local government, and their expectations have been built up to such an extent that they believe that it will be the panacea for everything. Unless there is cooperation on revenue and time with the Departments and outside bodies, community planning will, in my view, be a Cinderella of the Bill.
555. **I think that this has to be legislated for:** they have to be there, and they have to bring their resources. I had a conversation with a person from a statutory body, whose view was, “If the reform of local government had been brought in when it was supposed to have been brought in, things may have been different. We have produced plans for up to 2018. Do you think that we will change our plans when community planning comes to local government?” I said, “No, we don’t expect you to change your plans, but we could at least be part of them and influence what you do in the future.”
556. **The Chairperson:** Can you align your plans with the Departments’ existing plans?
557. **Councillor Chambers:** The problem is the different timescales. The South Eastern Education and Library Board’s plans for our new area could differ from what is required, but, because of all the changes, it will not change direction. Unless some reciprocal arrangement is made, and the Bill is designed to cater for such issues, community planning will be a Cinderella, but it should not be. Everybody should grasp this opportunity and take it forward, because it will define what their area is like in the future. That is what is required rather than the piecemeal attitude of, “We can’t do that, because we are already doing this”, or “You can’t do that, because we’re already doing something else”. It is up to the community to decide, with everybody else, what it wants. Unless everybody is on board with their resources as well as
- their time, it will not work. I do not know whether that answers your question.
558. **Mr Weir:** Yes.
559. **Councillor McPeake:** I will follow on from Peter’s point. This is where I see the worth of the partnership panel coming into play. Some sort of mechanism would cajole, force, call it what you like, the Departments to align their plans to local plans and to report back if that was not happening the way it was supposed to. More specifically, I want to address the wording of the Bill. We are not saying that NILGA has to be prescribed in legislation; our suggestion is to match what is, I am told, currently in place for the Department for Employment and Learning (DEL). Within its framework, it is stipulated that it must ensure that an association that is representative of district councils takes part in —
560. **Mr McCallan:** That relates to employment and takes relevant legislation from elsewhere and puts it into tailored NI activity.
561. **Mr Weir:** Does DEL use a particular form of words? If so, could that be forwarded to us?
562. **Mr McCallan:** There is a particular form of words. As you say, today is not really about finding the words, but they do exist in statute in NI, and that is what we are keen to do. We are keen to make sure that anything good in the Bill is kept and anything that requires improvement is modified. That should not be done by edict or chastising, but by making it to a completely good Bill rather than having a curate’s egg that is good in parts.
563. I am trying to respond quickly to some of the many questions raised. Mr Weir made a point about clause 97. In particular, we think that the role of the local government auditor should, perhaps, be taken literally: it should audit what is being done. Trying to future-proof, predict or say that we think that local government should be doing this or that redefines the role of the local government auditor and starts

- to bring in, for example, the need for a performance framework for local government.
564. Interestingly, chief executives and elected members are delighted that there is ministerial and departmental interest in the performance of local government. We just need to have a system that will reflect the national and local performance priorities in the Programme for Government. Let us not build in so much rigidity and so many processes that the time of intelligent people will be taken up with performance management that is way over the top and of no consequence to ratepayers or taxpayers. A framework could simplify that, which is what Councillor McPeake was referring to when he mentioned the extract from Clive Grace's performance and accountability report. Auditors do different things in other jurisdictions: let us be contemporary about this.
565. I reiterate our president's comments about qualified majority voting and call-in. There was a long-standing, cross-party piece of work, which was almost like Jon Snow doing the election statistics. I mention that not to be facetious but because people looked at the political demographics and the flexibility and the tolerance levels of a cross-party approach, and they came to an agreement. If they came to an agreement and the political demographics are still there, why tinker with that? It was professionally, politically and passionately delivered in 2009-2010. All we are saying is that, if there is a construct in place that shows consensus, let us not play about with it.
566. **Mr Weir:** There were two specific issues with the call-in. First, to be fair, there is no agreed or worked-out position that somebody will determine the legitimacy of a call-in. Do you have any thoughts on whether the one formula offered in the Bill is the right one or whether there is an alternative?
567. Secondly, there is the question of definition.
568. **Alderman Hatch:** That is really what we are asking for.
569. **Mr Weir:** From a definitional point of view, it is about trying to ensure adequate minority protection without creating gridlock. The issue that you raised about there being too wide a definition for QMV seems to identify it as an area of concern.
570. **Alderman Hatch:** We raised this question again today because we see it as one that needs to be looked at closely and clarified so that it does not cause councils to be unable to function. In the midst of all the transformation, councils must be able to deliver services and make decisions. So that is what we have called for, and I agree with you that it needs to be looked at and specified carefully.
571. My one further point is on the listing of bodies that are partners in community planning. Councils have been given the function of leading, but leading a Department such as the Department of Health or the Department of Education will not be easy — look at the Scottish model. It could be 10 years before the programmes of work align; it will not happen overnight. So we need to keep the expectations of the community under control. It will take a lot of talking to gain the trust of those big organisations because, as Myreve said earlier, we are delivering only one twentieth of the Northern Ireland Budget, so this has to be proportionate. If local government, which is the small player in the budgetary field, is required to observe performance measures, the same rules should apply to the Departments' performances. If they fail to perform, we will find it difficult to perform our community planning role.
572. **Mr McCallan:** I am sure, Madam Chair, that that will come out eventually in the review of Departments and the role of the Northern Ireland Assembly, which we look forward to participating in further. However, there is one opportunity to solve this. One of the great things about shadow council is that you can test things. In the period from 23 May

- to April 2015, there is an opportunity, perhaps through informal all-council activity, to ensure that the sort of point raised by Mr Weir about guidelines on what can constitute legitimate call-in can be tested and illustrated. We have the capacity to do that. I know that the Department is as exercised as we are about getting this right in time for April 2015. However, there are things that can be placed in a Bill, and there are things that can be tested only in real time — we want to do both.
573. **The Chairperson:** I recall that Ms MacHugh said that there would be guidance on and a set of criteria for, for example, eligibility for call-in. Is that what she said?
574. **Mr Weir:** There must be a definition of eligibility. There is also a separate issue that, however it is defined, whether through legislation or regulations, ultimately someone must take a decision. When councillors sign a bit of paper that says, “We want this decision called in”, it could be 100% legitimate, vexatious or somewhere in between. Someone outside the council must make a decision on whether it fits the criteria. It is a question of identifying the appropriate person or body to make that decision, and that is important. There might not be a better solution, but I am not entirely comfortable with the legislation as it is now: it states that it is enough to get a town clerk to send it to a lawyer. However it is changed — for example, by getting the opinion of a panel of lawyers — the problem is that there could be, depending on who is asked, 15 different solutions and different interpretations in different areas. I can see that leading to problems.
575. **Mr Eastwood:** Thank you very much for your presentation. There is quite a lot in it and, unfortunately, we do not necessarily have the time to go through all of it. I would very much welcome an opportunity, early in the year, to do that. All of us should be open to improving and enhancing the Bill, particularly community planning, much of which can be strengthened. I have had some experience on Derry City Council of trying to get outside bodies to come to committees, in preparation for RPA, that were specifically set up to deal with such issues. We were not always successful in getting people to come and engage in the way that we would like, although some were better than others. However, that is beside the point, and we can go through all that detail at another time.
576. Specifically on public and press access to subcommittee meetings, I understand that there are occasions when you need to be able to do things outside the full glare of publicity. That is very important. However, I am slightly concerned that we might get to a stage where subcommittees would be doing a lot of the work — almost all of it — and then standing committees would merely be rubber-stamping it. I do not know what you think about that. There has to be some way to ensure that there is as much public scrutiny as possible while allowing a bit of privacy when required. Have you any thoughts on how that can be engineered?
577. **Alderman Hatch:** At the moment, anything that relates to staffing issues must go to committee, for obvious reasons. So I imagine that you could set down areas for which it was acceptable to meet in committee without the public or press present. Commercially sensitive information, such as a new contract, should be discussed in committee. However, the result of that discussion should go to the full council for ratification.
578. **Mr McCallan:** Supplementary to that, I am aware that the Bill has current specifications, which outline that personal, confidential or legal issues can be discussed outwith media and public access. Our issue is more to do with the governance of councils and outcomes. Councils are not homogeneous — they never should be, otherwise the local aspect of government is lost — and a number of them use the subcommittee process, perhaps for elected members for the first time, to discuss how to deal with,

- say, spatial planning, or a particular locality issue. All I am saying is that we should be careful that we do not punitively overburden councils to an extent that it prevents the local democratic thinking that ultimately leads to decisions.
579. We must add a caveat. I think that it was Councillor Chambers — forgive me if I am wrong — who pointed out in our presentation that we are on record as wanting openness and transparency. Decisions can be recorded, and they can be on the infamous Twitter, the internet or available in hard copy in libraries as soon as possible. This is not about withholding information; it is about the ability to discuss.
580. **Mr Eastwood:** There is definitely room for compromise. My concern is that, as often happens, much of the work will be done in these committees and then, all of a sudden, the public will be presented with a decision, without knowing much about how that was reached. I think that there is a halfway house between your position and that currently in the Bill.
581. **Councillor Chambers:** In our council, we have a few subcommittees, which are set up only for a specific purpose. Usually, they perform scoping exercises when the council is considering doing something. The subcommittees do not make decisions; they bring their findings to the main standing committee, which, in our council, is the full council anyway. We do not have separate committees, so every member of our council has an input to everything.
582. What concerns me is that the prescriptiveness of the legislation would not allow those scoping exercises to be done by a small number of councillors in order to bring a report to the standing committee. I have no problem at all with issues being dealt with in public. I am more concerned about the scoping mechanisms in subcommittees. You cannot have the public present when discussing, for example, where the next leisure centre will be, because it may not even come to fruition. It may be cost-prohibitive. You do not know what the situation is, but, if the public are there, talk of a new centre will be in the stratosphere before you even get home.
583. **Mr Eastwood:** I completely understand that, and I have no fixed view on it.
584. **Councillor Chambers:** The issue is for subcommittees.
585. **Mr Eastwood:** We need to protect against the potential for everything to be done behind closed doors, but I understand where you are coming from.
586. **Councillor Chambers:** If the legislation is too prescriptive, it will prevent the council getting on with its normal day-to-day business.
587. **Mr Elliott:** Thank you for your presentation. It was very good and helpful, and I congratulate you on that. I agree with quite a lot of it — not all, but a vast amount. I do not know how we will get through the Bill, Chair, because we do not have the time today. Even if we spent a full day on it, I do not know whether we would get through it all.
588. **Councillor Chambers:** We can spend many days on this. *[Laughter.]* We want to get it right.
589. **Mr Elliott:** Derek, I am not sure that everybody would agree with your statement on the public-spirited nature of government. I am not disagreeing with you, but others may not think that.
590. **Mr McCallan:** You are quite right. I agree with your sentiment that they may not. I have seen people doing fantastic work on, for example, gritting. You would expect me to advocate the best in local government, and there is a lot of the best.
591. **Mr Elliott:** It was only a comment.
592. First, can you see all councils reaching a common agreement on the qualified majority and call-in, which are detailed in clauses 44 and 45, particularly on aspects required to go into standing orders?
593. Secondly, you mentioned the substantially increased costs of RPA.

- Have any councils carried out additional work to assess the cost to each individual council?
594. My third point is the concern about the preservation of local identity. With much larger councils, that will be quite difficult. Do you have any specific proposals on that?
595. Finally, does NILGA have any comment or view on the report of the remuneration panel?
596. **Mr McCallan:** I think that there will be common agreement. Look at the work done just two or three years ago on QMV and call-in. It was forensic, it was cross-party, it required a lot of man hours — or people hours, Chair — and agreement was reached. So, with minor local variation, I think that having common standing orders across the emerging 11 councils is achievable. It will, however, require legwork and brain work to get it right.
597. Common agreement was also reached in, for example, the north-east of England, where the Association of North East Councils looked at a code of conduct. Everyone worked together to achieve a code of conduct across the 12 unitary authorities, which used to number 25. It is one of the reasons why we get together regionally and produce a sectoral response. It is one of the added values of a local government association. I think that it can happen.
598. **Mr Elliott:** Do you see that being led by NILGA, Derek?
599. **Mr McCallan:** The members would prefer to use the word “coordinate”, because we inform rather than lead our councils. The councils lead us, so we would coordinate it.
600. Eventually, a substantive, cross-party, all-council piece of work will emerge, and it will have examined not only the actual cost but the forecast cost of RPA. That has to work its way through the regional transition bodies as urgently and dynamically as possible, but significant work has already been done.
601. Our members may want to answer on the preservation of local identity and remuneration. I would say that there is a little bit of work to do. Consensus is building that whatever has been presented by the remuneration panel might require a little enhancement. However, I will, as always, pass to our members to talk about identity and so on.
602. **Alderman Hatch:** On identity, I understand where Mr Elliott is coming from. It is such a large geographical area. I can see community planning probably kicking in in order to tackle that problem in that, if a community has had issues, the elected members from that area could form a group or provide a platform for those issues to be addressed. The last thing that we want is a proliferation of parish councils spinning out of the 11 councils. However, that could happen. In France, which is supposed to be very democratic — although, when you scratch the surface, it is, perhaps, not — there are representative bodies and elected councils with very small populations. We are now in a situation where the populations are very much the same and very much larger. Local accountability will be difficult. Take, for example, my area of Armagh, Banbridge and Craigavon. They are three entirely different types of councils with different assets. You would like to think that you could deal with that; take the best out of it and ensure that the identity of the ecclesiastical capital of Ireland is maintained, together with that of other areas. That will take effort. One way of dealing with it is that small communities should have their issues and problems dealt with by the elected members in a district electoral area (DEA).
603. As regards remuneration, I think that I commented that the panel reflects the importance that it puts on councillors, which is very little.
604. **Councillor McPeake:** Chair, some of us were at the political reference group earlier in the week when that was tabled for the first time. We have not yet had the opportunity to discuss it through

- NILGA, although we will. I suppose that it will also be led by the National Association of Councillors (NAC), which will have a big input. It is early days yet. There is a lot more work to be done, shall we say.
605. **Mr McCallan:** Our programme for local government in 2014 will assuage some of the issues that have been raised about local identity. What are we doing? We are developing in partnership a programme for local government. Why are we doing that? Because, if your timetable is met, there will be a new Programme for Government shortly after that. This time, we would like local authorities to be part of the new Programme for Government, rather than be referred to as an RPA item by which 26 councils become 11. There is a challenge for us, and for you, with regard to local democratic accountability, to refer back to Mr Elliott's identity issue. It is hugely important. Where there has been success elsewhere, let us bring the good from there and tailor it to NI.
606. **The Chairperson:** That is a good point. In producing the Programme for Government, we need to take into account local government issues, policies, aspirations and targets as well. Are you OK with that, Tom?
607. **Mr Elliott:** Yes. I have a number of issues, Chair; however, I would prefer to leave them.
608. **Mr Boylan:** Thank you very much for your presentation. Other members have already asked most of my questions. However, I noted a couple of points. Although, as the Chair said, we are talking about the Programme for Government, the Bill is vital. We need to go through it line by line to ensure that we get it right and that we empower councillors to represent and better their communities and to continue to do so in future. That is what this is all about. I noted what Alderman Hatch said. I welcome the comments about Armagh because there are different dynamics and diversities that we need to manage sensitively in community planning in particular.
609. With regard to subcommittees, I recognise that you need the opportunity to represent the people and to bring things to the table and report back, as you have said.
610. **Councillor Chambers:** It is flexibility.
611. **Mr Boylan:** Absolutely. I understand what one of the members was trying to say, and I am glad that you raised that important point. I want to make three points. You mentioned attitude, which I would like you to expand on, because we need to get to the bottom of it. We need to start on a fresh footing. Arnold, it was you who mentioned that issue. I would like you to expand a bit more.
612. **Alderman Hatch:** Yes, I find that we are continually trying to claw a situation back from a position taken by civil servants. For example, we were told that an area, I am not sure where, would need new legislation. Through work with our colleagues across the water, we found out that the legislation is already here. It is the Finance Act 2011, which specifies district councils as a representative body of two, three, or more, councils. The legislation was already there, but we had to find that out for ourselves. There was a reluctance to share that with us. We would like the Department's officers to be willing to say, "This is what we think. What do you think?" before it is written down and dictated to us. That is what I mean by attitude.
613. **Mr Boylan:** That is grand. It is new legislation — the most major piece of legislation for local government in 40 years. There is a lot of good stuff in it. A great deal of good work has been done already, but there are a few things that we need to look at.
614. Has consideration been given to whether a review should be initiated of all the issues and processes on community planning and holding partners to account to ensure that they are playing their part?
615. **Councillor Chambers:** To be fair to local government, there should be a review of the agencies taking part, because,

- at the end of the day, performance-management obligations will be set in the legislation on local government, which we will have to meet. If we do not meet them, and if we do not carry out all our functions, we will be subject to whatever penalties or surcharges there will be.
616. The same should apply to the representative and agency bodies that are coming to deal with community planning. If they do not perform, it will reflect on local government. There should be a review into the aspects of their cooperation, more than anything else.
617. **Mr Boylan:** That is the point that I am trying to make.
618. **Councillor Chambers:** There definitely should be, because, as I said, we will be performance-managed on all the aspects that are coming to local government, one of which is community planning. If only two or three of the partners are operating the system in the correct manner, the system will not work properly. Therefore it should have a review.
619. **Councillor McPeake:** Rather than a big-bang review, I see it as a constant review, mainly with the work of the partnership panel. If the partnership panel and the local government sector work together with Ministers, they will be hearing things consistently; therefore it should not come as a surprise if things are not working out as planned. The partnership panel should be meeting periodically with up-to-date reports of how the key players are working, or not, in different areas. In my view, that should be an ongoing review.
620. **Mr Boylan:** I was only throwing out the question about a review; I did not get into the detail of how long it should be, but you agree with the concept.
621. **Councillor Chambers:** Yes, definitely.
622. **Mr Boylan:** I have two quick points. I agree with expanding the commissioner's role. An issue that I have, and which we have noticed in other legislation, is the clear guidance and guidelines. You will agree that they need to be set in stone and to be robust. Are you getting the feeling that that is what is coming through the legislation?
623. **Councillor Chambers:** No.
624. **Alderman Hatch:** That is the very point: we do not get a sense of it until it has been presented to us. We would rather have a discussion about it and say, "This might work. That is a good idea. That is not a good idea". However, that is not happening.
625. **Councillor Chambers:** I am not sure that we are being listened to. We bring a lot of valid points to the table, but the civil servants seem to have a very illogical way of thinking. Getting them to define the call-in procedures in our discussions with them was like pulling teeth. We cannot get them to define anything. Call-in procedures, and what you can call in against, need to be defined in the Bill rather than be left to anybody to define. I know that local and central government can be very bureaucratic, and, coming from the private sector, I know how bureaucratic it is. However, it will slow things down even more if there is not real definition in the Bill of what can and cannot be done.
626. **Mr McCallan:** To encapsulate, I would not specifically refer to attitude. What we have is a suite of mechanisms that have to be looked at and participated in. I have no issue whatsoever with the talent, expertise and willingness of Departments and departmental people in trying to get solutions. However, it seems as if a labyrinth of processes has been put in place that are almost like cement, and you know that there is a different way. If we could, we should lift the lid on this and look at it afresh. None of this is insurmountable, and all of it can be done on time. That is the attitude that I am referring to. Let us enable rather than inform one way. There are solutions that will require us all to be positive.

627. **The Chairperson:** We also have to bear in mind that this is primary legislation; it is enabling legislation. There will be a raft of regulations and guidance coming through. This is months before the statutory transition committees (STCs) and all the rest of it. There is always a consistent message from you that you have not been consulted properly, that there is not enough communication between Departments and NILGA, and that there is a top-down approach.
628. **Mr McCallan:** There are 12 Departments mechanically administrating 11 local administrations, which takes the democracy out of the two-tier elected member role. That should not be driven by institutions or processes. The outcome should demand that we de-institutionalise this and have a healthy participative two-tier partnership.
629. **The Chairperson:** Working together, yes.
630. **Mr Boylan:** You mentioned primary legislation, Chairperson. Whether it is enabling legislation or not, we should have foresight of subsequent legislation. We need to have a better understanding of it to decide what we need to do. Sometimes, in legislation that we have done in the past, it has been a catch-up issue. We now have an opportunity to look at that.
631. **The Chairperson:** OK. I need to bring the discussion to a conclusion. I am aware that the NIPSA representatives have still to make their presentation. There seems to be quite a bit of interest from members for a subgroup. Peter looks puzzled at the suggestion of a subcommittee.
632. **Mr Weir:** No.
633. **The Chairperson:** OK. I will make a suggestion. We are going into recess, and plenaries will not start again until 13 January. Our first committee is on Thursday 9 January. If we put in an extra meeting on Tuesday 7 January, perhaps we can take up your suggestion of looking at the Bill clause by clause.
634. **Mr Weir:** May I make a slightly different suggestion? I have no problems with having an extra meeting. To be fair, if we are going to tease out these issues, it would probably make sense to have a subgroup meeting with NILGA and have a half day or a day's session on the clause-by-clause. It may be something that we need to come back to next week, but, if we are having an extra meeting, in part to agree a subgroup or, alternatively, if the whole Committee is sitting, we need to have a relatively small number of people in the room to work through the issues. I do not know whether we could maybe look at agreeing something next week to have a meeting scheduled. I am happy enough if there were to be an extra session in early January or whenever. I detect a lack of enthusiasm, that some might not be quite so keen, but I know people will have a wee bit of reluctance to see anything eating into the period when we are in recess. I think that, to be honest, if there are a few of us there, it may be easier to schedule it prior to our going into full session rather than trying to fit round dates, because once you get to the first or second week of January, things start kicking in full-throttle. It might be a wee bit easier to get a day set aside during that Committee week for a sub-group meeting. On the mechanics of that, if something could be worked up and then a proposal brought back next week at our last meeting, we could consider it then.
635. **Councillor Chambers:** May I suggest that it be open to the full Committee to come or as many members as wish? The more contact with members of the Committee, the happier we will be, because it is only through the interaction of the Committee and ourselves that we will get the Bill right.
636. **The Chairperson:** I sense that there are more people interested than just a subgroup. If it is a special meeting open to all members; whoever is free or interested can turn up. I am not calling a meeting to set up a sub-committee.
637. **Mr Weir:** I think that something should be arranged. I appreciate that,

- technically speaking, we are all sitting around the table, but I think that something that has a smaller table may be more productive. Although I would not exclude anyone on that basis.
638. **Mr Elliott:** As I said earlier, NILGA provided a very good paper and obviously has a significant interest in this, as you would expect. We need to be careful as a Committee, because if we are going to meet NILGA a couple of times, you could have requests from other organisations and some organisations that we will not get to meet at all. I have had requests from a couple of organisations to meet over the Local Government Bill, so all I am saying is that, as a Committee, we need to be careful. I mean no disrespect at all to NILGA, because I think that it is doing a very good job and has provided very good information. I am just trying to protect us.
639. **The Chairperson:** It is a special group; it is a representative group.
640. **Mr Weir:** I appreciate Tom's point, but I think the other point where there is some distinction is that it is the representative body representing the 26 councils, so we are having a different sphere on this issue —
641. **Mr Elliott:** Peter, you will get people saying that they are ratepayers and that they are paying for local councils, for local government reform, so they are equally entitled. That is all I am saying.
642. **Mr Weir:** It is a representative body; that puts it in a different sphere, with the best will in the world. Unless we are going to get all 1.8 million people in Northern Ireland and individually quiz them on that, there are lots of elements —
643. **Mr McCallan:** They are all outside at the moment, Chair, the 1.8 million other than ourselves. *[Laughter.]*
644. **Mr Weir:** On a rotating basis, maybe we can.
645. **Mr McCallan:** Whatever the Government's requirements, we will
- comply with them, Madam Chair, but whether on potential climate change or the ecclesiastical capital of Ireland, we are here to do business with you.
646. **The Chairperson:** Surely. We will have a word with members and perhaps set a date, and I will come back to you to confirm if that is OK. Thanks very much indeed.
647. **Alderman Hatch:** I wish you all a very happy festive season. It may not apply to yourself, Madam Chair, but it may well do. The culture here is to celebrate Christmas. We wish you a productive 2014.
648. **The Chairperson:** Yes, and the same to you: merry Christmas.

5 December 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Ms Pam Brown (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Ian McCrea
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Mr Pat Baker NIPSA
 Mr Bumper Graham

649. **The Chairperson:** I welcome Bumper Graham, assistant general secretary of the Northern Ireland Public Service Alliance (NIPSA) and Pat Baker, the chairperson of the NIPSA local government panel. My sincere apologies for having kept you waiting for so long. It has been a long meeting with several presentations. You have waited there so patiently. We are really pressed for time. I will give you five minutes and then open the meeting to questions from members.
650. **Mr Bumper Graham (NIPSA):** Thank you very much, Madam Chairperson. We are the trades union side lead, and Pat is the chair of the local government reform joint forum, which is the body established by the Minister to deal with the industrial relations process.
651. Our interest is primarily in the 10,000-plus staff who work in local government and in the transferees, who will come mainly from the Civil Service but also from the likes of the Housing Executive. In that area, the Northern Ireland Public Service Alliance represents people in all sectors.
652. Local government has often said that it wants to be the employer of choice; we would like to see that become the case. I have to say that, at present, local

government employees see themselves being treated as third- and fourth-class citizens; they are certainly the poorest paid of public servants. They are being treated abysmally by the Department of the Environment in the RPA process, and they face great concerns for the future, as we see local government in the vanguard of the privatisation of our public services. Morale is at an all-time low. I have been a trades union official for 35 years, so I am used to the Maoists of the public service, the senior civil servants who believe in perpetual revolution. We never seem to get one reform done before another is visited upon us.

653. Peter Hain, when Secretary of State, said at the outset of RPA that it would be a short, sharp refocusing of our public services. Yet, a decade on, we still have not seen RPA rolled out. That is doing considerable damage to the morale of local government workers and those who are due to transfer to local government.
654. The system established by the Department of the Environment is a myriad labyrinth of working groups, working parties, task and finish groups, etc, which is not doing the industrial relations process any good. The one award that it would win would be the Sir Humphrey Appleby award, if any of you are aficionados of 'Yes, Minister'. He would give it five stars, or a gold award, as a way of confusing and avoiding having to deal with the trades unions. That has been our greatest concern. We have, by and large, been frozen out of much of the work that the DOE is leading. For instance, we raised issues in relation to the finance working group, and the senior civil servants looked at us quizzically and asked why the trades unions would be interested in the finance working group. We said that the converging of rates determines the amount of money that

councils will have for service delivery, and service delivery — with all due respect to our colleagues from the Northern Ireland Local Government Association (NILGA) who have just left — is not done by councillors. It is done on behalf of councillors by the staff of local government. Likewise, with respect to the subgroup that is looking at debt, debt has to be repaid. That has an impact on rates, and that has an impact on staffing. Therefore many areas of the work that is going on impact and impinge upon staff, and we feel that we have been frozen out.

655. I listened with considerable sympathy to the points made about the process of subordinate regulations. I would like to have thought that, as we have been at this since 2002, there could have been a single, all-embracing Bill rather than this hotchpotch of legislation. We had a major row recently due to the lack of consultation on the statutory transition committees and particularly about regulation 18, which broke the terms of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and breached the Northern Ireland Executive's guiding principles on the protection of staff. We sit here, only six or seven months away from shadow councils, without a clue what power and authority shadow councils will have and what that will mean for staff. The important thing in this is that staff are continuing to try to deliver the services that are provided by local government. They will have to move seamlessly into providing the new and additional services. It raises very big concerns about the capacity and resources that will enable them to do that. As a trade union, we want to see effective delivery of our public services. We want to see public services being delivered in a better way than they are currently being delivered. Therefore, we broadly welcome the principles that underpin the likes of community planning.

656. The concerns set out in our submission can be broken down into four sections. There are concerns about the constitution/standing orders etc. I think

that Tom suggested that there should be a single set of standing orders. We would endorse that. We would expect to be consulted on that with regard to how they may impinge upon staff. One of the problems that we have had with the current arrangement is that councils go into committee and make decisions that are detrimental to staff and those decisions are applied with no scope for the industrial relations process. Two examples that I can give immediately are the debacle of the Greenvale Leisure Centre in Magherafelt, which the local government auditor has commented upon, and, indeed, the current situation with Exploris, where, had we been consulted, we would have been able to tell Ards Borough Council that there was no way that the private sector company would be able to fulfil its obligations under TUPE and pensions. Those decisions were taken behind closed doors. It was a breach of industrial relations law in how it affected staff. We want to see a more open and transparent approach to engaging with staff on issues.

657. We also have concern in and around the directions and improvement area. Again, I sympathise — I did not think that I would often sympathise with NILGA, but on this occasion, I do — with the potential of one central government Department setting one set of directions or improvement notices and another doing likewise and the two of them pulling in opposite directions. We see some scope for DOE to, at least, provide some sort of coordination role in that.

658. Clearly, the big issues for us are the protection and interests of staff. In relation to clause 121, we certainly see a need for the staff transfer scheme to be embodied in the legislation in order to give full and absolute protection to the interests of staff in terms of continuity of employment, pensions etc. Another issue that relates to the Bill is that the previous Minister of the Environment, Alex Attwood, give us a firm commitment that he would provide that the local government reform joint forum staff severance scheme would

be the scheme in the Bill. We need that because we do not want a situation where cluster 1 offers employees the absolute statutory minimum, cluster 2 offers the Rolls Royce, and cluster 3 decides, “Well, if we like the look of your face, we might give you a pretty good package. If we do not like you, tough.” We believe that there is a need to enshrine the local government reform joint forum staff severance scheme into legislation to ensure that people are treated equitably. However, I have to say that, clearly, we do not wish to see any great use of a voluntary severance scheme. I keep telling members that it is my job to disappoint them when it comes to their asking for voluntary redundancy. We do, however, see a limited need for such a scheme.

659. An issue that was raised by the Minister in the Second Stage debate was the potential for council employees to be elected to the employer council. There has been no engagement with the trade unions at all on this point, and we consider this to be an area where there is great potential for conflict. If a relatively junior-graded member of staff were elected as a councillor, where would they know to take their employee hat off and put their councillor hat on? That could raise all sorts of issues with supervisors, managers and, indeed, with other members of the workforce.
660. The other area that I wish to touch on is in relation to the code of conduct. I was at the stakeholder event last week, and I believe that the Department either misunderstood or misrepresented what we were saying about the code of conduct. The forum is working on a revised staff code of conduct, but in relation to the code of conduct for councillors, the point that we were making is that there needs to be a specific annex to that code that determines the relationship between councillors and council employees and vice versa, just the way that there exists a protocol in the Assembly between Members and Assembly staff. We want to see that as a separate annex to the code of conduct for councillors. However,

we believe that it would be inappropriate for any complaints being tabled either by a council employee or a councillor to go through to the Commissioner for Complaints. There are established industrial relations processes that deal with this. Obviously, we want to see things dealt with at the informal level and discharged, but, if it had to come to a full, formal hearing, we would want to see the likes of the Local Government Staff Commission being used to administer a formal complaints process.

661. I will conclude on that point in mentioning the Local Government Staff Commission. The Department, or, to be more accurate, the Minister, recently announced his intention to wind up the Local Government Staff Commission in 2017. NIPSA firmly believes that, in fact, there should be a single, all-embracing public services commission, covering all of our public services. If that is not achievable, we see the continued need for the Local Government Staff Commission. It does valuable work and has kept many councils out of the newspapers on potential cases in the industrial tribunal system and saved much money for councils on that basis. When it comes to a value-for-money study, the staff commission demonstrates that it is a valuable asset. I consider that the decision by the Department was vindictive and irrational because the staff commission, along with the trade unions and the Public Service Commission, was saying that the Department got it wrong in relation to regulation 18 of the Local Government (Statutory Transition Committees) Regulations (Northern Ireland) 2013. This is revenge by the Department towards the Local Government Staff Commission.
662. In conclusion, our interest is to protect and promote the interests of the 10,000 staff who are currently delivering good, effective public services across the 26 councils, to integrate the staff who transfer and to see a much wider and better array of services being delivered by local government staff on behalf of the 11 councils.

663. **The Chairperson:** Thank you very much, Mr Graham. Obviously, it is your job and your role to protect staff, and we understand that staff must have had much sense of uncertainty over the years around whether RPA is going to happen or not happen. I fully understand that. There are new functions coming in and, as you said, transferees from Departments. There are a lot of changes, causing uncertainties and anxiety.

664. **Mr Boylan:** Thank you for your presentation. NILGA brought up the commissioner's role. Are you saying that you do not believe in that process? I am not saying that it should be introduced, but I am in favour of looking at it for the reason of holding the councils to account on decisions made in the likes of PCSPs. That is what we are looking at. I know that how we were to define that role would be vital in protecting the likes of the workers.

665. **Mr Graham:** It is absolutely right that there is a process of accountability in any democratic system, and, as a trade union official, I am used to it as much as yourselves, if not more so, in accounting to our various elected bodies. There is a distinction to be drawn between the staff who are discharging functions and those who take the political decisions.

666. On the specific point about the code of conduct, it is more that, if a councillor has a complaint about a member of staff or, on the reverse side, an employee has a complaint about a councillor, a process should be provided for in the code of conduct but as a separate annex to it. The Assembly protocol is a good model, and it tries to deal with things informally. That is our general approach to industrial relations, but if you cannot deal with matters informally, there has to be provision for a formal phase. However, we do not see the Commissioner for Complaints as an appropriate body to deal with the specific aspects of complaint either between or from a councillor and a member of staff.

667. **Mr Boylan:** No problem. I have written down a lot of stuff, and I will try to

quantify it and bring it into some sort of order in a couple of questions. You feel that your staff have been left out of the process in some situations. Could you expand a wee bit on that and on how they can input into that? Another thing is the training that staff require for the changes. You mentioned clause 38. On the subcommittee process, you are talking about decision-making, and I would look at new ways forward on that. I know that, being on a council myself, subcommittees sometimes make decisions. They go through proper processes and bring a reporting mechanism to the full corporate council. Are there any ways of trying to expand that, bring more views or consult properly? Maybe that is the best way forward. I do not want to block or inhibit the process of committees making decisions, but there might be a way to have a more open process. Will you talk about that?

(The Deputy Chairperson [Ms Brown] in the Chair)

668. **Mr Graham:** You asked about staff feeling isolated from the process. As I mentioned, there is a labyrinth of DOE-led groups looking at various aspects, and there has been no provision for any trade union input into that. I will give one example. When the Minister set up the local government reform joint forum, he was quite clear that it was to be the single body to deal with industrial relations and human resource issues. However, the Department has established an HR subcommittee. Why has it established an HR subcommittee when there is already the forum? What is that HR subcommittee doing? We have found it very difficult to get underneath the purpose of it and what work it is doing.

669. Capacity is an issue, and it is mainly senior people and people in corporate services and finance who are trying to do the day job that they are there to do but also to sit in on all those working groups and prepare for the new council. I refer the Committee to the work that was done by the social research centre at the University of Ulster, which conducted an examination into RPA in

- health — for my sins, I was involved in RPA in health as well — and came out with a very critical report on issues such as capacity and expecting people to continue to do the day job as well as all the other functions in preparing for the change from the 18 trusts to five trusts. It is no different in local government. In fact, you might argue that it is exacerbated.
670. There is one other point in that report that we have not touched on to date. It came out in some degree because I thought that Arnold Hatch was making the bid for Armagh with maybe a bit of support from you, Cathal. One of the big issues for staff is location and whether they will be required to move. That needs to be carefully handled, and there are ways around having people moving, and having people passing each other on the same road and maybe paying them excess fares. So, there is stuff that we want to do on that.
671. Clause 38 is a difficult area. A council, either in full session or in subcommittee, will be required to make decisions. Some, we will absolutely and totally oppose. Currently, I can give the example of privatisation of leisure services. We have recent experience of that. What we have found is that those decisions are taken behind closed doors and you then work backwards through the industrial relations process. However, the industrial relations process says that you should consult and negotiate with the trade unions at the earliest opportunity. Look, for instance, at the redundancy legislation. It says that once there is even the faintest possibility of a job loss, the employer is legally obligated to engage with the trade unions. If a decision to do certain things is being taken in committee and in secret, I believe that that is an infringement of the redundancy regulations. Our aim is clearly to protect and promote jobs in local government in this particular scenario.
672. **Mr Boylan:** How would you see that process working? If we were to look at this Bill, how do you see people being fully involved in that process? There are certain cases on which it may impact.
673. **Mr Graham:** It is very difficult to be prescriptive about it. Some of the greatest concerns are that some of it is commercial in confidence and some of it is policy determination. However, as I keep telling employers, that does not prevent them engaging with the trade unions. Once a trade union breaches that confidence, the trade unions will rightly be excluded. Whether it be with central government, the health service or local government, I am well used to signing up to confidentiality clauses. Sometimes, that does not go down well within the trade union. Pat sits on NIPSA's executive committee. At times, I have had to tell the executive committee that I cannot tell it the detail because we are in negotiations and have signed up to a confidentiality clause in respect of that. However, that at least allows us to be at the table, engaging directly and trying to influence the decision-making process.
674. **Mr Pat Baker (NIPSA):** Most councils have trust as one of their core values. Along with the HR manager, I gave a presentation on core values to the Committee about five or six years ago, and trust was one of those values. There has to be trust between management and the trade unions. I have sat as a NIPSA representative in confidence with management on certain groups.
675. **The Deputy Chairperson:** I apologise, but the Chair has had to attend another event on behalf of the Committee. I am filling in for her.
676. **Mr Elliott:** I have just a couple of very quick points. First, your written presentation focuses on consultations with trade unions. How wide a range of staff does NIPSA represent in local government? When there is a need to consult, how do you distil it somewhat, or do you have to consult all the unions?
677. My second point is about the Local Government Staff Commission. Bumper, you talked about a public service

- staff commission. Do you see that as covering all Government Departments and agencies — the totality of the public sector?
678. **Mr Graham:** As regards trade union structures, it is a multi-union situation. That is why I made the point at the outset that Pat acts as chairperson of the joint forum and I am the lead negotiator. What we say in the submission is endorsed by all the trade unions, and that includes Unite, GMB and other unions with smaller membership, such as the Services, Industrial, Professional and Technical Union (SIPTU) and the Union of Construction, Allied Trades and Technicians (UCATT). It is a multi-union position. On the trade union side, the forum is structured in such a way as to be reflective of the numbers of members of those unions who are primarily affected by staff. NIPSA's area is more affected than others, because we tend to represent clerical, administrative and managerial grades. The greatest impact is likely to be felt in and around the corporate finance-type end of services, so that is why we are taking the lead. It is on behalf of all of the unions.
679. NIPSA has always made a case for a single public service commission. Currently, you have that august body called the Civil Service Commissioners, and who knows what it really does? I do not hear any attempts being made to wind up the Civil Service Commissioners. There is also the Staff Commission for Education and Library Boards, of which I have been a member for a number of years. I have been carrying my P45 in my back pocket because we were told that it was going to be wound up when the Education and Skills Authority (ESA) is created. If I am to believe the press this week, I can shred my P45 on that one. You also have the Local Government Staff Commission. The health service has never had a staff commission. We would see the Local Government Staff Commission acting as the core base to be expanded to form a statutory public service commission, and we would much prefer that. There is the Public Service Commission that was created for RPA purposes, but that is purely for RPA purposes, and it is not on a statutory basis. So, we want to see a single public service commission covering all of our public services. That would be helpful for giving advice and guidance on HR and industrial relations issues and, more importantly, would also assist in the greater movement of people between different parts of the public service. If we are to enhance delivery of the public services, then moving away from silo government and silo delivery of public services will be important. The likes of a single staff commission could considerably assist in that.
680. **Mr Elliott:** I find that interesting, because I know that, at local council or local government level, because there is such a close interaction between the elected representatives and the staff, it is important, in fact vital, that you have the opportunity for advice from the Local Government Staff Commission, wherever that happens to be. In my time at local council, I found it invaluable.
681. **Mr Graham:** When we envisage a single public service commission, it is that it would do the overarching and interfacing work. You would also have specific directorates dealing with local government, health service and the Civil Service etc.
682. **The Deputy Chairperson:** Gentlemen, thank you very much for your attendance at the Committee.
683. **Mr Graham:** Thank you, Madam Deputy Chair. If the Committee requires any further information, we are happy to submit that in writing or, if need be, to reappear.
684. **The Deputy Chairperson:** That is much appreciated. Thank you very much.
685. **Mr Elliott:** Happy Christmas.
686. **Mr Graham:** Happy Christmas.
687. **The Deputy Chairperson:** Same to you.

12 December 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Ian McCrea
 Mr Barry McElduff
 Mr Peter Weir

Witnesses:

Ms Louise Mason *Northern Ireland*
 Ms Laura Murphy *Audit Office*

688. **The Chairperson:** I welcome Louise Mason, the Chief Local Government Auditor, and Laura Murphy, policy officer. This session is being recorded by Hansard, and it will be included in our report. The members all have your written submission before them, Louise and Laura. I know that you have a lot of concerns, but, if you could briefly outline the issues for us in about five minutes, we will then take questions from members.
689. **Ms Louise Mason (Northern Ireland Audit Office):** I am happy to do that. I start by thanking the Committee for its invitation to come here today to give our views on the Local Government Bill. Back in May, when I was before the Committee, I had with me Rodney Allen, who is the director responsible for the local government audit. Unfortunately, on this occasion, Rodney has not been able to accompany me because he has had a family bereavement. However, I would like to introduce Laura Murphy, who also works on our team. Laura has been looking at the draft legislation for me.
690. I hope that the Chair and Committee understand that our primary focus on the Bill has been looking at the Parts and clauses that refer to the role of the auditor. We see this as a good opportunity for the Assembly to do three important things: to modernise the audit requirements; to strengthen
- audit powers and independence; and to remove duplication of audit requirements. I have written twice to the Committee, and members have the information before them in my letters of 13 November and 2 December. The more recent letter has the more detailed observations that I have made. I want to cover some of the main observations relating to the clauses and also to touch on our audit resources, costs and skills, because I know that that has been raised by others.
691. Our thinking at this stage has been influenced and informed by some engagement that we have undertaken with some of our sister audit agencies, the Department, the ombudsman and some other interested stakeholders. The most major change for us, as auditors, are the proposals set out in Part 12 concerning performance improvement. Performance improvement and auditing and reporting is a new role for the local government auditor and is in addition to our existing financial audit responsibilities, which, by the way, continue under the new regime. We welcome this new role.
692. The audit requirements set out in the Bill compare directly with the Welsh local government measures of 2009. However, there have been two subsequent amendments to the Welsh legislation affecting the auditor, which have not been reflected in the Bill, and I will touch on those later. I also suggest that the Committee may wish to review the specific clauses to ensure that they are proportionate and appropriate to local circumstances. There is also an opportunity, at this stage, to make some adjustments in light of the experience of operating the legislation in Wales, where they have the benefit of hindsight. I have spoken to our Welsh colleagues.
693. We all agree that we want to ensure that the legislation is drafted for the

long term. Clauses 98 and 100 require performance audits of all councils each year with a minimum of three audit outputs for each council. That is a minimum of 33 annual outputs, which is a considerable undertaking and will require significant resource. That said, I anticipate that that extent of work will be necessary in the early years of the new arrangements, but I expect that, as the systems mature and embed, the audit role should be more focused on risk-based assessment. Therefore, I suggest that there should be some flexibility in the legislation to allow the auditor's judgement to be used on the extent and frequency of audit work to be undertaken. A simple legislative change in the wording, from "must" to "may", in clauses 96 to 100 might be sufficient to provide for that flexibility.

694. In clause 95, the proposed date for the publication of the council's assessment of its performance is 31 October, some seven months after the end of the financial year to which it refers. Perhaps an earlier date would be preferable and would better inform the overall process, including the scope for timely audit and for informing future performance improvement planning. Also in clause 95, it may be preferable for a specific date to be stipulated for the publication of the councils' improvement plans. Ideally, plans should be put in place before the year to which they relate; that is, by 31 March. An early date is important for timely audit of the information.
695. One aspect of the proposals in clause 97 requires some "crystal-ball gazing" — I have taken to calling it that — for the auditor. It asks me to assess whether the council is "likely" to comply with performance improvement requirements. That is unusual, as it departs from the traditional audit role, and it may perhaps be more appropriate to require the auditor to assess whether proper arrangements are in place that would allow the council to deliver its performance improvement plans. I also highlight the fact that the usefulness of the audit recommendations will

depend on how quickly they can be communicated and applied. Therefore, the availability of improvement plans and the timeliness of the audit will be important to making the provisions successful in practice.

696. Clause 98 requires the auditor to provide copies of the audit reports by 30 November. That seems to me to be unachievable, as councils will only publish their assessment reports on 31 October. We suggest that a more realistic date for the audit reporting of this information would be no later than 31 January. In Wales, the 2009 measure has been revised to provide for that later date. An alternative and more proactive approach would be to bring forward the councils' publication date from 31 October to, say, 31 August, which would allow the audit reporting date to remain at 30 November.
697. This Bill has brought to light again the importance of the principle of the auditor's independence. Clause 101 provides the Department with the power to direct the auditor to carry out work. I am concerned that those proposals have the potential to undermine the auditor's independence. In a recent development in Wales, there has been an amendment to the legislation to remove that power. I suggest a change to the Bill, in that the word "direct" should be changed to "request", which would be much more appropriate and would strengthen the independence of the local government auditor. That applies equally to extant legislation, and I have raised that directly with the Department.
698. I am sure that you would agree that, when introducing a new regime, it is essential that the old one is revised. In other words, a new regime should not be superimposed over the old arrangements. The Bill aims to address that in Part 15 by making amendments to the Local Government (Northern Ireland) Order 2005. On review of that Part, we identified some further amendments that the Committee may wish to consider. Those are set out in detail in the annex to my letter of 2

- December. One matter included in the annex relates to the local government auditor's value-for-money powers; currently, there is a requirement for statutory consultation when carrying out value-for-money work. There is an opportunity for the Committee to strengthen the independence of the auditor by removing that requirement and bringing it in line with the powers that exist for the Comptroller and Auditor General in the Audit (Northern Ireland) Order 1987. In addition, the Bill contains, in clause 111, the power to repeal existing provisions relating to surcharge. However, in light of the new ethics framework and the mandatory code of conduct for councillors, I have raised with the Department my preference for the Bill to remove altogether the power of surcharge. Its removal would allow consistency with the other UK regions.
699. Members will appreciate that the Bill's proposals for performance improvement planning will have resource and cost implications for the Audit Office. At this stage, we have been incorporating those into our corporate planning process on the assumption that audit fees will be charged to the councils in the same way that we charge for our financial audit work. However, an alternative arrangement could be that the performance improvement audits are funded from central government. There are advantages and disadvantages to each of those approaches, but funding directly from the Consolidated Fund would have the advantage of further strengthening the auditor's independence.
700. In my correspondence to the Committee, I note concerns raised from some stakeholders regarding the audit capacity and resources to undertake the new responsibilities set out in the Bill. Those are not unreasonable concerns, given our new proposed role, and I have already indicated that we plan some research and development prior to the legislation being effective in order to ensure that we are best placed to take forward that work. That will also help us to finesse the cost implications. However, at this stage, it is likely that the cost of applying the proposed new audit work will require a significant, dedicated staffing resource.
701. An advantage that I have, with the local government audit function being under the umbrella of the Audit Office, is that I can have access to other skills that exist across the office, such as those of my value-for-money (VFM) colleagues, who already undertake similar work in auditing the Policing Board's continuous improvement arrangements. So, we do have some skills within the office.
702. In summary, we see an opportunity for the Committee to update existing audit legislation through this Bill, which will result in modernising audit requirements, strengthening auditing powers and independence, and removing some duplication in audit requirements. I hope that these comments are helpful by way of setting the scene, and I am more than happy to discuss my observations and address any concerns or questions that members may have.
703. **The Chairperson:** Thank you very much. That is certainly a very comprehensive run through of the issues that you brought up, and there are certainly a lot of issues. You just wonder whether the Department has ever talked to you to try to sort it out. You talked about unrealistic dates, and that really sounds strange.
704. **Ms Mason:** There was consultation with us away back. Before I took over the role, there was quite a bit of consultation with us, but things have moved on since then. We have had some recent consultation on limited elements, but I would have liked earlier sight and some more consultation. That is my honest answer.
705. **The Chairperson:** Louise, I have never been in a council, unlike many of my colleagues. I do not quite understand the bit about the surcharge. Can you explain that to me? It is in clause 111.
706. **Ms Mason:** You have asked me the wrong question. I feel a bit of a draught

with Rodney not being here, because Rodney has all the detailed knowledge of this. I have never used the surcharge power since I came. I will put this in layman's terms as opposed to legal terms, because it is a very legalistic process — an extremely legalistic process. My understanding is that if councillors take forward some action deliberately — that is not the legal term — that turns out to be illegal, they can be surcharged, and the cost of it may then have to be paid out of the councillor's pocket.

707. **Mr Boylan:** That is the gist of it.

708. **Ms Mason:** That is the gist of it. Some people here probably have more understanding of it than I have.

709. **Mr Weir:** Chair, linked in with that, if there is a direct penalty on the councillor, it can also lead to a period of disqualification as well as the other related issue.

710. **The Chairperson:** It is a bit like a fine.

711. **Ms Mason:** Yes. It comes out of the councillor's own pocket. It has not been used that much over the years, although it has been used on a number of occasions.

712. **The Chairperson:** I understand that now.

713. **Mr Weir:** With regard to the surcharge, I listened carefully to what you said, and I pretty much agree with everything. I appreciate what you said about the surcharge side of it not being your bailiwick. However, the concern with the surcharge is twofold. First, as part of this process, councillors said that there would be a new regime. Arguably, from their point of view, one of the potential benefits being brought in was that things would be brought into line with the removal of the surcharge. Therefore, there appears to be a rolling back on that if the surcharge is mentioned. I can think of two or three occasions over the past 25 years when it has been used. Although the potential threat of surcharge may create admirable caution, it can also mean that the desire for councils to do anything innovative or new

can be a major problem. All it takes is one officer, particularly if he or she does not want something to go through, to say, "Members are perfectly entitled to do that, but I would be a bit worried that the local government auditor might have something to say on that and that there might be a surcharge or whatever". That can have a high detriment.

714. There are two aspects to the main point about protecting independence. The first is the actual direct independence. As you indicated, some of the elements have shown that they may not be 100% fit for purpose as is. Concern has been expressed to us, and you have echoed it, that what we are left with in this section, as with a couple of other sections, is essentially a cut-and-paste job from Wales. There is a feeling that that does not reflect local circumstances and does not reflect the situation. In Wales, as in England, the expenditure and the areas of activity of a local council are massively more than they are here. From that point of view, do you feel that, along with the issue of independence, there is an issue that it is over the top and that what is directly required of you, as opposed to your having the ability to do things, is excessive?

715. **Ms Mason:** Yes. I go back to what I said. The word change from "must" to "may" gives that flexibility. I totally understand and agree with the performance improvement work. However, in the first few years, it is very likely that we will go into every council and make sure that the whole system is being embedded properly. In Wales, as it has developed, they have found that they do not feel the need to go into every council every year. If there are specific risks, they will go in. They do others on a cyclical basis. They would like to be able to do an overall report as it beds down, rather than doing a report on every council, but they cannot because their legislation does not provide for that. We have less spend going through. Wales has education and lots of other big areas going through, but we do not. With the "must do" for everybody, 33 outputs from us every year is very significant.

716. **Mr Weir:** You may not be in a position to tell me this now, and you may not be keen to give a ballpark figure. So, it may be a question of you getting this information back to us. It seems that, even with “may”, there would be some level of increased requirements on you. Obviously, with “must”, those requirements increase significantly. I can understand the argument, from your point of view, about the location of the money. However — this is perhaps teaching my granny to suck eggs — if you look at it from an audit point of view, the problem is that, regardless of whether it comes by way of a form of charge to the council or from central government expenditure, additional money is still being paid one way or another.
717. **Ms Mason:** The Audit Office will need more resource; that is the bottom line.
718. **Mr Weir:** Will you be in a position to give us indications of what you believe would happen with what might be described as the two models; i.e. a model with “may” and a model with “must”? I am not asking for that snapshot today, but perhaps you will be able to get back to us with projected costs: what you believe the cost implications will be if you get what you believe are the necessary changes, and what the cost would be if this goes through unamended and you have a layer of requirements that may be excessive? It would be useful to get that information.
719. **Ms Mason:** We can certainly look at that and see what we can come back to you with.
720. **Mr Weir:** To be fair, Chair, without prejudice, I hope that the Public Accounts Committee (PAC) will not come back in five years’ time and say, “The Audit Office response was that it would cost £2 million, and it actually ended up costing £5 million. Let us audit the auditors.” However, perhaps we can get an indication from you, because there is a significant issue. Common sense dictates a lot of what you have said about what should be there, but it would also be good if we could get ideas and ballpark figures from you — not necessarily today — on the difference between what is necessary for reform and the gold-plated quality that seems to come from the Department.
721. **Ms Mason:** In such a note, it might be worth giving you some figures for how much they charge in somewhere like Wales. You have to remember that Wales has a wider remit, because it includes education; it is bigger. However, we could give you some of the levels of fees in Wales, because that is really where we will be looking to. At this stage, we have not totally worked through all the details of what this will mean for us, but that is where we will be looking to.
722. **Mr Weir:** I appreciate our complication in respect of amendments, but presumably that could be done within the next month or so. We are taking evidence on this, and a number of things that you suggest will clearly require changes to the wording of the legislation. Some are relatively small changes that would have a very significant impact, but we obviously have a particular time frame.
723. **Ms Mason:** We will get you that for the new year.
724. **The Chairperson:** If additional duties are placed on you, you need additional resources. There is no doubt about that.
725. **Mr McElduff:** Louise and Laura, do you understand some councillors’ view that, if you extend the role of the auditor to include improvement or corporate plans, that undermines the democratic process? They see it as more proper that elected members set the priorities of the organisation and then oversee delivery against those priorities.
726. **Ms Mason:** I hear what they are saying. An alternative view is that we are actually supporting the councillors because we are coming in independently and saying, “Here are the improvement plans, but we see weaknesses. Here is a smarter performance indicator for you to use.” It could actually be seen as our giving councillors more independent information.

727. **Mr Weir:** Louise, as long as it is not the old line of supporting somebody like a rope supports a hanging man. *[Laughter.]*
728. **Ms Mason:** The point of this is to drive forward improvement of the councils, and we have experience. One of my VFM colleagues looked at performance indicators in central government. We would be quite happy to use his experience and bring it across to councils, so that they can learn from it in setting good performance indicators. The whole point is to drive forward improvements in the councils.
729. **Mr McElduff:** OK. I want to express the same concern that Peter expressed about it appearing to be a cut-and-paste job from Wales. Local government here is largely self-funding and self-financing as opposed to administering large scale funding from —
730. **Ms Mason:** Certainly, they do not have the large central government work here.
731. **Mr McElduff:** Would you not be tempted then to look across to Scotland as opposed to Wales? In Scotland, the system was developed by local government itself; is that right?
732. **Ms Laura Murphy (Northern Ireland Audit Office):** The system in Scotland comes from the 2003 best value legislation. Since 2004, performance improvement work has fallen under value for money, best value, proper arrangements for securing efficiency and effectiveness, which is already in the 2005 order. You are right that Scotland is much less prescriptive. The Accounts Commission has the duty to perform the work, and it directs the auditors. There is no defined framework in legislation about how they go about that, so it is much more flexible in Scotland. We have spoken to our colleagues in Scotland, and they took the same approach. In the first instance, they went round all 32 councils and did a belt-and-braces audit. That was their baseline for going forward and looking at the areas in which there were weaknesses, so that they could target their future audits.
733. **Mr Boylan:** Thank you very much for your presentation. Following on from my colleague, I have heard some soundings about the Welsh model. There are some good elements of it, but it seems to me that this is a cut-and-paste.
734. I want to go back to three issues. It is funny that you mentioned best value. There is now an order that gives councils a facility to look at the likes of procurement practice and best value practices. We are fighting over the issue of “must” and “may”. When we went through the Bill originally, we were saying that “must” was much stronger language for us in the legislative process. I understand what you are saying about creating a wee bit of flexibility. However, surely it is best that we have a process of working with councils to look at assessments, priorities, performance standards and everything else and getting all that right as opposed to the other way. It is only a question. That is another way of going about it. We could bring forward good practices with councils, work with councillors and say, “Here are the standards that we want to meet.” Clearly, you are saying that the “must” element of the Bill would put undue pressure on you, so is that not an alternative?
735. **Ms Mason:** Every new council that is starting up should be setting out to adhere to good practice. I have indicated that we have some expertise in the office. We will be happy to share that and to work with councils. However, the whole point of this cycle is continuous improvement for councillors. They can then look at what they have achieved, and we can come in and give some independent view on that so that it is improved for the next year. “Must” is probably right for the first year or two until, as Laura said, we get the baseline and see where all the risks lie. However, if we leave it as “must” in the legislation, in five years’ or 10 years’ time, we still must do every council and three outputs every year. There is the potential that we would be going through a motion for the sake of it.

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736. **The Chairperson:** There is no point.
737. **Mr Boylan:** It is OK. It is up for discussion, and that is why they are here making a case. I am only asking the question.
738. On another point, you asked for the date to be changed from 31 October to 31 August.
739. **Ms Mason:** As it stands, the councils will have to produce their assessment on 31 October, and we then have to produce our report on 30 November. We have said that it is not doable in a month. In Wales, they have changed the date that the auditor's report is due to 31 January. They have kept it that the councils have to report by 31 October, but the auditor's report is then due on 31 January, which is fine. I am just putting the other option into the mix that could be looked at. You may need to talk to some of the councils about whether it is achievable for them to deliver theirs by 31 August, so that we could then deliver by 30 November.
740. **Mr Boylan:** That is why I ask the question. Is the end of the summer period the best time of the year to have full accounts and to be properly abreast?
741. **Ms Mason:** That is the difficulty. We are just saying that, if it stays as the councils producing theirs by 31 October, we would want the legislation to be changed — in line with Wales — so that we would have ours done by 31 January at the latest.
742. **The Chairperson:** Giving you one month to do it is just unworkable.
743. **Ms Mason:** Wales found that, and that is why they have changed the legislation.
744. **The Chairperson:** As Peter said, it is common sense. These are all the questions for you. We would appreciate it if you would give us that assessment.
745. **Ms Mason:** Yes, I am happy to do that.
746. **The Chairperson:** Lovely. Thanks very much indeed.
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9 January 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Barry McElduff
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Suzie Cave *Research and
 Information Service*

747. **The Chairperson:** I welcome Suzie Cave, our Assembly researcher. Suzie, you have provided very good papers, I have to say. They are succinct and to the point. Can you start to run through them with Committee members, please?

748. **Ms Suzie Cave (Research and Information Service):** Surely. I remind members that, at the previous briefing that I gave on the Local Government Bill, there were a few areas that the Committee identified as requiring further information. One of them was the single transferable vote (STV), on which I gave a quick briefing just before recess. The detail in the paper before you has not really changed much since the previous briefing. I have been speaking to departmental officials, and they are still working on draft guidance documents for how STV will be implemented in new councils, but they are also working on d'Hondt and Sainte-Laguë as well. Therefore, I was not actually going to go into too much detail on STV this morning, instead looking into some of the other areas.

749. One of those is the Commissioner for Complaints, and I have looked at the Localism Act 2011. The other area is call-in, and I have looked at the use of that mechanism in the Local

Government Bill and how it compares with its use in England. The third area is the general power of competence and how it is used under the Localism Act in England. It also gives information on how local authorities across England are using it at present. It also looks at the contribution of statutory bodies to community planning, with the main focus on Scotland.

750. As I said, there are five papers, so I will not go in and out through all of them and bore you to death. I will just highlight the main findings. Looking back to the Commissioner for Complaints, the main difference is the remit for investigations into conduct. In the Local Government Bill, it is limited to councillors and former councillors, whereas, in England, Wales and Scotland, the remit extends to public bodies. In fact, in Wales, it also extends to council staff and, in Scotland, to Members of Parliament. In England, there is no commissioner for complaints similar to what is proposed in the Bill here. The Localism Act introduced a new standards regime that required local authorities to produce their own ethical code and to deal with standards complaints internally. In Wales, the complaints are dealt with by local government or the Public Services Ombudsman, which is similar to the Commissioner for Complaints here. Complaints will go to the authority's monitoring officer in an attempt to resolve them locally before going to the ombudsman. In Scotland, complaints are dealt with by the newly established Commissioner for Ethical Standards. Those are the main points that I wanted to highlight from that paper.

751. I will move to the call-in mechanism. In the Local Government Bill, there is the 15% trigger. In England, a study revealed that 35% of councils require at least three authorised signatories. How a call-in is instigated varies across

- all the local authorities. The paper lists some of the different variations that they use. That is basically because local authorities must establish a separate decision-making executive with overview and scrutiny committees that then may compel the executive or authority to reconsider a decision. Due to that, functions have been established in a variety of ways. Call-in under the Local Government Bill is based on two grounds. The first is that a decision has not been reached. That may be due to the failure of the policy process or a lack of following the policy framework. Again, that is similar to England. They have only one ground for call-in, which is based on this. In our Bill, the other ground is if a decision would disproportionately impact any section of the community. It is under that ground that a barrister or solicitor can be called in to validate the call-in. It is not necessarily to make a decision on the call-in itself; it is to say whether they feel that the call-in is worth looking into.
752. I looked at the general power of competence under the Localism Act and how it is applied and used by local authorities across England. The power under the Localism Act is similar to how it operates here in the Local Government Bill. Again, it is considered to be a wider and less restrictive power than the power of well-being. The general power gives councils the same freedom as any individual, provided that the act is within the law. That is stated in the Localism Act as well. There are boundaries under the Localism Act to the power. It may not be used to raise taxes, although it can be used to raise charges for discretionary service purely on a cost-recovery basis where no profit is made. It cannot be used to make by-laws or for any form of enforcement. In fact, it has been causing quite a bit of confusion in local authorities across England due to the lack of by-law making and enforcement under it.
753. The Local Government Association for England looked in detail at the use of the power by the councils. It found that they are using it in a number of ways to promote innovation in areas such as extending services and support into new areas. That gives councils the specific legal basis and confidence to extend their services beyond areas traditionally seen as their responsibilities. The example from Oxford City Council on page 2 of the briefing note demonstrates that.
754. Another area is in building greater economic resilience in local communities. A few examples show where local authorities have been offering loan finance to small businesses that have potential but that may not have been able to gain funding from banks. Another one is local authority-based mortgages for first-time buyers.
755. The final paper looks at the contribution of statutory bodies to community planning in Scotland. The Local Government Bill does not include the statutory community planning partners. That will come later in subordinate legislation. However, the Local Government in Scotland Act 2003 states such statutory bodies; for example, NHS boards, police, and fire and rescue services. Page 3 of that paper contains a list of the stated statutory bodies under that Act.
756. On the level of contribution and accountability of statutory bodies, neither piece of legislation places an actual duty. In October 2013, the Department of the Environment (DOE) published community planning guidance to councils. However, there is no direct detail on the contribution that is required from statutory bodies. It emphasises participation and engagement with communities and partners. However, it notes that there is no fixed approach to ensure engagement or participation and states that it will be up to councils to select an appropriate method.
757. Although I say that Scotland does not have a duty under its Act, it has used a number of methods to deal with the issues directly. That is done through the community planning partnerships, single outcome agreements (SOAs) and, more recently, a statement of ambition. The latter two require community

- planning partners to make more of a commitment. To explain how that might operate, I can tell you that, in 2012, the Scottish Government and the Convention of Scottish Local Authorities (COSLA) published a statement of ambition to community planning partnerships, in which one of the core principles was to strengthen duties on individual partners. That is so that the Scottish Government and community planning partners ensure that health boards and other public bodies are held to account for their contribution to community planning. In fact, Scottish Ministers can hold appropriate individual partners to account for the effective discharge of their duties.
758. An example of SOAs can be seen in Fife's community plan up to 2020, which sets out three high-level outcomes to which community planning partners must agree and sign up. The community plan details that the lead partnerships and groups will work together with people in communities in Fife to deliver the agreed objectives.
759. That is a quick overview of the main areas, but, if members wish, I am happy to go into more detail on any of the other areas, including STV.
760. **The Chairperson:** I have a couple of questions. The subcommittee met the Northern Ireland Local Government Association (NILGA) on Tuesday. NILGA made the point that it is concerned that the power of competence is too vague, is almost a free-for-all and may raise false expectations that lead to people coming to councils and asking for different things that councils do not have the resources or power to do. How can we address that? How can we tie this down?
761. It is great to hear about all the innovative ideas that are being put forward and are materialising in Scotland — first-time buyers and all of that. I do not know whether our councillors would want to dip into that sort of thing, but other precedents could be set that see people go to our local councils and be disappointed that they cannot do things.
762. **Ms Cave:** There are limitations to it, which I did not go into but that are in the paper on pages 5 and 6. So, you need to consider those as well.
763. **Mr Weir:** I want to touch on two issues in the paper. It is a very good paper. It deals with the issue of code of conduct and the like. You mentioned that, in England, the commissioner for complaints has a remit that covers all public bodies as opposed to simply councillors or ex-councillors. I appreciate that, from our discussions on Tuesday, there may be a particular issue that, as a Committee, we may want to look at a recommendation but we may not have the power to change the legislation on this basis. Would the remit covering public bodies cover the members of a public body irrespective of whether they were councillors or independents, for want of a better word? The point was made to us that we will get a number of bodies here that are mixed bodies. One particular example was PCSPs, where you have a mixture of elected representatives and independents who are appointed. One of the concerns that were raised was that you would have a situation in which the code of conduct, if you like, covered some people in a particular body but not others. I am looking for clarification that the Commissioner for Complaints would cover those independents or non-elected people as well.
764. **Ms Cave:** Yes, there is a list that it did cover. It was mainly councillors, public bodies and co-opted members. If I remember correctly, Wales seemed to have a wider remit compared with England and Scotland. The only limitation they gave was that investigations could not be made to individual employees of an authority.
765. **Mr Weir:** In the broadest sense, it is public bodies and representatives. The other issue that arose out of that may be outside the remit of what you are looking at, and, if it is not there, it may be useful to get some more information.

That is the issue of complaints. In the legislation, there is a lack of or a very limited appeals mechanism. At the moment, the only thing that seems to be potentially envisaged by the Department is a judicial review type of appeal, and there seems to be a general feeling that that is maybe not adequate. Are you aware of any examples elsewhere of where appeals mechanisms are built into the situation where there has been a complaint? It might be useful if we were to look at what mechanisms those are, because, obviously, we are looking to see what we can put in place here and what the best way of doing it is to have some form of appeal for a councillor or whatever.

766. **Ms Cave:** In that paper, I did not go into that area, but I certainly can.
767. **Mr Weir:** I appreciate that I am maybe throwing something at you. Chair, maybe Suzie could take a look and see in other jurisdictions what appeals and what grounds there are and what the mechanism is by which an appeal is made. There does seem to be general concern that, at present, you have a situation where somebody could suffer a particular verdict that has very major implications. It seems to be against natural justice not to have some level of appeal.
768. **The Chairperson:** Does Wales not have some kind of appeals mechanism? I am trying to remember from your paper. Did it mention an appeal system somewhere? It is a concern that has been highlighted in our submissions quite regularly.
769. **Ms Cave:** It is not something that I have gone into in any great detail, but I will take a look into that.
770. **The Chairperson:** OK.
771. **Mr Boylan:** Thanks very much for the presentation. I welcome the question by Peter about the commissioner, because we are looking at whether we should expand the role of the Commissioner for Complaints. Maybe we will see some examples from the Welsh model and what exactly his role is. I have two points, and one relates to the general power of competence. Say, for example, some council area decides to do something for the betterment of its community and some other council decides not to do it, and a member of the public says that such a council is doing this and the other council decides not to do it, can a member of the public hold the council to account for not doing it? I do not know how that stands legally. There would be an expectation on a council, because if one council is doing it, the public in another council area would maybe like it done too. How would that stack up if a council were challenged as to why it did not undertake to do something that another council was doing?
772. Secondly, I welcome the new statement of ambition, which is in the Scottish model. Does that sit in statute, is it a regulation, or is it just a signed agreement? I ask that because there are genuine concerns about whether the statutory agencies will participate properly in the likes of community planning and everything else. There are general concerns about that level. I wonder how we can tie it down in our legislation to ensure that those people do participate properly, that the engagement is meaningful and that they attend the meetings and participate in community planning. I would like a wee bit of information on that, please.
773. **The Chairperson:** Also, more so as to whether they are going to put their resources into the community plan or align those actions to their own department's policies. That is very important.
774. **Mr A Maginness:** With regard to call-in, the context in which England is operating seems to be the context of cabinet-style administration at local government level. The call-in seems to be based on an apparent lack of proper procedure rather than a substantive issue. Is that a correct reading of the situation in England?
775. **Ms Cave:** It is hard for me to say. From the evidence that has been given so far,

- there seems to be such a wide variation in how it is applied that it is hard to come up with a common understanding of it. The research has been looking into it to try to assess how it has been operating across all the different local authorities. However, there are such variations in how it is instigated. Some local authorities allow members of the public to instigate a call-in, whereas others do not. It is left to their own discretion.
776. **Mr A Maginness:** Have there been examples of where the call-in has operated that you might think would be useful to us here? Maybe you have not explored that in great detail.
777. **Ms Cave:** I looked at it in general, but I could do that. I could go into more specific examples —
778. **Mr A Maginness:** It might be interesting to have a few examples of where it has been effectively used and the circumstances in which that happened. I think that concrete examples are more helpful than the overall procedures and theory. With regard to legal opinion, I know that, under our legislation, we are talking in terms of a solicitor or a barrister. Is that the position in England, or is it just a matter of procedure?
779. **Ms Cave:** There is no provision for that use of a solicitor or barrister in England. With the Local Government Bill, one of the two areas that call-in can be used for is the disproportionate impact on a section of the community. Again, I tried to get clarity on the idea of “section of the community”, but they seemed to say that it was going to be defined as part of the community that has a specific description. Again, that is when the solicitor or barrister can be used. In England, the call-in is only used on the process — so, for failure to reach a decision — and therefore the solicitor or barrister element is not written into the Bill.
780. **Mr A Maginness:** So, really, we are dealing with fairly novel territory here. The English experience is a little bit different from our own.
781. **Ms Cave:** Yes, it is more limited towards the process and the failure to reach a decision, whereas the Local Government Bill has now introduced the element of disproportionate impact on the community.
782. **Mr A Maginness:** Thank you very much. That is very helpful.
783. **The Chairperson:** Actually, Alban, at the discussions on Tuesday, the Northern Ireland Local Government Association (NILGA) suggested that there should be a panel of solicitors, stressing that different solicitors may give different views.
784. **Mr A Maginness:** Yes, I am sorry that I was not here on Tuesday. I apologise for that.
785. **The Chairperson:** In order to keep consistency across different councils, there may perhaps be a panel of solicitors to adjudicate on requests.
786. **Mr A Maginness:** Yes, that might be a better idea.
787. **Ms Cave:** Yes, to keep more of a standardised approach.
788. **The Chairperson:** We will talk to the Department about that.
789. **Mr Elliott:** Thanks, Suzie, for the presentation. Regarding the call-in again, is there any indication of the criteria that will be used? I know that at the bottom of your report, regarding barristers and solicitors, it states that the Department plans to develop some form of consistent criteria, and I know, as the Chair said, that NILGA indicated that it would like a panel or pool; but is there any indication that the Department will put that criteria into legislation, either secondary or otherwise, or will it be just guidance?
790. **Ms Cave:** I asked the Department that question, and it said that, at this stage the guidance will be developed whether it will be statutory or advisory.
791. **Mr Elliott:** So, we do not know.
792. **Ms Cave:** It did not clarify that.
793. **The Chairperson:** We had a bit of a discussion on Tuesday on whether it will be by guidance, which is really on a voluntary basis, or regulation.

794. **Mr Elliott:** I do not know whether NILGA came to a firm view on that either. My recollection is that it did not have a firm view on whether it should be statutory or just guidance.
795. **Mr Weir:** Chair, as we are getting a bit of clarification, NILGA was saying that it was getting a mixed understanding of the extent to which there would be guidance and how much would be in regulations.
796. **The Chairperson:** I think it is going to come back to us on that. There are a few issues that it will come back to us to clarify.
797. **The Chairperson:** OK. Are there any more questions for Suzie? Thank you very much, Suzie.
798. Members, is there any other information that you would like to seek? Those are all the issues that we want to look at again.
799. **Mr Elliott:** One issue that came up again on Tuesday was whether a council employee could become a councillor. There was quite a lot of debate on that. Peter indicated that it was based on a European judgement. I wonder whether there is any point in our getting a bit more information on that judgement. I know that NILGA indicated that it was opposed to giving permission to or allowing people who are employees of councils to become councillors, and certainly not in their own council, I think was the key. I wonder whether we could get more information on that because it was the first issue that NILGA raised.
800. **The Chairperson:** NILGA was quite content for employees to become a councillor in another council but not to become one in the council for which they work.
801. **Mr Elliott:** I think that that was the compromise that they were suggesting in the end.
802. **The Chairperson:** I can understand that. It is just going to be so difficult.
803. **Mr Weir:** Let me take up that point. I think that it is a reasonable enough point to make that, if someone is an employee in a different area, it would seem to be slightly strange as to why that person would be excluded. It may be useful to find out precisely what the current legal position is.
804. The bit that slightly confused me, or at least suggested to me that we may previously have been given the facts but not the full facts, is the indication given by the Department. It may be the case that there is a wee bit of mixed information in it. Somewhere there has been a degree of miscommunication, perhaps even in the information that we got on Tuesday. The information that we got from the Department is that that position is changing because of a European Court ruling. I believe that a couple of employees in England who, I think, worked for a parish council took the court case. The impression that I got from the Department, when it raised the matter in Committee, was that this is a requirement that we have to bring in because of something that happened pretty recently. However, the NILGA representatives said that someone in the Department had mentioned a 1989 court case to them. Thus, the two do not seem to add up. One obvious thing, I would have thought, is that, if there was a European Court ruling in 1989 that said that you cannot put a bar on council employees, it seems that someone has massively fallen down on the job if our legislation remained unchanged for 24 years in contravention of European law. It may be that there has been another court case, and someone in the Department has not relayed that information to NILGA. I do not know. It may be worthwhile to find out what the position is. I agree with Tom's remark.
805. **The Chairperson:** My understanding is that it was a fairly recent case, not one from away back in 1989.
806. **Mr Weir:** That is certainly the impression that I got, but that may beg the question that, if that has been mentioned elsewhere by some other officials to someone in NILGA, referencing the 1989 case, does it mean that those officials are unaware of the more recent case? I

think that we need to get a bit of clarity on this.

807. **The Chairperson:** We will look into that, too.
808. **Mr McElduff:** In support of Alban's point —
809. **The Chairperson:** Sorry. Let me remind members to move their tablet away from the microphone. Apparently, some members' tablets are obstructing the microphone.
810. **Mr McElduff:** I support Alban's point about call-in. We should try to get that fleshed out a bit more. Perhaps other jurisdictions, some of which might be described as divided societies, can provide guidance on the substantive issue of protection of minorities. Are there specific examples of that?
811. **The Chairperson:** I think that that part on adverse effects on sections of the community is quite specific to us in Northern Ireland. Is that right, Suzie?
812. **Ms Cave:** Yes.
813. **The Chairperson:** OK. Thank you very much, Suzie. We look forward to seeing you back again.

9 January 2014

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 Mr Ian McCrea
 Mr Barry McElduff
 Lord Morrow
 Mr Peter Weir

Witnesses:

Mr Colm Bradley *Community Places*
 Ms Clare McGrath
 Ms Louise McNeill

814. **The Chairperson:** I welcome Colm Bradley, Louise McNeill and Clare McGrath from Community Places. You are very welcome, and thank you very much for your submission, for attending the stakeholder event and for coming back again. Community planning is obviously a major issue and is very new to us. It is important that we thrash things out. I know that you raised a number of issues. I hand over to you to guide us through your submission.

815. **Mr Colm Bradley (Community Places):** I thank the Committee for inviting us along. I will make a few general comments by way of introduction and then hand over to Louise, who will take you through our proposals. We can either do that clause by clause and stop after each one or go all the way through and take questions at the end — whatever you think is best, Chair.

816. The proposals have been developed over time with the support and involvement of a number of community support networks across the region, and that number has now grown. We now have over 100 community development support organisations, with a membership of over 2,000 local groups. They have been involved and

are supportive of what we propose. I will make some general comments about this part of the Bill specifically. Essentially, it does not really do what it sets out to do; it does not really do what it says on the tin. As presented, it does not, and will not, do four essential things. It will not coordinate and join up services. We all want to see this happening, but the Bill does not address it. It will not ensure meaningful community engagement and realistic opportunities for community groups to participate. It will not ensure that we really make a difference and produce real outcomes. It will not create shared responsibility and accountability for delivering the aims across all the partners involved. You have been discussing that issue already. Everyone who speaks about community planning, whether in the Assembly, local government or central government, wants to see those four core ingredients being delivered by community planning. We cannot find them in the Bill. Our proposals focus on bringing those four key ingredients into the Bill.

817. As some of you already know, I think, this part of the Bill is lifted largely from the Welsh legislation. I am sure that it works fine in Wales, but this is not Wales.

818. **The Chairperson:** They are reviewing it now, too.

819. **Mr C Bradley:** They are reviewing it to try to improve it. A crucial difference is that although our new councils will have more responsibilities, they will not have anything like the responsibilities that councils in Wales, England or Scotland have. They will be required to work with a much broader range of partner organisations, many of which will have larger budgets, responsibilities and so on. Getting that mix and those relationships right and getting those partners locked into the community

- planning process is more crucial here than elsewhere.
820. I have a couple of final points. Contrary to what some officials said at the stakeholder event, our proposals seek a role for the community sector, but not one that is the same as the statutory partners. All the community groups and community support organisations involved in developing the proposals recognised that we are not statutory. Our role is not the same as that of our statutory partners. However, we are proposing that the community sector should be able to participate fully in developing and delivering community planning as and when it is appropriate and realistic. Departmental officials have also been saying that the four elements that we identified as being missing will all be dealt with through guidance. It seems that a lot of things are going to be dealt with through guidance. However, guidance cannot supplement, substitute or fix poor legislation. This part of the Bill, as it stands, is poor. It does not deliver those four key ingredients. The guidance cannot do that either. Our proposals are to improve the Bill and bring those four key ingredients into it.
821. I will now hand over to Louise. Would you rather that we go through clause by clause?
822. **The Chairperson:** I think so. Members may want to ask you questions after each clause. If there are no questions, we will move on to the next one. It will be easier that way.
823. **Ms Louise McNeill (Community Places):** Thank you. I welcome the opportunity to engage with you again today. As Colm said, we have identified a number of areas in which we feel that the Bill could be improved and enhanced. The first relates to clause 69, which sets out the process that describes community planning. One of the main weaknesses is that, as Colm has just said, there is no reference to the improvement of services or service provision at all. One of the most valuable strengths of effective community planning is its ability to improve the coordination and delivery of public services in local areas and constituencies. That has been a fundamental aim of community planning elsewhere, such as in Scotland, Wales and the Republic. However, the Bill makes no reference to that service provision. Clause 69(2)(c) states:
- “identify actions to be performed and functions to be exercised”.*
- It should be amended to also state:
- “including those related to the planning, provision and improvement of public services by the council and its community planning partners for the purpose of meeting the objectives identified under paragraphs (a) and (b).”*
824. Those paragraphs talk about the improvement of well-being and the achievement of sustainable development. That would be a way to really place that emphasis, rightly, on the improvement of service provision. The Minister’s statement and the explanatory note that goes with the legislation emphasise that service provision, but, as Colm said, the legislation does not include it. I think that, by taking it from Wales, that aspect has maybe been missed.
825. We feel that the community and voluntary bodies should be and are important stakeholders in the delivery of effective community planning. They have experience, knowledge and assets that they can offer. They have access to resources that are not available to statutory agencies and experience in providing local projects and services. So, it is vital that they are active participants from the very outset of the community planning process. The legislation in Scotland uses the term “co-operation” to allow for their inclusion, and we feel that, at clause 69(2)(d), a new clause should be inserted to read:
- “and in co-operation and conjunction with community and voluntary bodies from the outset of the process.”*
826. That would highlight the important role that the community and voluntary

- bodies can play in delivering effective community planning.
827. It is clear that the community plan will provide an overarching framework, and what has been called the “plan of plans” really sets the vision and agenda for the work of the 11 new councils and their community planning partners and representatives from community and voluntary bodies. In order to ensure appropriate commitment to the implementation of the community plan and to achieve those improved outcomes, long-term objectives and actions should be identified and agreed. So, we seek a small amendment there to include the word “agreement”. Clause 69(2)(a) and 69(2)(c) would include to:
- “identify and agree long-term objectives ... [and] actions to be performed and functions to be exercised”.*
828. The amendment would be the inclusion of the requirement to identify and agree.
829. I will move on to the link between the community plan and the local development plan. We very much welcome that statutory link and feel that it will really enhance both processes. We think that there are a number of benefits from the two processes being aligned, and we want to draw your attention to the example of Fife, where that alignment is utilised very effectively. The community plan sits up with the national planning framework and really sets the strategic aims and outcomes of the land-use plan. In Fife, it is the Fife structure plan, and that is like our local development plan here. That takes that forward in various zonings. It is a very good example that it might be worth looking at.
830. I will move on to the community planning partners, which is under clause 70, and naming the partners. Suzie has commented on that, and some of the questions that you asked touched on it. In other jurisdictions, the statutory partners are listed in the primary legislation along with provision for changing that list as circumstances require. In light of the fact that our councils will have fewer powers than councils elsewhere and that more statutory partners will be involved, it is all the more important that the primary legislation reflects that, and we feel that the Bill should be amended to include a list of the community planning partners and their duty to participate.
831. **Mr Weir:** It is maybe slightly unusual to list names, but I understand the reason why. Would one possible formula be to outline a minimum list and say, for example, that the community planning partners:
- “shall include but not necessarily be limited to”?*
832. I am conscious that there may well be, for instance, statutory bodies that may be relatively tangential to the community plan, but it may depend upon what is getting done. On a particular issue, you may want to involve such and such, and there could be a situation in which that is almost ring-fenced, and every time you want to change it, you have to go back to legislation. I think that everybody will accept that the likes of the Housing Executive, Roads Service or whatever should automatically be part of that. There may be a formula that can ensure that particular people are listed but also makes it clear in the legislation that it is not an exhaustive list.
833. **Ms McNeill:** I agree with that. It should still be flexible. We were going to recommend a new clause at 70(5) that would allow the Department, by order, to modify subsection (1) by adding a reference to “any eligible body”. Although they have not been specifically named, that flexibility could be used, when it is needed, to include the additional partners.
834. **Mr Weir:** I am conscious that it is in a format that may allow the body itself to more or less add in somebody if it so desires. I am conscious that that could happen even by way of a departmental order. I appreciate that it may be just to give it flexibility. However, you may have something on a particular net issue and want to involve a particular body for a two- or three-month period. If it is by way of departmental order, by the time that

- you get something drafted, that two- or three-month period might have passed, the issue has gone away and you do not need it any more.
835. Even from our experience, if it is tied in with reference to an order from the Department, with the best will in the world, by the time that an order is produced, consulted on and comes to us, the moment could very easily have gone. If we want a degree of flexibility, there also has to be something that at least allows action to be taken on the ground without it being entirely tied in with requiring legislative approvals.
836. **The Chairperson:** I wonder whether there could be a catch-all phrase like “all Departments and statutory bodies are the list of partners” that would capture all —
837. **Mr C Bradley:** It might be a very long list. You might need a very big room.
838. **Mr Weir:** Moreover, some may not be overly relevant.
839. **The Chairperson:** You would not need to call them if they are not relevant.
840. **Mr Weir:** There are government bodies, for example, that may be peculiar to Belfast. To have the Omagh or Fermanagh community planning group or a rural development body dealing with inner city transport in Belfast having, by law, to be represented would not appear to be particularly relevant. I think that there is some merit in having a minimum list, but there then at least has to be the flexibility for that to be added to, depending on local circumstances.
841. **Mr Boylan:** I was going to come in at the end, but I will come in now. There are two separate issues. One concerns the list of community partners and how you define that. Can we get some idea of who the partners are in the Fife model? Clearly, there are different partners for different things. Can we have that identified?
842. The other thing that I know everybody is concerned about whether the statutory agencies participate properly. Have you looked at any other models where that is working properly? Who are the statutory agencies? Can you identify them? Do we need to put them in primary legislation, as is indicated in the Scottish model, in secondary legislation or in guidance? Can you talk a wee bit about that and give us a wee bit of information?
843. **Mr C Bradley:** We will come back to the second point later. However, I will say generally that it is an ongoing problem in Scotland and Wales. The statement of ambition that Suzie mentioned earlier is a statement from government and the Convention of Scottish Local Authorities (COSLA). One of the key things that it says is that they want to see community engagement improved. However, they also want to see partners taking community planning more seriously and being more accountable. The statement then indicates that they will bring forward legislation to strengthen the accountability of partners in community planning. That is contained, to some extent, in their Community Empowerment (Scotland) Bill, which was released just a couple of months back. One of the ways in which they try to make the partners more accountable is by strengthening the outcomes agreement and strengthening their responsibility for delivering some of the outcomes that clearly sit within their remit.
844. That is the kind of approach that we have tried to take later in our proposals. We tie them in more with delivering the community planning outcomes. We will also suggest that when the audit process kicks in to look at how the councils are performing, part of that also look at how the partners have performed in helping the council to develop and deliver the community plan. Therefore, an audit would also look at and comment on not just the council’s responsibility for the community planning process but the statutory partners’ responsibility to see to what extent they have met their responsibilities. We will come to that later.
845. We have not used the term “community partner”, because we do not want to confuse that with “statutory partner”.

- However, as Louise said, we think that there should be something in the legislation that sets out clearly that the community sector has a role to play in developing community planning and delivering some aspects of it. That would be worked out locally in each community planning setting. It would be for the council and the partners in the community sector to work out how they will conduct community engagement in their own community planning process and get different community and voluntary groups to contribute to delivering the community plan. So, we think that the legislation needs to set down the intent of participation in developing and delivering the plan but that the actual practicalities of that should be left to each of the 11 situations.
846. **Ms McNeill:** We also welcome the requirement for the Department to consult those whom it considers appropriate when it is determining who the partners should be. We think that, in the interest of certainty, consistency and clarity, the Bill should specify that that will include community and voluntary bodies, along with, as is currently stated, the community planning partners, district councils and other such bodies.
847. Again, clause 73 should be amended to include the words, “community and voluntary bodies”. In naming the partners, as we suggest, the Bill should also allow for additional partners to be identified and added as required. We talked about that briefly, and again, it goes back to the point about flexibility in enabling additional partners to take part.
848. Moving on to the production of the community plan, which relates to clause 71, we feel that a specified time frame should be set for when the first community plan must be published. It will be important that councils and community planning partners are given the necessary time to produce a robust and quality community plan. The first community plan from each of the 11 councils will provide the blueprint for further community planning in the councils’ own districts. As such, it is essential that all those involved will have the time to produce a robust and comprehensive community plan.
849. At the same time, it is also important to ensure that the community plan is produced without unnecessary delay and in a timely fashion. So, the introduction of a timescale has a twofold role. We recommend that a community plan be published no later than within three years of the formation of the new councils. Therefore, clause 71(4)(a) should be amended to read:
- “and no later than within three years of the formation of the new councils;”.*
850. Clause 73 deals with the review of community plans, and we welcome the Bill’s provision at clause 76 for community involvement in the review of the community plan. It is widely recognised that good practice in consultation includes the provision of feedback that indicates how people’s views have been considered. Thus the council and its community planning partners should also report on the means of that consultation, including providing a summary of its outcomes. It will be essential for community involvement to be consistent and robust across the 11 new council areas. So, we recommend the inclusion of new subsection 73(2)(a)(iii) that reads:
- “report on means of consultation with the persons listed in 76 (2) including a summary of the outcomes of consultation.”*
851. To ensure that a timely review of the community plan is conducted, a time-scale of six months should be introduced for when the plan should be published after review. We therefore recommend amending clause 73(6) to read:
- “The council must, as soon as is reasonably practicable after becoming subject to the duty under subsection (4) and within six months, publish an amended community plan.”*
852. Clause 74, which deals with monitoring, looks at making a difference in the outcomes aspect, which we talked about. Elected representatives, councils, communities and ratepayers will all wish

- to ensure that community planning is having —
853. **Mr Weir:** May we just briefly go back?
854. **Ms McNeill:** Yes.
855. **Mr Weir:** The draft amendment that you talked about uses the words “publish an amended community plan”. However, it may well be that the feedback will mean that there needs to be an amendment. Does that make any provision for the group, having looked at it, saying, “To be honest, listening to what has been said; we actually think that we got it right. We do not want to amend”?
856. **Ms McNeill:** Yes. They also have to produce a statement showing progress, so it would be only if an amendment were required.
857. **Mr Weir:** OK.
858. **Ms McNeill:** To go back to clause 74 and the discussion on really making a difference, monitoring progress in delivering the community plan and reporting on its impacts will be important to all those who will be involved in the community planning process. That should be reflected in the Bill. There is a focus on community planning in Scotland, and that is also increasingly the case in the Republic of Ireland. An outcomes-based approach provides councils and their community planning partners with a framework to identify and to measure the progress made towards the community plan’s objectives. However, it also helps with the better alignment of regional council and local priorities. A focus on outcomes should, therefore, be explicit in the Bill. We feel that clause 74(3)(a) should be amended to read:
- “progress made towards meeting the community plan objectives and outcomes for its district;”*
- so that there is more emphasis on outcomes in community planning.
859. **The Chairperson:** When you say outcomes, you mean the result, not the output. Is that right?
860. **Ms McNeill:** Yes, it is the difference.
861. I will move on to clause 76, which is “Community involvement”. Community involvement and effective engagement is a key ingredient in community planning. It is crucial that it reaches out to everyone living in a council area, including those who are often described as hard to reach. Legislative provision elsewhere seeks to ensure that by encouraging a proactive approach to engagement. However, at clause 76(1), the Bill simply requires a council and its community planning partners to:
- “ensure that arrangements are made so that ... persons ... have the opportunity to express their views, and have them taken into account”.*
862. That is very passive and overly bureaucratic language, which is unlikely to encourage good practice. More active language should be used to ensure that councils and their partners actively seek and encourage participation in the process of community planning. In Scotland, for example, the legislation uses the words “take suitable action to encourage” and in England, the phrase “seek the participation” is used. In Wales, the same wording that we are proposing here is being used — “arrangements are made” — and we feel that that will not encourage good practice.
863. We would like to amend clause 76(1) to read:
- “A council and its community planning partners must seek the participation of and encourage persons mentioned in subsection (2) to express their views”.*
864. **Mr Weir:** That is a reasonable point. The only issue is if you are going to follow through a wee bit of consistency with the other bits. Mention was made earlier of the community and voluntary groups, many of which do a good job. However, I wonder if a different phraseology may need to be used when we are talking about the community including community and voluntary groups. There is also the fact that, if we are looking at inputs, there are a lot of people who are not members of groups, who, in

- many ways, simply because they are not a member of one of those groups, at times do not feel — and there is also the fact that, even from the view of the community partners, you may find that it may be helpful, at times, for the local group to put someone forward who has no direct connection with any groups but who may be able to bring a certain level of expertise in the field. There may need to be language that is phrased in such a way that it is, at an earlier stage, more widely drawn and inclusive and which, perhaps, talks about the community including community and voluntary groups but does not necessarily exclude someone who is not within that ambit.
865. **Mr C Bradley:** To be fair, the Bill does refer to persons who are “resident in the district”.
866. **Mr Weir:** I understand that, but specifically it is with regard to some of your earlier proposed amendments, which mention specifically community and voluntary groups. Perhaps there should be a different phraseology that includes those groups but is more widely drawn, whoever it is that you are involving. That might be helpful in that regard.
867. **Mr Boylan:** It is grand saying “persons resident in the district”. The likes of yourselves and community and voluntary groups will be there and will understand that they can contribute. How do you reach that individual out there who may have a contribution to make? How do you encourage those individuals? It is all right saying it in the Bill. Are there any ideas or anything going forward in any other legislation or community plans that you have gone through in your own research?
868. **Ms McNeill:** Certainly, when we get to the guidance sections, when it comes to quality standards for engagement, it is likely that, given the alignment with the land use plan or local development plans and the community plans, we may even see councils trying to develop a specific engagement plan for their areas, which, rather than having one for land use planning, it would also be there for community planning. We would like to see quality standards for engagement to ensure consistency across the 11 council areas. You might have one council that is already ahead of the game and working very well on community planning and another council that maybe is not as proactive. It would ensure that there is consistency in quality standards in engaging with everyone. That would go right down to persons, not just necessarily those who represent groups and, particularly, to harder-to-reach groups. We have also developed, along with funding from the Big Lottery fund, a community planning toolkit. One of the themes of that looks at engagement and is specifically about trying to engage in innovative methods of reaching out to those who are often harder to reach.
869. **Mr Weir:** Maybe it is drawing things too widely, but it occurs to me that, if we are talking about the issue of residency, there is an argument that that also should include people who are employed in that area.
870. **Ms McNeill:** There are number of people who are included, such as persons who are resident and persons who are not resident but who receive services. It is quite broad. It includes representatives of voluntary bodies, representatives of persons who are carrying out business and other persons who the council considers appropriate. So, it is very broad.
871. **Lord Morrow:** My point is on the definition of a hard-to-reach group. Sometimes, I think that we can maybe overdo these things in trying to get to those who do not want to be got to. *[Laughter.]*
872. **Mr Weir:** “Can you leave us alone?”
873. **Lord Morrow:** Exactly. Are we going take 10 bloodhounds with us and seek these people to organise people in particular who say, “Hold on a moment. Just let me get on with my life, please”. Somehow we have to respect that, but, if there were groups, people and organisations that are being deliberately missed, obviously that would cause concern. I do not think that we are

- talking about that. For me, people who are hard to reach are people who very often decide, "Hold on a moment. This is the way I live my life. Just let me get on with it".
874. **The Chairperson:** I agree with you to a certain extent, but the term "hard-to-reach groups" quite often refers to ethnic minority communities that comprise very new or new immigrants who may have a language barrier. It is really about overcoming those barriers to facilitate them to be able to participate. The term also refers to young people or older people or people with a disability. It is about how you get over the barrier to bring them in. That is what this means usually.
875. **Lord Morrow:** Yes, but does that have to be set in legislation?
876. **Ms McNeill:** No. I think that you would probably see that in the statutory guidance. Also, if you have quality standards for community engagement that are there for everyone, it ensures that people who are harder to reach are included. So, it is about ensuring that you get the engagement process correct at the outset. It does not necessarily mean that you have to specifically try to target and go beyond, particularly, as you said, with people who maybe just want to get on with their lives and not be hounded.
877. **The Chairperson:** "Leave us alone".
878. **Ms McNeill:** If you have those quality standards for engagement, it ensures that fewer people are excluded and that there is an opportunity to be included.
879. **Mr McElduff:** Is Community Places not offering more than that by way of addressing hard-to-reach groups? Are you just leaving it with quality-type engagement? Have you anything else to offer in that area that might strengthen it?
880. **Mr C Bradley:** Do you mean strengthening the legislation?
881. **Mr McElduff:** Yes.
882. **Mr C Bradley:** We are not sure that it can be done on a legislative basis, to be honest. We think that it can be done in the guidance, and we are absolutely convinced that our community planning toolkit provides a whole range of methods of engaging with people around different issues and different needs. It provides a whole suite of methods that have been tried and tested elsewhere.
883. **Mr McElduff:** Can we receive some details of those methods of how to reach according to your toolkit?
884. **Mr C Bradley:** Absolutely.
885. **The Chairperson:** I think that your point is that, in primary legislation, we need to strengthen the wording that is in the Bill currently to actively seek participation rather than to leave it in guidance. Other minor details can be put in guidance.
886. **Ms McNeill:** Currently, the arrangements that are made could just be an advertisement in a local paper or something that people would completely miss. So, at least, if the legislation could say to seek and be much more proactive and if the guidance could follow that up, it would probably be much more effective.
887. **Mr McElduff:** I think that it was Leonard Cohen who said:
"If you want to reach me, leave me alone"
[Laughter.]
888. **The Chairperson:** I do not know the logic of it.
889. **Mr McElduff:** I do. I know it well.
890. **Mr Elliott:** Are you planning to have that inserted in the legislation?
891. **Mr McElduff:** I can think of a gentleman in Omagh who is very good at lobbying, but he is very much an individual.
892. **The Chairperson:** There are no more questions, so we will move on to the next clause.
893. **Ms McNeill:** Clause 77 relates to guidance, which we have covered in a few of the other comments. We very much welcome that the Department will issue that guidance, and it will be

- essential in ensuring that effective and consistent processes are developed across the 11 new council areas. We feel that the guidance could cover a broad range of things, as included in our submission, but I would just like to highlight a few of those now.
894. It should cover the aims and principles of community planning; how the community plan will fit with other plans, and that really relates back to plan alignment and the community plan being the plan of plans; quality engagement standards for community planning; and, in line with the councils' new role as a facilitator of community planning, proactive approaches to engaging and reaching out to those harder to reach groups that we were just talking about, including low-income groups, rural communities and lesbian, gay, bisexual or transgendered (LGBT) communities.
895. Also, there should be guidance on the implementation of the statutory link between the community plan and the local development plan and provision for developing thematic and local community plans. There should be guidance, potentially, on the outcomes-based approach to measuring progress and improvement and also aspects around the general power of competence; good practice examples of its use; and details of how it can be implemented to respond to the needs identified through community planning processes and how it can effectively respond to previously unidentified needs or gaps in the community plan.
896. We also feel that additional advice notes may be required because a broad range of aspects has been identified. It would be a very large guidance document if it were to cover all of those; so, perhaps it would be useful to see additional advice notes on specific areas there. Again, we highlighted our own community planning toolkit and, if that would be useful, we are happy to share it.
897. Also, the Bill requires the Department to issue guidance and consult a number of different bodies; for example, associations or bodies representative of officers or councillors and so on. We think that, again, specific references to consulting with community and voluntary bodies should be included here so that they have an opportunity to shape and influence the process of community planning. That would amend clause 77(2) to include the wording:
- "including community and voluntary bodies as appear to the Department to be appropriate".*
898. Moving on to the duties of —
899. **The Chairperson:** Clause 77(1) states that the Department "may" issue guidance: should that not read "must" issue guidance? That has been raised by NILGA.
900. **Ms McNeill:** We definitely think that it should.
901. **Mr McElduff:** Chair, what is the difference between "must" and "shall" on this matter?
902. **The Chairperson:** They are the same: "must" and "shall" are the same. Is that right, Peter? They have the same weight?
903. **Mr Weir:** There is a difference between "shall" and "may". Barry, the bill is in the post.
904. **Ms McNeill:** Moving on to clause 78, which covers the duties of Departments in relation to community planning; Departments will play an important role in the success of community planning. They will wish to be active and positive contributors to the implementation of community plans that have been developed by locally elected representatives and others. The wording in the Bill states that each Department must:
- "aim to promote and encourage community planning;"*
905. Again, this is quite passive and conditional language. It is unnecessary and unhelpful and we feel that the phrase "aim to" should be removed. It should read that Departments:
- "will promote and encourage community planning".*

906. Ministers will also wish to play an active role in ensuring that the public services they are responsible for are, through the community planning process, improving and addressing the priorities of each council areas. Like their counterparts in Scotland, England and Wales, they will also wish to promote and encourage community planning as legislation in these jurisdictions allows. However, the Bill does not make any reference to the Ministers' role in encouraging and promoting community planning. We feel that clause 78 should be amended to read:

"So far as is reasonably practicable to do so, every Northern Ireland Department and Minister must, in exercising any function which might affect its community planning, promote and encourage community planning."

907. We would like to remove the term "aim to". We also propose —

908. **The Chairperson:** So, in other jurisdictions in the UK, the Minister is always mentioned in primary legislation?

909. **Ms McNeill:** The Minister is mentioned.

910. **Mr Weir:** Chair, there may be a difference between the Department and the Minister here because of the way that power is devolved. I think that power might rest with the Department. There is some technical difficulty, so there may be some slight variation of terminology here.

911. **The Chairperson:** Perhaps we could find out the difference.

912. **Mr Weir:** I might be wrong on this, but I think that there is some provision under the Northern Ireland Act, which established the Assembly and the power devolution side of it, on where the exercise of ministerial power lies. It is phrased slightly differently from the norm across the water. However, I cannot remember what the differences are. I suppose that is more of a technical issue.

913. **Ms McNeill:** In relation to Departments' additional roles, they must have regard to the content of the community plan in relation to the exercise of that

Department's functions. We also feel that that should be furthered so that they will actually agree with councils and their community planning partners on how the Department can assist in implementation of the community plan. That would require an amendment to clause 78 to state that Departments must have regard to the content of the community plan and also agree with councils and their community planning partners on how the Department can assist in the implementation of the plan.

914. Clause 81, which deals with interpretation, allows for community plans to be referred to by alternative names. We feel that, if utilised, the provision will undoubtedly lead to confusion and loss of identity of the new process. We think that is it unhelpful and unnecessary, that the Bill should aim for simplicity and avoidance of confusion and that clause 81(4) should be deleted.

915. **Mr Weir:** I understand where you are coming from in relation to that. A thought just occurred to me when you said that though. Is there not an argument that allowing some level of flexibility could be interpreted as trying to promote a community plan, sometimes from a sort of marketing point of view? For the sake of argument, maybe you are working on a community plan, and you want to call it Belfast 2020 or some sort of slick name. To some extent, if you do not allow some flexibility in the naming of the plan, you are slightly straitjacketing it. Maybe the concern is that, because of the name, it is seen as something that is a little bit boring or whatever. I have an open mind in relation to it, but I could see some advantages in some level of flexibility. I appreciate your point that there is also a danger of confusion. I do not know how you crack that, but it might be a bit prescriptive simply to say that there shall be no alternative name.

916. **Mr C Bradley:** I think we would be OK if it was something like Belfast 2025: the community plan for Belfast, as long as the term is always consistently used so that everyone knows that that is the

- community plan, and people are not asking, “Belfast 2025? What is that?”
917. **Mr Weir:** One thing we can look at is whether there is a way of squaring the circle so that you have provision of an official title but there can also be some flexibility. We may have to tease out with the departmental officials what the thinking behind that is, but I think that might be to allow a little bit of local opportunity for whatever they want to do in connection with that. I do not think we should preclude that either.
918. **Mr C Bradley:** That is not our intention.
919. **Mr Weir:** I understand that.
920. **Mr C Bradley:** Our intention is that, if you search on a Belfast website for the community plan, it will just pop up and you will know that it is the community plan. It might be branded as something else, but as long as that is in the title, you would know that it is the community plan for Belfast.
921. **Mr Weir:** There are advantages to consistency on things, whether it is in reference to the community plan or domain names of websites, for instance.
922. **The Chairperson:** The 36 neighbourhood renewal partnerships each produce a plan. Do they all call it the same thing—neighbourhood renewal plan? Is that right?
923. **Mr C Bradley:** Yes.
924. **The Chairperson:** Once you call it that, everybody knows what it is.
925. **Ms McNeill:** Also, if there is provision for thematic and local plans, it could get quite confusing if you do not know what the overarching plan is for a particular area.
926. I will move on to clause 82, on the general power of competence, in Part 11. We support the introduction of the general power of competence, and recommend, as I have already mentioned, that guidance should be provided to aid the understanding of the scope and implementation of the power. That should include the contribution that the new power can make to achieving the objectives and outcomes set out in the community plan.
927. We have looked at some areas where the general power of competence has been used well. We know that it has been used in Oxford, for example, to address underachievement in primary schools. In Sherwood it has been used to support local small businesses, and in Richmond it has been used to address things like empty shops and trying to promote civic pride, so we have some documents where the general power of competence has been used. Again, we would be happy to share those if that would be useful. Clause 90 deals with consultation on improvement duties and relates to the contributions of partners. The Bill requires councils to secure continuous improvements across all their functions, including community planning, and we welcome that. However, the Bill does not recognise that improvements in community planning can be achieved only if the statutory partners also play a full and meaningful role. The Bill should enable partners to do so in relation to two aspects of improvement: consultation with service users; and the provision of information to councils on progress from partners.
928. The Bill requires councils to consult their service users when reporting on improvements in community planning. However, in a context of community planning, this should be extended to the statutory community planning partners who would also be involved in community planning. We feel that clause 90(1)(b) which states:
- “persons who use or are likely to use services provided by the council”,*
- should be amended to add “and its community planning partners”. That would emphasise the role that the statutory community planning partners will play.
929. In assessing and reporting on improvement issues, councils will wish to consider the views of residents and communities. That will ensure that the views of all those who are essential to the practice and implementation of

- community planning have an opportunity to shape and improve the process. We feel that clause 90(c), which states that:
- “persons appearing to the council to have an interest in the district”,*
- should be amended to add:
- “including those who are specified under section 76(2)”.*
930. **The Chairperson:** It is just clause 90(b). There are no subsections 1, 2 or 3.
931. **Ms McNeill:** We recommend that there be a new clause 90(2). That would change it to clause 90(1), clause 90(1) (c) and then clause 90(2). You are right, though.
932. **Mr Elliott:** Clause 90(c) states:
- “persons appearing to the council to have an interest”.*
933. How would you define “appearing to the council”?
934. **Ms McNeill:** That is the phrase in the legislation.
935. **Mr Elliott:** Yes. I just wonder what your view is on that.
936. **Ms McNeill:** I think that it would probably go back to the persons at clause 76(2) such as “persons resident in the district”. It would probably fall under that. It is very broad and basically includes everybody.
937. **Mr Elliott:** Yes. I want to know what your view is on that.
938. **Ms McNeill:** It is very broad, but we think that it should also include that definition.
939. **Mr Elliott:** Are you reasonably content with the wording “persons appearing to the council”?
940. **Ms McNeill:** Yes, provided that it is in the context of —
941. **Mr C Bradley:** Provided that:
- “including those who are specified under section 76(2)”*
- is added.
942. **Mr Elliott:** If your extra bit was not included, what would you see as a reason?
943. **Mr C Bradley:** If that was not added, we would not be content.
944. **Mr Weir:** On that wording —
945. **Lord Morrow:** Does “appearing” need to be in it?
946. **Mr Weir:** Yes, in one sense, it is meant to go beyond clause 76(2). To my mind, the use of “including those” means that you have to tick the box and that anyone who is in clause 76(2) is included, but it can go wider than that. I am not sure who is intended. Maybe we are making a mountain out of a molehill, but it would be interesting to probe the Department on what its thinking was behind that.
947. **Ms McNeill:** OK. To enable councils to assess the improvements in community planning, which is required by the Bill in clauses 87 and 89, councils’ community planning partners will need to play a supportive role and to provide inputs. That should be enabled in the Bill through the insertion of an appropriate new clause 90(2). That would change the numbering.
948. It is the duty of each planning partner of a council to provide such information as a council may reasonably require to enable it to comply with its duty under clause 93, which relates to the collection of information for its performance. That highlights the fact that the Bill is placing the emphasis on councils to show how they are improving. However, given that the statutory partners will play a huge role in community planning, they should also be required to provide information to councils to enable them to do that appropriately.
949. Clause 92 deals with performance indicators and performance standards and enables the Department to specify performance indicators and standards, and, before doing so, it requires that the Department will wish to ensure that stakeholders such as community and voluntary bodies are consulted. Again,

- we would like to see the amendment of clause 92 to include community and voluntary bodies as appear to the Department to be appropriate.
950. Clause 93 relates to the collection of information relating to performance. In the Minister's statement to the Assembly when presenting the Bill, he confirmed the Executive's view that council-led community planning would provide a statutory framework to deliver on the objective of improving outcomes for everyone. Thus, it is important that that is explicit in the Bill, as an outcomes-based approach will help councils and all other partners to set clear goals and milestones in order to make a difference. It will also provide the framework to measure progress and to join up regional, council and local priorities. It is placing the emphasis more on outcomes in the Bill. Clause 93(1)(c)(i) could be amended to read:
- "to measure the improvement in the outcomes of its performance".*
951. That would include the term "improvement in the outcomes" rather than just the performance during the financial year. Again, that relates to the fact that, currently, the Bill relates to only councils. It highlights the important role of the other partners in providing that information to councils.
952. Clause 98 concerns audit and assessment reports. Although the new power of community planning will be led and facilitated by the local councils, its effectiveness is the responsibility of all the community planning partners designated under clause 70. Departments will also play an important supportive role. All will wish to play their role in achieving successful implementation and in contributing to the work of the local government auditor, as set out in clause 98. The Bill should be amended to facilitate that, with the insertion of a new subparagraph to clause 98, 98(1)(b)(iii), that states:
- "that the community planning partners and Departments have discharged their duties under Part 10 Community Planning."*
953. Again, that is another way in which primary legislation could ensure that the statutory partners are participating in community planning.
954. Finally, clause 106 concerns the partnership panel. We support the introduction of a partnership panel consisting of Ministers and elected representatives to discuss matters of mutual interest and concern. That will provide an important mechanism for the discussion of community planning issues, including the interdependency of local and regional issues. The panel could be enriched by extending the membership to include people from local community and voluntary groups who are active participants in community planning at a council level. Clause 106(3)(a) in Part 13 could be amended to read:
- "councillors appointed by the Department; and representatives appointed by the Department of community and voluntary bodies, as defined by section 76(3)."*
955. Those are our comments and recommendations. We are broadly supportive of the Bill. There are a few areas in which it can be improved and enhanced.
956. **Mr Weir:** I appreciate that this is a comment more generally, but, with the best will in the world, the partnership panel falls outside the community planning bit. The partnership panel is meant to be something very different from community planning. That is not what really is intended. Whatever about the arguments on other bits, having representatives of community and voluntary bodies on that is not really appropriate. It is meant to be interaction purely between local and central government rather than a community planning tool. Maybe that is more of a comment than a question.
957. **Mr Boylan:** Thanks very much for your presentation. There were some useful and valid points about the community planning element. We had a meeting the other day with NILGA. It has some concerns, in particular about Part 12, which concerns performance

improvement. It had concerns about how that is all measured. You talked about outcomes, targets and everything else. There will be a lot of expectation from communities in particular. How do we get something through community planning that will be achievable? How do you measure the expectation and realisation of what we are actually trying to achieve? Will you comment on the Fife plan or any others? That will be an issue. There is an improvement duty on councils and measurements and everything else, which will concern them. We should be realistic about what we are trying to achieve and what the Bill sets out to achieve.

958. **Mr C Bradley:** In Scotland, you cannot really look at or talk about community planning without also talking about their outcomes agreements. In fact, many would say that the outcomes agreements are almost now more important. Community planning is the process that gets you to the outcomes that you want, and then the outcomes agreement — and tying everybody into that outcomes agreement, and everybody signing off on it — in practice becomes the method of implementing the community plan. So the outcomes agreement implements the community plan. The community plan sets out the broad vision, what you want to try to achieve, and what the outcomes should be. In Scotland, all the partners sign up to the outcomes agreement.
959. **The Chairperson:** Can you give an example of what you mean by an outcomes agreement?
960. **Mr C Bradley:** The outcomes agreement will go through all the issues that are in the community plan.
961. **The Chairperson:** Give us an example, so that it is easier for people to grasp that.
962. **Mr C Bradley:** If the plan is to improve provision for young people, there would then be specific targets, like building a new youth facility in this area, extending a youth facility somewhere else, increasing the number of young people participating in youth clubs by a percentage. It is that specific. Then it would, in some cases — such as in Fife or Dundee — it will actually name the officer who is responsible for that outcome and that target. Then, that officer has to report. If an outside or external partner is responsible for the outcome or target, that partner is also named in the outcomes agreement. It is a table of outcomes and targets. The last column names who is responsible for delivering each and every one of those. We suggest that we use the same broad approach here.
963. **The Chairperson:** The position of the officer, rather than the name of the officer?
964. **Mr C Bradley:** Yes, seriously, they are there. The position is always there, but sometimes they actually put the name in.
965. **The Chairperson:** OK.
966. **Mr C Bradley:** Yes, I know.
967. **Lord Morrow:** When it is good news he stands up, and when it is not good news he sits down. *[Laughter.]*
968. **The Chairperson:** So he is named and shamed if he does not do it. *[Laughter.]*
969. **Mr Boylan:** I have one other point. I addressed an issue earlier, during Suzie's presentation. I think it a reasonable suggestion, and I just want your views on it. This statement of ambition in the Scottish model — is that something that we would consider here?
970. **Mr C Bradley:** As your question hinted at, it is what it says it is. It is a statement of ambition. It looks critically at the practice of community planning across the whole of Scotland, and it identifies some things that need to be improved. One of them is this issue that we are talking about: how external partners are made to take the whole thing seriously and how they can be made more accountable. That is one of the key weaknesses. It is a key area that they want to see strengthened, because there are inconsistencies across Scotland in how effective the

external partners are in delivering the community plan. The statement of ambition addresses that. It sets out the ambition that they will introduce legislation to strengthen that. To some extent, they have done that in this new Community Empowerment and Renewal Bill, which tries to strengthen the partners' responsibility for delivering the outcomes and making that much more of a legislative requirement than it has been previously. Our proposals learn from that, and say that it needs to be on the face of the legislation here. That is what they are now doing in Scotland to try to retrospectively fix a problem. It is not across all the local authorities in Scotland, but some of them have experienced situations where partners have not been as cooperative as they would have liked. So they are now bringing in what we are suggesting, to strengthen the partners' responsibility and accountability.

971. **The Chairperson:** That has been a big concern of lots of people in the submissions to us.
972. **Mr Boylan:** Following on from that, the overall idea of the community plan is that outcomes can be measured. Is there an opportunity to hold people to account, or is there some other piece of legislation that holds statutory agencies to account with respect to those outcomes? Do you know what I mean? Is a certain target set, or is that —
973. **Ms McNeill:** Those agencies sign up to them so, in their own performance improvement, they will have to show how they have done. If they sign up to it, they then have to report on their own performance.
974. **Mr Boylan:** I agree with you, but then that could be them auditing themselves. Do you know what I mean? It is like councils doing their own audits and everything else. That could be a part of the problem; and that is why we look to the Commissioner for Complaints for an independent challenge to ensure that they are achieving that. That is the question.
975. **Mr C Bradley:** The Bill requires the local government auditor to come in and, among other things, look at the council's performance in its community planning function. The council's performance in its community planning function is heavily reliant on its partners' contribution to that. Therefore, we propose that the auditor, when they look at community planning performance in a council area, also looks to see whether the partners did what they said they would do, and reports on the performance of the partners as well as that of the council in delivering the community plan. So, you would, then, have an audit report that states, for example, "This is how Omagh and Fermanagh developed and delivered its community plan. This is how the council performed. This is how the Housing Executive performed. This is how health and social services performed". It would look right across the board at how everyone did what they said they would do and to what extent they achieved it.
976. **The Chairperson:** I think that that is only fair.
977. **Mr Boylan:** I want to make one final point about the community and voluntary sector. I know that you have not mentioned the capacity-building element of that. It is a key element in examples of how it has been done elsewhere. Can you comment? Have you any knowledge on that?
978. **Mr C Bradley:** One example from the best local authorities in Scotland is that of Strathclyde police. The chief officer of Strathclyde police told all of his senior officers that they were now community planners. Fife began its community planning two years before the legislation came in. The first thing that the chief executive did was to rewrite the job descriptions of all of his senior staff to include community planning. So, it is not as though a few people in Fife are responsible for community planning: as far as the chief executive, directors and councillors are concerned, everybody is responsible for community planning. Everybody has to do it within their own remit.

979. **Lord Morrow:** Did he retain them as police officers?
980. **Mr C Bradley:** Yes.
981. **The Chairperson:** I suppose that we have police officers who are community support officers.
982. **Mr C Bradley:** Yes. So, the delivery of community planning is part of the capacity building that everyone sees as part of their responsibilities. However, there is, clearly, a need for the community sector to have some support to become engaged in community planning. That is the missing ingredient here at present.
983. **The Chairperson:** I support that. I think that the community and voluntary sector has the expertise and on-the-ground knowledge of the community's needs. However, it is a big sector. What mechanism do you suggest to extend the membership to include the voluntary and community sector in every panel?
984. **Mr C Bradley:** I think that it would have to be worked out at each council level. We are talking to the Department. We are offering to work with statutory transition committees to begin to design how they would do community engagement and look at issues of representation of the community and voluntary sector in the community planning process. Certainly, outside Belfast, structures in the community and voluntary sector have kind of been evolving towards fitting in with the new council structures and community planning. So, the rural networks and the major town-based networks are working together to see how they can help community groups in their area to fit in with the new community planning structures. They are certainly doing that outside Belfast. It is probably happening to a lesser extent in Belfast because it is dominated by neighbourhood renewal partnerships, which are probably looking to be the lead representation for the community sector in the city. However, outside Belfast, both the urban and rural networks have, slowly but surely, been developing new ways of working together and ensuring that their membership will be able to engage with the community-planning processes. However, they are not resourced for that new responsibility, so they are drawing on other resources to try to make it happen. They are very stretched.
985. **The Chairperson:** Obviously, there is the need for capacity building and for the community and voluntary sector to have meaningful engagement. There is no point putting them in the partnership to just sit there and nod their head.
986. Good work was done there. I thought that you would also think about good examples which, if we like, we could visit in Scotland and Wales. Is that right?
987. **Ms McNeill:** We have looked at some examples of good practice. Some plans will have certain aspects that are better than others. For example, Newport in Wales has a specific engagement and participation strategy that puts quite a lot of emphasis on including its young people. Pembrokeshire also has an engagement strategy. Wales has moved towards having single integrated plans. It has local service boards. Wales has quite a lot of new plans that came out last year and some that are still being developed this year. Cardiff's is quite a good example of one of the single integrated plans in Wales. That is the good practice that we have looked at in Wales and are continuing to look at. We also wanted to speak to some of the voluntary organisations in particular there, because, although some of the plans can look great, we want to see how, in their implementation, they have been accepted by and have evolved with local people and groups and whether they have actually tackled issues. In Scotland, I guess that some of the good practice would be in Fife, Aberdeen and Dundee.
988. **The Chairperson:** Fife was mentioned in Suzie's research paper.
989. **Mr C Bradley:** As Louise says, good examples in Scotland are Dundee, Fife and Aberdeen.

990. **The Chairperson:** We cannot go to too many places. We will have to pick one, subject to agreement from all members.
991. Thank you very much, indeed. That has been very useful and constructive.

16 January 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Barry McElduff
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Dr Tom Frawley	<i>Northern Ireland</i>
Ms Marie Anderson	<i>Ombudsman</i>
Ms Gillian Coey	

992. **The Chairperson:** I welcome Dr Tom Frawley, Marie Anderson and Gillian Coey. You are very welcome. We have received a lot of written submissions on, obviously, the code of conduct, complaints and all that, so, we look forward to your briefing, Dr Frawley.
993. **Dr Tom Frawley (Northern Ireland Ombudsman):** Thank you, Chairperson and Committee members. With your permission, I will make some opening remarks to set the scene from my perspective.
994. I begin by thanking the Committee for the opportunity to give evidence this morning on the proposed role of the Commissioner for Complaints in relation to the local government ethical standards regime that is to be established under Part 9 of the Bill. I very much welcome the introduction of a mandatory code of conduct for councillors, which I consider to be an important part of the reform of local government in Northern Ireland. I am conscious that with the inception of the new councils we are embarking on a new era in which councillors will have an increasingly important role, particularly in planning and community planning matters.
995. These developments make it even more important that we ensure that the code, the first mandatory code for councillors in Northern Ireland, is effective and secures the confidence and trust of the public in ethical standards in local government. However, there is also a need to maintain the balance between ensuring that the public interest is met and creating a regime that is fair to the individuals whose conduct is the subject of a complaint.
996. I am aware that, during the Committee's scrutiny of the Bill, a number of issues have been raised on the proposal that the commissioner will be involved in ethical standards. It is my understanding that those include the procedures by which complaints of alleged breaches of the code will be investigated and adjudicated on; whether the scope of the code and my related jurisdiction should be wider than that currently proposed in the Bill; the need for an appeal mechanism; a means by which complaints of a more minor nature might be handled; and how unfounded allegations will be dealt with.
997. The written paper I have submitted to the Committee gives an overview, from my perspective, of my proposed role in ethical standards regarding investigation and adjudication procedures. It also provides some clarity in relation to the scope of the code as currently drafted. Before moving to respond to the Committee's questions on these and any other matters, I will highlight the provision in the Bill for the extension of some provisions of the Commissioner for Complaints (Northern Ireland) Order 1996 to apply to the investigation of local government ethical standards complaints. I consider it essential that the principles already established in the existing areas of my jurisdiction are

- built on in the ethical standards regime and that the model that has operated successfully in the Commissioner for Complaints jurisdiction since 1969 is not compromised. I am happy to take questions from the Committee.
998. **The Chairperson:** You mentioned a number of issues arising from the written submissions. A frequent one concerns the lack of an appeal mechanism. As I said earlier, we have just received a tabled paper from the Northern Ireland Local Government Association (NILGA). I will allow members a couple of minutes to quickly read that paper. I would like you to respond to the issue of the lack of an appeal mechanism; so, if you do not mind, we will take a couple of minutes for members to read the paper.
999. It lists practices in other jurisdictions, such as Scotland, as well as reasons for appeal. It states that in Scotland an appeal can go to a sheriff principal, which, in Northern Ireland, would perhaps be the County Court.
1000. **Dr Frawley:** Yes.
1001. **The Chairperson:** It says that, in Wales, they have the Public Services Ombudsman, which is equivalent to you.
1002. **Dr Frawley:** Correct.
1003. **The Chairperson:** However, there is also an adjudication panel, which is an independent body. The paper states:
- “The Panel’s role is to form tribunals to consider whether elected members or co-opted members of county, county borough and community councils, police, fire and national park authorities in Wales have breached their authority’s statutory code of conduct. The Panel will also hear appeals by members.”*
1004. So, the paper is stating that we do not have that here.
1005. **Dr Frawley:** Chairman, it may be helpful, from that preliminary commentary that you offered me, that we look at those alternative jurisdictions and how they deal with the matter, because it may be helpful for the Committee to understand what is different in Scotland and Wales and what are we proposing to do. Having opened up the discussion in that way, we could then possibly explore the model here that we will speak to, and then you can make your own judgement on that.
1006. I have looked to my deputy Marie Anderson, particularly as a qualified and practising lawyer, to look at these issues, because there are obviously legal issues fundamentally involved, and to look at the comparative models across these islands in terms of the so-called devolved territories. If you will allow her to speak on the subject we can then join in as you find helpful.
1007. **Ms Marie Anderson (Northern Ireland Ombudsman’s Office):** Will it be helpful if I deal with the comparison with the other jurisdictions before I deal with Appeal v JR?
1008. **The Chairperson:** Yes, please.
1009. **Ms M Anderson:** In the other jurisdictions, the model is completely different from that proposed by Part 9 of the Local Government Bill. In Scotland and in Wales, in particular, the role of the standards commissioner or ombudsman is simply to investigate. There is then an appeal mechanism from that decision.
1010. I will take the position in Wales because it is probably closest to our own. The Public Services Ombudsman for Wales investigates complaints of maladministration in public bodies and complaints about the standards and behaviour of local authority councillors and members. The Welsh ombudsman simply investigates. I have not seen the NILGA paper, but the Adjudication Panel for Wales that you mentioned adjudicates; so, the model is different.
1011. The model proposed for Northern Ireland is for the Commissioner for Complaints for Northern Ireland to investigate complaints and adjudicate on sanctions; so, it is a different model. I had the benefit of visiting Wales, seeing how they investigate, and meeting Peter Davies, the president of the Adjudication

- Panel for Wales. They impose the sanctions. In Northern Ireland, the Commissioner for Complaints is investigator and adjudicator; so, it is a different model.
1012. In effect, we have tied the roles of the Public Services Ombudsman for Wales and the Adjudication Panel for Wales into one office. There are a number of reasons for that. One of the significant reasons is the saving of costs, because the model, as previously proposed and which would have had an appellate tier, standards committees and councils, would have cost in excess of £850,000. In effect, the Commissioner for Complaints is combining the role of investigator and adjudicator for something in excess of £300,000 per annum; so, there is a cost saving.
1013. Nevertheless, it may be helpful if I take you to the issue of what would be an appropriate method of challenging decisions by the Commissioner for Complaints on investigation and adjudication. It is important for the councillors who are the subject of a complaint to understand that the process will be fair, transparent and provide opportunities for representation.
1014. I think back to what the Commissioner for Complaints said in his opening remarks. It is important to remember that the function of investigation and adjudication of local government standards will sit within the jurisdiction of our Commissioner for Complaints. Currently, his decisions are amenable to challenge only by way of judicial review. We have sought the opinion of senior counsel on this matter and have been advised that this arrangement reflects the constitutional position of the commissioner, who sits parallel to other aspects of the justice system. It is important to maintain that consistency with the Commissioner for Complaints jurisdiction, and it would be inappropriate to have an appeal on a Commissioner for Complaints decision either on maladministration or on an issue regarding breach of the code of conduct. That is quite a significant point.
1015. From looking at some of the debates, I am aware that there has been a concern about fairness in the process and that judicial review merely looks at the process of decision-making and, for instance, is not an appropriate method to open up challenge to the decision of the commissioner on sanction. I reassure the Committee that this is not the case. Judicial review has been described as:
- “the principal legal procedure by which public power is defined, invoked and restrained”,*
1016. and it includes an examination of process and the legality, fairness and proportionality of a decision. It is also important to note that, if judicial review were available, as proposed, to challenge a commissioner’s decision, there is an important element to judicial review that may not be there in an appeal, namely the fact that the first stage is a leave application to a High Court judge to look at the merits of the decision to see if there is prima facie evidence. That is helpful not only to provide parties with an opportunity to look again at a decision and perhaps seek to resolve it but because it means that unmeritorious challenges, either from a complainant or a councillor, could not be granted leave and would go no further. That might result in a significant saving in legal costs to the public purse overall.
1017. **Dr Frawley:** I thank Marie for that very helpful perspective. The other thing that comes into play, Chairman, is that you have the authority of a High Court judge making the judgement on whether the commissioner has acted fairly or not.
1018. The irony of the circumstance is that, even if you have an appeal mechanism, when the individuals are not happy with the appeal, it will go to judicial review, because that is what people do. If people are not willing to accept the outcome of an appeal, they will just go to judicial review. There are two other dimensions to it. The appeal issue, by its nature, is extremely expensive, because all parties will want legal representation. I do not want to say this because you know it better than I do, but

everyone will look to the public purse to support that legal representation. In designing the legislation, you will be asked to indemnify councillors, who will therefore have open access to public money for their challenge. My office is funded by public money, and, indeed, the complainant might well argue that equality of arms demands that they, too, have access to public money and all that for an appeal process. I make the point that the word “appeal” is left there.

1019. Marie can describe the process, Chairman, so bear with us. You may already have questions that you want to ask, but this will give you a sense of how the decision-making process will work, in our view, and you will get the sense that the different levels of engagement and opportunity afforded to an individual to speak in their defence or challenge an allegation made against them are quite significant in the process that we propose. That, in turn, will allow you to make a judgement about how far the individual is able to articulate their own position and challenge the allegation made against them.
1020. **Ms M Anderson:** Would you find it helpful if I explain that, Chair?
1021. **The Chairperson:** Yes.
1022. **Ms M Anderson:** The caveat is that this is still work in progress, and we are working on the procedures for investigation and adjudication in the office. The procedures will be tested by getting the opinion of senior counsel, who is a judicial review practitioner, to ensure that there is fairness and that the rules of natural justice are met as well as any obligations under the European Convention on Human Rights (ECHR). Under a service level agreement (SLA) with the Northern Ireland Human Rights Commission (NIHRC), we can obtain advice about our process and its meeting human rights and data protection obligations. We intend to take that step. So, our procedures will be human rights-proofed and proofed on fairness, transparency and openness.
1023. The first, and quite significant, fact is that the Bill provides that only a complaint in writing can be accepted by the commissioner. That is quite important. The commissioner will not be accepting anonymous complaints. The individual must put their complaint in writing. As part of our consideration of what the process might look like, the Bill contains a discretion on the part of the commissioner on how to investigate or proceed in an investigation. We think that an important part of the process will be the admissibility stage, in which we will consider whether a complaint has been properly brought to the commissioner and whether the matter is within jurisdiction; in other words, that you are not complaining about an individual in their role as an MLA or otherwise. Consideration will be given to whether the complaint is of a minor nature or whether it should proceed to investigation.
1024. If a decision is made to proceed to investigation, the councillor will be informed at that time of the full details of the complaint and of any evidence provided by the complainant to support the complaint. The councillor will be informed of the commissioner’s decision in relation to an investigation. Of course, once an investigation starts, the complainant will have to be interviewed, perhaps, as will the councillor. The councillor will be given the ability to have someone in support in relation to any interviews with the commissioner or his staff; so, there will be an opportunity to make representations during the investigation stage. It is important to point out that, because of the way the Bill is framed, there is a middle procedure that needs to be undertaken. Quite rightly, the Bill provides for circumstances in which there is no evidence of a breach, and, in circumstances where there is no evidence of any breach of the code, no further action will be taken by the commissioner. So, there is a provision that relates to the findings that the commissioner can make, and one of them is that there is no evidence of a breach. It is important for an individual

- who has been accused to know that there is a rigorous process to test the evidence.
1025. The next stage of the investigation may well involve looking at documents or taking statements from eyewitnesses about a particular incident, and there will be procedures and processes around that. It is important to note that in adjudication, which is the next stage, the commissioner will make the decision on the sanction to be imposed. That is a commissioner's decision. Internally, we have established a directorate of investigations so that those who lead on the investigation will sign off on the investigation report. There will be, if you like, a Chinese wall between the investigator and the commissioner who makes the decision on sanction. So, there will be a careful dichotomy or difference between the investigation and the decisions on sanction. At the stage where the commissioner is considering whether to impose sanction, which can be censure, suspension or disqualification, the councillor will be given an opportunity to bring representations either on their own behalf or through legal representatives on the issues raised in the investigation and on the sanction. So, we have a three-stage process, in effect: admissibility, investigation and adjudication.
1026. **The Chairperson:** How transparent is the whole process? Will you publish details of the investigation and will you let the public know about a case whether admissible or not admissible?
1027. **Dr Frawley:** One of the merits of using the model of the Commissioner for Complaints is that we do everything in private. That is very important to us. The confidentiality dimension is hugely important. Clearly, as highlighted in your discussions, there is the risk that an individual, while complaining, will also go to the local media and say that they have made a complaint to the Commissioner for Standards. The representatives in this room understand how this works better than I do. In such circumstances, a very clear judgement would have to be made that, in the event of an allegation being put into the public space, the vindication would also have to be put into the public space. It would not be a private answer that states, "Well, I find no case to answer." If it is in the public arena, the commissioner would be compelled to go into that public arena and say that the allegation had no basis whatsoever.
1028. Secondly, it is important to be very clear to everyone affected by this code that, if people make malicious complaints and they are found to be malicious and judged to be so by the commissioner, then they in turn are breaching the code and are liable to an investigation. The commissioner would then make a judgement on whether the behaviour — the way the person dealt with the issue — was, in itself, a breach of the code.
1029. Confidentiality is important throughout this matter, but clearly that will be guided and informed by whether the individual pursuing a complaint has behaved properly in that circumstance. As I have tried to suggest, Chair, there are other interventions that may be appropriate if their behaviour is inappropriate.
1030. **The Chairperson:** That is a good balance in many ways. It will safeguard against people bringing frivolous complaints.
1031. **Ms M Anderson:** Without prejudging any matter, one of the benefits of adding this function to the commissioner for complaints' legislation, as it exists, is that the commissioner has the benefit of the obstruction and contempt provisions in that order. That would allow him, if he thought that any person was contemptuous of his process, which might well include going into the public domain with an unfounded and uninvestigated allegation about an individual and the damage to the reputation of that individual, to certify to the High Court a matter of contempt. It is not a decision that he would take lightly, but you can see that already there is protection there for individuals who may be the subject of unfounded

- or malicious allegations. That is an important protection.
1032. Again, it feeds back into our desire, which is to, as far as possible, not only provide the protections of the 1996 legislation, under which we currently operate, to the individuals, but ensure that the commissioner's constitutional position under that legislation is protected.
1033. **Mr Eastwood:** You will be well aware of how this thing is used up here. It becomes a political football. We had a lot of complaints, last summer in particular, and I am sure that, coming up to the next election, there will be a few more. The vast majority do not go anywhere. You have a lot of protections in there about confidentiality, but it should be the rule that you should not be allowed, if you are the complainant, to put the matter into the public domain, whether it is malicious or not. The only thing that should ever be put into the public domain is whether someone is found guilty of something. In the political arena, it is used as part of a political campaign against an individual. We have seen it far too often up here. We are grappling with this issue in the Standards and Privileges Committee and it is not that easy. You need to make as much provision as possible to protect the person being complained against. That would be a good thing. It is good that people can be found guilty of making malicious complaints, but I do not think that anyone should be allowed to put anything in the public domain until the results are investigated.
1034. **Ms M Anderson:** Chair, may I answer that point? We have sought legal advice on our work under the investigation of complaints of maladministration where complainants, or even public bodies, have taken a draft report and have gone into the public domain with it. We have been told that it is contempt. There are existing provisions and they apply equally to the complainant and the councillor. We have sought advice on that matter in the other aspect of our work.
1035. **Dr Frawley:** I will just add to that. We would wish the spirit to be one of confidentiality and privacy. We believe that people are entitled to that, but you are the public representatives and there is a dimension to the whole issue — these are your words, not mine — of transparency and openness. There is a tension between transparency and openness and absolute confidentiality. Therefore, let me be clear: the issue is that, once the matter was published, the judgement would have to lie with the commissioner on the nature of the finding and whether that finding demanded to be in the public space because of its significance or the implication of it. That is a judgement call for the commissioner. There are issues that would go into the public arena. The pitch of Mr Eastwood's point, however, is that someone might just use the complaint itself as a vehicle for gaining traction and visibility, and, once you have that traction and visibility, the outcome does not matter at all. That is his point, and I take it entirely.
1036. **The Chairperson:** Mud sticks?
1037. **Dr Frawley:** Absolutely. However, I think that the other side of that allows me to have a cheap shot at politicians. So much of that is dependent on you, if I may say so.
1038. I am happy. I do not wish to present myself as the referee in the middle, but if the players accept the spirit of the process, it is much easier to referee the match. I merely make the point that it is a very difficult arena. There are real issues about openness and transparency, and you would advocate those very strongly for Departments, public bodies and others, so we have to find that balance.
1039. **Ms M Anderson:** I think that it is not to be naive either. Mr Eastwood's point is properly made. The experience in Wales, we are told, is that, at election time, complaints to its ombudsman more than double.
1040. **The Chairperson:** We will be seeing that in the coming months and years.

1041. **Mr Boylan:** Thank you very much for your presentation. I will not comment on what you said about politicians just now. However, I wish to comment on a couple of key issues. I welcome Mr Eastwood's point. People should get a fair hearing, and it should be confidential. Once the issue goes into the public domain, the perception is that you do not get a fair hearing.
1042. I want to pick up on the important point about the admissibility criteria. Have they been set yet, or have you any ideas about them?
1043. **Ms M Anderson:** As you know, the admissibility criteria have not been set yet. However, we have been able to scope out those complaints that we think that we will not accept for investigation under the code. Those are cases in which the individual has not put the complaint in writing but has merely telephoned the office. They will include circumstances in which the complaint is anonymous or there is no evidence to support it. This is not merely about raising an allegation. What we intend to do is to have, on our website and available on paper, a complaint form that states, "Please outline in detail the nature of the allegation and provide supporting evidence or documentation to support it". It is not simply the case that we will accept the complaint, immediately admit it and then commence an investigation. We will be looking at the evidence and assessing it. Perhaps "admissibility" is not the right word, as "assessment" may be a better one to describe the initial part of the process. That is important. Obviously, all our procedures will be put in the public domain. I know that departmental officials are here today, and I think that the intention is that, when the code and our procedures are finalised and we begin to work on the guidance, there will be some stakeholder events at which we will communicate in detail, to the councillor community and others, just what our procedures are.
1044. **Mr Boylan:** The reason that I ask the question is because, in the past, there have been issues about the recording of minutes and evidence. We do not want to go down that route. We need to cut that out from the start. We need a proper base, criteria and investigation.
1045. **Dr Frawley:** We feel that very clearly, Mr Boylan. That is very much our focus.
1046. It is very hard to finalise the admissibility criteria until the code is finalised and accepted, because that will hugely inform the key criteria that we wish to have for the admissibility phase of the process. Therefore, there is a lot of work to be done. We are very conscious of that, and it is very helpful to get the perspective of the Committee on its concerns and priorities at this moment.
1047. **Mr Boylan:** Following on from the Bill itself, clause 67 concerns expenditure of the commissioner. Can you touch on that a wee bit?
1048. **Dr Frawley:** The referee now becomes a sort of player on the pitch. The one thing that I want to say, if I may, is that our office is very clear that we have to provide value for money. Our core business is in investigating complaints. I want to put it on the record — this is an opportunity to do so, and I thank Mr Boylan for it — that we will not compromise our core business of investigating complaints by in some way cross-subsidising the role of our code of conduct. We will be very honest about what we think the cost will be.
1049. Marie has given you two ballpark numbers: the projected cost of the original proposals, which was in excess of £900,000; and what we are now talking about, which is a sum in the region of £300,000. Marie has been working on the cost of that for me and on the skills, resources and competencies that we believe we would need to deliver the mechanics and spirit of the process that we have described. I will ask her to speak to those core costs. That, I hope, will give you a sense of what we are talking about.
1050. **Ms M Anderson:** Earlier, we mentioned the establishment of a directorate of standards, which will be led, in

Civil Service terms, by a grade 7 director. There will be two deputy principal officers, a staff officer and administrative support. When it is fully operational it is obviously not fully operational at the moment, as the regime has not started and the code is not yet in play and we start to receive complaints, we think that the fully functioning cost will probably be in the region of £375,000.

1051. I go back to Mr Boylan's point: we are not happy with clause 67 as it stands. I do not think that it is the intention, but it certainly looks as though there is a kind of "polluter pay" principle and that councils will be charged by the commissioner for the number of complaints that they receive. It will then be up to the commissioner to recover that amount as a debt. We do not think that that is appropriate, and we think that that, again, would undermine our role as the Commissioner for Complaints. As the Committee may know, we investigate complaints of maladministration by councils under the maladministration function. That is funded through the Estimates process and is essential to our independence. We think that a member of the public who reads clause 67 may think that we are being paid by the council commissioner to investigate complaints, and there could be some perception of a lack of independence.
1052. We have had discussions with officials, and it is proposed that the local government grant will be top-sliced in some way to fund this activity by the commissioner. I do not think that it is appropriate for the commissioner to start sending out bills and collecting debts.
1053. **Dr Frawley:** I would be totally opposed to it. I do not think that it is a model that makes any sense. As Marie said, it would compromise our independence.
1054. There is another issue that we should not underestimate, which is very real and imminent. It is certainly an issue in Wales, Scotland, England and, indeed, the Republic of Ireland.

It is the issue of legal costs. You can say that there will be upfront costs of £390,000, but if you get into judicial reviews or representation in which people have been indemnified, those costs will escalate very rapidly. I do not want to burden you too much, but judicial reviews can be very expensive processes and no one can predict what they will be like. Once you indemnify people, they will immediately take up the option. They will not feel that the costs are coming out of the public purse and not seek that support or cover. When you make a judgement to indemnify people, as you will when you prepare the legislation and decide on it, you will be signing a blank cheque as far as what lies ahead of us is concerned. That is your judgement, not mine. I am just highlighting the risk.

1055. Secondly, there is a real issue with equality, and, as my human rights conscience, Marie reminds me of that. Equality of arms demands that, if you fund and indemnify a councillor, you should also fund and indemnify the person who makes the complaint. If not, all the councillor would have to do is take a judicial review, and the whole thing would fall. Therefore, there are big issues in that for you on which I am not in a position to give you a direction, but I think that I have made my position clear as you make those calls and offer advice to the Assembly as it proceeds with the legislation.
1056. **Ms M Anderson:** The concern is that, given the pressures on the legal aid budget — it is overspent — if a councillor is going to be indemnified in order to challenge the commissioner's decision, will a complainant have the benefit of legal aid, from the public purse, also to challenge the commissioner's decision not to investigate or impose sanctions where he or she is unhappy with the outcome of an investigation? That is where the equality of arms issue comes in.
1057. **The Chairperson:** You are certainly bringing up a lot of issues.
1058. **Mr Boylan:** I had to ask the question.

1059. I have one final point. From what you have said, I take it that the role as it relates to maladministration and sanctions is similar to the ombudsman's role. What are your views on councillors sitting on outside bodies? For example, if an issue came up about a decision that was made about neighbourhood renewal, they would feel that they were fulfilling their role as part of a council, but there might be independent members on the body.
1060. **Dr Frawley:** There are two things to say. First, in the original review of my office that was done by Deloitte in 2004 when there was the proposal to have the conduct issue placed in it, the idea was that the role of the Assembly Commissioner for Standards and the role of a local government Commissioner for Standards would be located in the office, thus saving significant money. However, the Assembly decided that it wanted its own commissioner, and that was perfectly reasonable.
1061. The other part of the recommendation was that all public appointees to public bodies should be the subject of a code so that the code would apply equally to people who are, say, non-executive directors of trusts or board members appointed by Ministers to education boards currently or other bodies. I know that that would have brought in inequality that is of concern to some councillors. Again, in the way in which the design is developed — local government is taking its place now through the reform process — that issue has not been addressed. Therefore, although councillors will be going on to other bodies and representing their councils on those other bodies, they will be subject to the code in that role, but the other people on the bodies will not be subject to the code. Equally, if the bodies that councillors are nominated or appointed to by the council do not have a code, the code for local councillors will apply in that circumstance.
1062. **The Chairperson:** Would that be for the other members appointed to those bodies, not just councillors?
1063. **Dr Frawley:** Absolutely.
1064. **Lord Morrow:** Thank you to those who have spoken. I am glad that I am not a councillor anymore. Having spent 40 years as one, I think that I have just escaped.
1065. I would like to hear your comments on a number of issues. It strikes me that what lies ahead of us is a lawyer's paradise, because lawyers are going to have real good times if the worst is achieved. When a complaint is made about a councillor — I know that no complaint will be accepted over the telephone or as a result of someone speaking to you in town; rather it will have to be done in writing — will the councillor or the person to whom the complaint is made be informed immediately in writing of the nature of the complaint?
1066. **Dr Frawley:** Yes, that is the intention. Go ahead, Marie: you answer.
1067. **Ms M Anderson:** Yes. I mentioned complaints that are not for investigation and not in jurisdiction, but the Bill as drafted puts a requirement — a duty — on the commissioner to provide the person who is the subject of the investigation with an opportunity to comment on any allegation.
1068. **Lord Morrow:** Therefore, the nature of the complaint will be put to the person in writing.
1069. **Ms M Anderson:** Yes, I think that that is the intention.
1070. **Lord Morrow:** And the name of the person who complained will be given.
1071. **Ms M Anderson:** Yes. I think that that is important. It is important that those who are accused know their accuser.
1072. **Lord Morrow:** Yes, that is fair enough.
1073. **Ms M Anderson:** I think that that is an important for fairness.
1074. **Lord Morrow:** That is fine.
1075. **Mr I McCrea:** On the back of that, will the person who is making the complaint

- be made aware that that will happen at the earliest point?
1076. **Dr Frawley:** Absolutely. We take transparency and openness seriously. It will be on our website. Anyone who makes a complaint will know from the website, or from the guidance on how to make a complaint, that we will be telling the person complained about immediately after we receive the complaint, provided that it is properly made. I think that that person is entitled to know.
1077. **Lord Morrow:** Chair, may I develop this a wee bit more? Take, for instance, a councillor who is on the receiving end of a complaint. It breaks into the public arena, and it is kicked around, and, subsequently, the councillor loses his seat. When the complaint is being adjudicated on, will it be taken into account that all the malicious conduct cost that individual his seat?
1078. **Mr Eastwood:** It is too late then.
1079. **Lord Morrow:** Yes. What protection is in the Bill for the public representative to be immune from that, or to be protected from that? If he cannot be protected, what compensation is due to him? Will he be awarded his seat one day because he was maliciously treated in the media?
1080. **Dr Frawley:** I need clarification from Lord Morrow. Does he mean if the adjudication vindicates the councillor?
1081. **Lord Morrow:** Yes.
1082. **Dr Frawley:** The councillor has acted absolutely properly and without fault, yes? The problem that one would have, or could see, in that circumstance is that one could assume that it was at the election, through the ballot box, that the individual lost his seat. The problem would be in demonstrating that it was because of the event or allegation that he lost his seat. I accept entirely that people who have the insights that you have could say, "He was an absolutely front-runner for that particular seat and could only have lost it because of this". However, it would be very hard to make that judgement definitively, because the argument could be that the electorate decided. The electorate is the ultimate decision-maker.
1083. **Ms M Anderson:** I wonder whether it is something that could be the subject of defamation proceedings. If the malicious complaint had defamed the councillor, and it was proven that the comments or allegations were untrue, I think that it would still be open to a councillor, as it would be to any person in a public position, to take defamation proceedings. That may result in compensation. It will not get him to the point of getting his seat back, but you did mention compensation.
1084. **Mr Eastwood:** How do you prove that the complaint was malicious and not just mistaken?
1085. **Dr Frawley:** As I said to an individual earlier in these exchanges, that is a judgement that the Commissioner for Standards should make. I said that if someone made a malicious complaint, and it was judged to be so, the commissioner could judge whether that was a breach of the standards rules and would investigate whether the complaint was malicious. I think that the malicious nature of complaints is something that the commissioner and his or her staff should always be very vigilant about.
1086. **Mr Eastwood:** Would it not be easier to ensure that everything is confidential until there is a result?
1087. **Ms M Anderson:** Everything is.
1088. **Mr Eastwood:** You talked about the website.
1089. **Dr Frawley:** I talked about the website purely and simply to give advice to people about how they should —
1090. **Mr Eastwood:** Did you not say that the complainant and the person being complained about —
1091. **Dr Frawley:** No, I am not talking about the website. The website is purely to give advice to people on what is required of them in making a complaint so that

- they know up front the detail required and the criteria that have to be met.
1092. **Ms M Anderson:** Following that, there will be leaflets and guidance on making a complaint available to the public. It will be clear to them, right from the beginning, that every investigation will be conducted in private and that there is a duty of confidentiality on them, as well as on the councillor and other witnesses involved in the process. My colleague Gillian and I have been discussing the importance of putting as much information at the front of the process when the individual who makes a complaint knows that this is a confidential process and that he or she must abide by that confidentiality.
1093. **Dr Frawley:** I give the assurance also, Chairman, in supporting Marie's point, that we live in a transformed world compared with 10 years ago, with the Internet, tweeting and all the stuff that goes on, and it is impossible to track these things. We also have a media that is voracious for such issues, because it is what sells papers or gets news. Therefore, clearly there is an issue. If the matter goes into the public arena through any of those channels, there is a commitment on the part of the commissioner that the vindication for that individual will be in the public arena and then a judgement made as to who broke the principle of confidentiality. It is very difficult, as I have just suggested, to find out who did that, but, as I said to Mr Boylan earlier, my view was that the spirit of this is about the people on the pitch, and the onus is on the people on the pitch. It would be impossible and unreasonable to put the whole onus for this on a Commissioner for Standards or a Commissioner for Complaints and say it is that person's business to manage and control the whole thing. Equally, councillors might wish to use the peer pressure of needing to have a standard that they commit to and that they will deliver on.
1094. **Lord Morrow:** The problem with the players on the pitch is this: they sometimes also want to referee. We then discover that not only do they want to referee but all the good referees are sitting in the stand, and the one who is doing his best out there knows nothing about it.
1095. I seldom go to football matches, but occasionally I do, and I have discovered that the guy who is running about with the black outfit on him knows nothing about the game, but all the people around me have all the answers to everything that happens. Therefore, all the good referees are not there, unfortunately, and that might become a syndrome within which you will have to operate.
1096. On malicious complaints that do not take us anywhere, what is the penalty for the person who makes a malicious complaint?
1097. **Dr Frawley:** If individuals are covered by the standards legislation — that is, if they are an elected member — there is an issue about how you can enforce some sanction on them. If they are a member of the public, there is immediately a different problem. Marie made the point that there are defamation proceedings and other recourses open to people. That is something that we have to consider, but, at the end of the day, the infamous public accusation and private apology is always there. It is a real problem for us in this area, and it affects all aspects of public life.
1098. **Lord Morrow:** What about the time factor in all of this? The period between the date of a complaint being lodged to the date that the findings are made known can be long. I suspect that it can go into years. Hopefully, it will not, but —
1099. **Dr Frawley:** If you accept the model that we are proposing, it should not. One cannot guarantee the time frame, but there should be an absolute principle that because someone's reputation, standing or character is being questioned, there is an absolute urgency about vindication and closure. I see that as a principle.
1100. **Lord Morrow:** How do you deal with uncooperative Departments that are saying, "By the way, there is a complaint here. It is not top of our agenda, so we will just let that sit for a couple of

- months or until we have the staff to respond to it”.
1101. **Ms M Anderson:** We have discussed that. Our intention is that when we write to a Department or body and ask for information we will give it a timescale. If it does not comply within the timescale, we will send a warning letter referring to the protections that I mentioned earlier under article 14 of the Commissioner for Complaints Order. We may consider bringing proceedings for obstruction, because the article-14 provision allows the commissioner to certify for obstruction or contempt. I would say that the continued failure to prove information is obstruction.
1102. **Lord Morrow:** That, in turn, will delay the process further.
1103. **Ms M Anderson:** It may delay the process, but our experience to date involving maladministration complaints is that the letter of warning works. We have never had to certify to the high court for an obstruction from a reluctant provider of information.
1104. **Dr Frawley:** That is an important assurance to give the Committee. Compliance from public bodies and Departments on our core work is 100%. It is not always as timely as it should be, but let me assure the Committee that, if it is an issue about someone’s reputation or character, deadlines are deadlines and are not negotiable.
1105. **Lord Morrow:** Finally, I know that you have flagged up judicial reviews, but they are costly exercises. They are also sometimes off-putting to the individual who perhaps feels very aggrieved about whether they can draw off the public purse. I know that it is easy cutting whangs off another man’s leather. It does not cost you anything, so you can perhaps be careless, for want of a better word. You do not have to be as particular if you are not paying for it. I think that you, Mr Frawley, said that you were very conscious that there has to be probity and accountability, because, after all, it is the public purse that we are dealing with. I was glad to hear you say that.
1106. **Dr Frawley:** Thank you.
1107. **Mr Boylan:** Talking about being on the pitch, I would not like to be the one getting the red card. The issue for us was the admissibility criteria and also, now that you mention the website, clearly defining the grounds for a complaint. I have noticed in the Committee on Standards and Privileges that we are starting to learn a bit more about how that process works.
1108. **Ms M Anderson:** It is our intention to do significant work on our website, publishing details of how to make a complaint and, if you are a councillor subject to a complaint, how we will deal with you. That is part of the overall cost that we have bid for.
1109. **Dr Frawley:** Timescales are important. It is important that, once everything has been finalised — it must be in a time frame ahead of the election — I will commit to going out into the local geographies, particularly to prospective councillors and to those who are elected afterwards, to emphasise the issues and the values that we have aired today. No one will be able to put their hand up and say, “I did not know. No one told me. I misunderstood”.
1110. The other thing that I hope, and it is important for leadership from the Assembly, is that a clear expectation will be articulated that there will be induction programmes for councillors before, or as, each council is convened, that an hour or an hour and a half of attendance at a meeting on standards will be vital, and that people will commit to it so that we can continue to hammer home the concepts of transparency, openness and confidentiality and build up a culture of ethics as an integral part of what we do. Being ethically driven and informed is absolutely central to good politics.
1111. **The Chairperson:** It is so important that you have that as a corporate culture and that everyone has to abide by the code of conduct.

1112. **Mr I McCrea:** Do you not feel that training on standards should be compulsory for any new councillor in the new super-councils, if that is what people still want to call them? On many occasions I have witnessed council staff trying to organise training for councillors to benefit the council and the councillors themselves for possible things that come through in the future. It should be compulsory.
1113. **Dr Frawley:** Far be it from me to say that. I look forward to the new Mid-Ulster Council and its compulsory attendance at the induction programme.
1114. **Mr I McCrea:** I am happy to propose it.
1115. **Dr Frawley:** Indeed. I give you an absolute commitment that I will happily attend such events. I will be there, and I think that individual councils should demonstrate their commitment by saying that it is compulsory and not voluntary. I also argue, as another important little piece of the jigsaw, that we might develop, either through individual councils or through the office of the Commissioner for Standards, a form that says that the councillor has been inducted and understands and accepts the requirements of the standards arrangements that exist in the council. That would be signed and dated by the councillor so that there would be no doubt about where we all are with how we will commit. I am happy to facilitate those mechanics. It is not in my gift but in that of the legislature or individual councils to make it compulsory .
1116. **The Chairperson:** It would be a written contract between a council and its councillors.
1117. **Dr Frawley:** Absolutely.
1118. **The Chairperson:** It could be done. I am sure that they sign many documents when they become councillors.
1119. **Mr Eastwood:** Apologies for coming back to it again, but I have just thought of this. What do you think of a moratorium on complaints for a period before an election? People could still complain after an election and before that particular time, but it might avoid a flood of complaints around an election. Some of those complaints might not be made after an election.
1120. **Dr Frawley:** The only problem, if I may say so, is that Northern Ireland is a bit of a hothouse for elections. Elections tend to start immediately after the previous one has finished, so you would have a real difficulty in deciding when such a period would begin. Secondly, you might argue that some complaints are so powerfully in the public interest that it would be wrong not to investigate them, so you would be making a qualitative judgement. It would be a very helpful thing. The only moratorium that you will ever get is the discipline of people themselves. Of course, the very reason that someone makes a complaint in a pre-election atmosphere is to affect either another candidate or their own candidature.
1121. **Ms M Anderson:** Chair, it might be helpful if I explain one the things on developing the procedures. The commissioner has a time limit for which he will accept complaints on maladministration. It must be on a decision or action that has happened within the past 12 months. They should not be old complaints or gripes that have been around for a long time. I think that we will adopt a 12-month period when we look more carefully at the admissibility criteria so that the complaint has to be on something that happened in the past 12 months.
1122. **The Chairperson:** Twelve months is quite a long time. I think that complaints to the Equality Commission have to be within three months sometimes.
1123. **Dr Frawley:** Absolutely, Chairman.
1124. **Ms M Anderson:** That is all couched at the discretion of the commissioner.
1125. **Dr Frawley:** We see a time limit, so we would have to make a judgement about what an appropriate time limit should be. The issue is about when someone becomes aware of something. There is a fundamental issue if someone is aware of something and, 12 months later,

- decides, “I think that I will deal with that now”. That does not say much about the urgency or the significance of the issue for them, and it is, in some ways, manipulative to introduce it. There is a clear judgement on what the timescale should be, and we will look at that.
1126. **The Chairperson:** Alban, you have been very patient.
1127. **Mr A Maginness:** I think that most of the questions have been exhausted. However, I remind Mr Frawley and his colleagues that the Northern Ireland Local Government Association (NILGA), at the meeting of 7 January, which, unfortunately, I was unable to attend, again raised the issue of an appeals mechanism. So although you may be able to persuade the Committee or other colleagues, you may have a job persuading NILGA . To recapitulate on your argument, you are saying that the office of the ombudsman has a certain legal authority and that it would be inappropriate in those circumstances to have a separate appeals mechanism other than judicial review.
1128. I am not sure whether councillors would be fully convinced by that argument. I find it persuasive, but councillors as a body may not be so persuaded.
1129. **Dr Frawley:** I thank Mr Maginness for saying that he accepts the argument. Part of people’s experience is the word “appeal”. It is the formulation of an arrangement by which there is a forum where I come to articulate my view and the people who have a different view articulate theirs and there is a panel making a judgement about it and so on. That is not different from representation to the ombudsman, where both parties argue their case or make their representation.
1130. As Marie said, at the adjudication point, people who wish to have legal representation to make their case forcefully, powerfully and, you may argue, professionally will be facilitated in doing so. There is no real difference between the two things other than the word “appeal”.
1131. If you like, the panel does adjudicate. The appeal panel adjudicates on the sides of the argument that they have heard, so the word that we are using is “adjudicate”. It is not a formal appeal, but to us it is the alternative model; it has served us well, and we are very anxious, as Marie said, to protect the integrity of our process. That is vital to us because that is the core that we must protect.
1132. **Mr A Maginness:** Who makes up the panel?
1133. **Dr Frawley:** There is no panel; it is just the commissioner, the individual.
1134. **Ms M Anderson:** Mr Maginness, there is already a model in local government for investigation and adjudication by a single decision-maker. That is in relation to the functions of the local government auditor when she investigates whether there has been wilful misconduct on the part of a councillor. She also adjudicates on the question of whether a surcharge will be imposed. That decision and those functions are not subject to appeal; they are subject to judicial review, so the model already exists.
1135. **Mr A Maginness:** NILGA raised the point on 7 January in relation to councillors who are on outside bodies. They argue that there is an inherent unfairness that a councillor should be subject to a code of conduct whereas individuals who perform similar tasks and functions are not. That does raise an issue.
1136. **Dr Frawley:** I agree completely . Some people may know that I worked in the health service for 30 years. People appointed to public bodies should have a code of conduct to which they are accountable, and I do not see why it should be different from the code for councillors. You would then have equivalence, and everyone would be in the same circumstances when accounting for their decisions and performance, and if they operate outside the rules of the standards, they are made amenable.
1137. It is not for me, but it is in the gift of this legislature. Northern Ireland

- could break new and important ground by saying, “We have expectations of people who operate in the public sphere because we have shown what we expect of councillors. We equally want those who are on public bodies to be just as accountable and susceptible to investigation and complaint.” I have no problem with that whatever.
1138. I respect NILGA; it does great work on behalf of the whole community of councillors. Of course, it has a perspective, and I totally respect it. I have offered you mine this morning, Chair.
1139. **Mr Elliott:** Thank you for your presentation. It was very interesting, as always.
1140. Marie, you mentioned the local government auditor. I am not sure that that is the best one to hold up as a good process. I do not know whether you were doing that or not; I am just making that comment.
1141. **Ms M Anderson:** I am aware of a judicial review in which its decision was overturned because there was insufficient evidence.
1142. **Mr Elliott:** So am I.
1143. **Ms M Anderson:** I know; I am aware of it. *[Laughter.]*
1144. **Dr Frawley:** I do not know whether Mr Elliott is declaring an interest. *[Laughter.]*
1145. **Mr Elliott:** Chair, my second issue is that, in regards to one of your last points, Mr Frawley, about the competence of this legislation having a basis for other people who sit on outside bodies or organisations, I do not know whether it is within the competence of this legislation —
1146. **Dr Frawley:** No.
1147. **Mr Elliott:** Certainly it is within the competence of the Assembly to do something about it.
1148. **Dr Frawley:** That is correct.
1149. **Mr Elliott:** I think that your point is well made.
1150. My first question is quite a simple one. I know that you would have to implement the legislation here, but do you agree with the principles of the legislation?
1151. **Dr Frawley:** Yes, I am content with them.
1152. **Mr Elliott:** All right.
1153. My other question is around the fact that the complaint must be made in writing. When I was on another Committee, we had long discussions about how a complaint could be made to the ombudsman by text or by phone call. Are you content that it can be made only in writing? I foresee, looking at it from the other side, an argument from people who work in departments in the Civil Service saying, “Well, people can complain about us and decisions that we have made by a simple text or phone call, whereas a complaint about a councillor must be made in writing.”
1154. **Dr Frawley:** I will have to clarify that, Chair. A complaint has to be more than a text. People could say, “Here is a complaint”, and there may be two words. There will be people who will say that they want to make a complaint and here is what it is. However, there are people, and the Committee is aware of this more than I am, who would have difficulty in writing a complaint, not for any reason other than perhaps misfortune or literacy challenges that they have been unable to overcome. In that circumstance, one would assist. We will help them to put what they want to say on a page, but they would have to come to us and say who they are and where they live. They will have to know that their complaint will be shared with the person they are complaining about. I would not want it to be a case where, unless you can write me a letter and get a stamp and an envelope and send it to me, it will not be a properly made complaint. We would assist in getting it formalised if the circumstances warranted it, but we would need to make that judgement. We would not obstruct people from making a complaint.
1155. **Mr Elliott:** The issue that I am making is that, to the ombudsman, it is much

- easier to make a complaint in a written format than it would be in this case. The only point that I am making is that there is a difference.
1156. **Dr Frawley:** Yes, there is.
1157. **Mr Weir:** Chair, possibly one difference is that, while it might be an individual civil servant who is taking a particular decision, largely speaking, with the ombudsman, it is likely to be a complaint against a government body and so the repercussion could be for that body. Here, on the other hand, if you are talking about a complaint, it will ultimately be against an individual councillor.
1158. **Mr Elliott:** I knew that you would come up with a Civil Service answer, Peter. You always do. *[Laughter.]*
1159. **Mr Weir:** Tom, I would be a civil servant, but I could not take the pay rise. *[Laughter.]*
1160. **Dr Frawley:** I do not want to get caught in the crossfire, Chair. The referee wants to get off the pitch. *[Laughter.]*
1161. **The Chairperson:** Let us move on, Peter.
1162. **Mr Elliott:** That is fine, Chair.
1163. **Mr Milne:** You are saying that the code should be in place by May and that it will apply to those elected to the new councils. What about those who are not standing for the new councils and who will still be councillors for that year? Will you be fit to adjudicate on people in that position? Has that been taken into account?
1164. **Dr Frawley:** That has not been advised to me, but my understanding is that it relates to the new councillors and not to the present councils.
1165. **Mr Milne:** Fair enough.
1166. **The Chairperson:** It will start from May 2014 with the shadow councils.
1167. **Dr Frawley:** It will operate under the shadow period.
1168. **Mr Weir:** To clarify, if there is a complaint against someone, what capacity does it relate to? Presumably, during that period, it is likely that quite a lot of people will experience a degree of overlap. So, presumably, it relates to their performance of duties in the new council.
1169. **Dr Frawley:** Absolutely.
1170. **The Chairperson:** The induction has to be done quickly — almost immediately — as well, as you say.
1171. **Mr Boylan:** Have you expressed your views on clause 67 in your paper?
1172. **Ms M Anderson:** Yes.
1173. **The Chairperson:** Thank you very much. It was a very informative exchange of information and a very robust discussion.
1174. **Dr Frawley:** Thank you very much, Chairman and members.

16 January 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Barry McElduff
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Julie Broadway *Department of the*
 Ms Mylene Ferguson *Environment*
 Ms Linda MacHugh
 Ms Fiona McGrady

1175. **The Chairperson:** I welcome the usual team: Linda, Julie, Fiona and Mylene. We are all very interested to hear about the code of conduct that you are working on. Over to you, Linda.

1176. **Ms Linda MacHugh (Department of the Environment):** Thank you very much for the opportunity to come today. We felt that, before the Minister goes out to full public consultation, it would be very useful to send this to some key stakeholders and to get initial views. The Minister will be able to take those views on board before the full consultation process kicks off in early February.

1177. I am joined by some of my legislation team and Fiona from the planning division. There is an element of the code that relates specifically to planning, so we felt that it would be useful to have her here. We have worked very closely with our colleagues in planning and the Commissioner for Complaints in drafting the code.

1178. As you have heard me say before, this is another area that has been a long time in the process. The whole principle of

the need for a code of conduct was very carefully debated when we had policy development panel A. At that stage, research was done on the principles and codes in other jurisdictions, and those models were amended to make sure that they were relevant for Northern Ireland. More recently, we have worked with the legislation working group, which includes representatives from local government, including the Northern Ireland Local Government Association (NILGA). It has been very useful to get their views on how this could be operationalised. We have come to you today with a document that has had a lot of input from some of the people who will use it.

1179. I will not go through the whole document in detail, but, clearly, it is based on the seven Nolan principles of public life and also the five Assembly principles in order to align it as closely as possible to the regime in the Assembly. It is also very closely linked to wider governance issues. You have heard from the Commissioner for Complaints about how the complaints procedure works, and, really, this code sets the rule book against which the commissioner will determine whether there has been a breach. So, it is an important document. It also links to a number of other key documents that will be produced or that are in the process of being produced. One of those is the guidance from the Commissioner for Complaints on the interpretation of the code of conduct and how that will interlink with complaints and the complaints procedure. There is also further planning procedural guidance, which will be relevant to the ethical issues around planning that are enshrined in the code.

1180. The local government reform joint forum, which is a consultative body comprising the management side in local government and central government and the trade unions, is working on a

- staff code of conduct. There is a very important correlation between the two codes. Jointly, we will bring together a group of elected members and people from the joint forum to look at a protocol that will act as a bridge between those two codes. One important element is the behaviour of councillors towards staff and staff towards councillors. We need to get that link-up right.
1181. The code will have a statutory basis, and the draft code will need to be laid in the Assembly and endorsed by the Assembly through draft affirmative action. So, it will be fully debated.
1182. The other issue that has been discussed this morning is who the code will apply to. I think that the initial proposal was that it would apply just to new councillors. However, that might create operational issues. During the transition period between May 2014 and April 2015, you could have two sets of councillors, one to which the code applies and one to which it does not. Indeed, you could have one councillor, sitting on the old and new councils, who would have to decide which hat they were wearing and whether the code applied or not. Just last week, we got agreement from the Minister that the code would apply to existing councillors, as well as new councillors, once it comes into operation. Operationally, I think, that is the only way forward.
1183. **The Chairperson:** Will it be operational from May 2014, after the elections?
1184. **Ms MacHugh:** It will apply to all councillors as soon as it is introduced. However, it will not apply beyond those who are councillors, as we do not have the jurisdiction in this Bill to apply legislation outside local government.
1185. The final point — I think that it was discussed with the Commissioner for Complaints — is the need for training and capacity-building for councillors and local government officers on the procedures and the meaning of the code and how complaints will be delivered. We clearly identified the need for that, and it is already part of the overarching capacity-building framework that we have developed, again in partnership with local government. I am very pleased that the Commissioner for Complaints and his colleagues have offered to take a very proactive role in that. I very much welcome their support and being very —
1186. **The Chairperson:** What do you think of his suggestion of a contract —
1187. **Ms MacHugh:** Yes.
1188. **The Chairperson:** — and that councillors will sign on the dotted line to say that they will abide by it?
1189. **Ms MacHugh:** It is in everybody's interest that we all know the ground rules from the outset.
1190. I am not going to say any more at this point, but we are very happy to take any questions that you have on the code.
1191. **The Chairperson:** What about the timescale for the consultation, Linda? This is just for stakeholders, is it not?
1192. **Ms MacHugh:** This is just a very short, sharp, two- to three-week process. We plan to go out to full public consultation in early February. We are looking at a possible eight-week consultation. However, considering the fact that we have done quite a lot of work with key stakeholders already, I am hopeful that that will not be an issue. It would then need to go further and be developed into something that can be introduced in time for the end of May.
1193. **The Chairperson:** Sometimes, there are weasel words. You need further explanation as well. You use words such as “respect” and “good relations”. You really need to pin it down.
1194. **Mr Boylan:** Thank you very much for your presentation. You are very welcome.
1195. We need to look at how we facilitate those in outside bodies. They are doing the same job as councillors, even though they may come from the community and voluntary sector. Issues have been raised about that. I can see that for people who are in the public sector. There should be a code

- of conduct across the public sector. I can see them going through a process. I know that you indicated that it will apply only to local authorities, but there should be a code of conduct across the public sector. Is there any scope to include the community and voluntary sector in the code? Has there been any talk from the Minister's office about that?
1196. **Ms Julie Broadway (Department of the Environment):** We understand the concerns. If councillors are acting on other bodies, the code will apply to them but may not apply to others. I really think that it is outside the scope of this Bill for us to deal with that. We can deal only with councils and councillors. I think that it would be for those other bodies to come up with a code, or, as the commissioner mentioned, more widely, there could be a code that applied to people in public appointments.
1197. **Mr Boylan:** It would be very easy for that body or an individual to bring a complaint. If they make a decision as a corporate body, it would be very easy for somebody sitting on that committee, or whatever the case may be, to bring a complaint, if the council was the sponsoring body. It is very difficult to square that circle, and you can see the genuine concerns that there would be about that. The general public knows that this will come in and there is an expectation of what will be handed down. We need to be very careful about that. That is why I tried to nail down the issue of admissibility criteria, because that would protect, in some ways, complaints against councillors.
1198. **Ms MacHugh:** Clearly, there also has to be a demarcation line between the decision of a body, or a corporate decision, and the behaviours of an individual. This is less about decision-making and more about a set of behaviours and an approach. This applies to the action of the individual as opposed to the collective.
1199. **Mr Boylan:** We are just trying to get examples, because the actual decision could lead to the complaint. It is about the interpretation.
1200. **Ms MacHugh:** We are aware that other bodies have their own code of conduct. Clearly, if a councillor is sitting on that body, that code will apply to the councillor.
1201. **The Chairperson:** Would they be subject to two sets of code of conduct?
1202. **Ms Broadway:** The code of conduct, as drafted, states that if they are on another body, and that body has a code of conduct, that code would have precedence. Of course, with regard to general behaviours, if they are acting as a councillor or representing a council on that body, they would have to take account of the code, but that other body's code would take precedence, if it has a code.
1203. **Mr Boylan:** I understand. You can understand why we keep asking the question. It is about the complaint that might be made in relation to councils. It is not about the code of conduct and hoping that they conduct themselves in a proper manner. It is outside of that. We are trying to envisage what could go wrong and who would be accountable.
1204. **Ms Broadway:** It is at a very early stage, but I know that the OFMDFM Committee is taking forward a Northern Ireland Public Services Ombudsman Bill. This might be something that would be appropriate for that Bill.
1205. **The Chairperson:** Yes. It is outside the scope of the Local Government Bill. The difficulty with the code of conduct for other members, from outside, who sit on the community planning panel, for instance, is that the Commissioner for Complaints cannot investigate them. The commissioner cannot investigate people who are not councillors.
1206. **Ms Mylene Ferguson (Department of the Environment):** It will extend, though. There is provision in this regime for people who are appointed to a committee, but who are not an elected representative, to be covered by the code. We are trying to contain it within

- the local government community, so that anybody who has a part to play in a committee, but is not elected, will have to abide by the code. They will have to sign up to it as well.
1207. **The Chairperson:** But that is just committees; it is not general panels or —
1208. **Ms MacHugh:** However, the way in which a community partnership operates would be determined by the council. So, the council would be in a position to set a code of conduct for everybody sitting on that partnership or body.
1209. **The Chairperson:** But people still cannot take a complaint to the commissioner and complain against those members who are not councillors.
1210. **Ms MacHugh:** Certainly not under this code and wider complaints regime that we are putting into place in the Bill.
1211. **Mr Elliott:** Thank you for that. I have two queries. One is around when the code must be observed. Section 2(d) of the draft code states that the code must be observed:
“at all times and in any capacity”.
1212. Clearly, that is very wide-ranging. How would that work for a councillor who was sitting on his church organisation or on a community group, and he believed that he was there in a private capacity, but others said, “You’re a councillor; you can’t get away from that fact”? How would it operate in those circumstances?
1213. **Ms Ferguson:** It would not apply if a councillor was appointed as a school governor, but, if it was more of a public appointment, such as to an education board, it would apply. So, there is a distinction.
1214. **Mr Elliott:** I think that that needs more clarity, because it says:
“at all times and in any capacity”.
1215. That is extremely wide-ranging.
1216. **Ms Ferguson:** It also goes into the area of people perceiving that somebody is acting as a councillor but that may not be in the council environment. We are trying to cover that.
1217. **Mr Elliott:** It certainly does not say that in that part.
1218. **Mr Eastwood:** Your local community might ask you to sit on something, but you could be appointed to lots of bodies and boards as a councillor by the council. Is that the distinction?
1219. **Ms Ferguson:** Yes.
1220. **Mr Elliott:** That is fair enough, Colum, and I accept your point. My only query is about the way it is written in that it says:
“at all times and in any capacity”.
1221. That is extremely wide-ranging. Other sections explain further details, but in this section, section 2, it is clearly very wide-ranging.
1222. **Ms Broadway:** We can look at that issue before we go out to a full consultation. The benefit of having the pre-consultation is that hopefully we can deal with any major issues before we go out to the public.
1223. **The Chairperson:** We can clarify the limitations and the boundary. It is scary to say “at all times” as if it includes walking the dog. *[Laughter.]*
1224. **Mr Elliott:** My second point is on planning. Councillors believe that they will have very limited powers under the new planning mechanisms and will see this as a further restriction to planning. On page 22, under “Decisions contrary to officer recommendation”, it states:
“You must never seek to pressure planning officers to provide a particular recommendation on any planning decision. If you propose, second or support a decision contrary to an officer’s recommendation you will need to clearly identify and understand the planning reasons for doing so.”
1225. Most councillors can make a case — it is, quite often, not upheld — as to why they would go against a planning officer’s decision. That is what happens at the moment. However, I feel that

- there will be a perception that that limits the scope. What is your view on that?
1226. **Ms Fiona McGrady (Department of the Environment):** I recognise the comment, but the key words are “pressure planning officers”. It is within the remit of a councillor to represent and lobby for his or her constituents, but that reference means to pressure the planning officer towards a particular recommendation. That is the important point. The whole purpose of the planning element of the code is to provide clarity on the roles and responsibilities of councillors on planning and to ensure that we provide protection for councillors in that area. The point about pressuring planning officers is to not pressurise them into a situation, but, yes, you can make representation where that is appropriate.
1227. **Mr Elliott:** There will be huge arguments over what is pressure and what is reasonable representation.
1228. **Mr Weir:** I understand what is being said, and I understand the intention. There may need to be a wee bit of manoeuvring with the wording. You want to avoid a situation of undue pressure. There may be an issue with interpretation. I appreciate that there is also a distinction depending on what way planning will operate. For instance, all the council may be in the planning bit, and you might have a councillor who legitimately may, if they are not on the planning committee, lobby on particular issues. At the moment, when you talk about pressure, what if someone who, for example — I do not think that it is intended — is not on the planning committee, then contacts the officer to say, “That set of apartments is proposed to go in there, and there is a lot of concern in the local community that it will have a major effect on parking etc”? It can be a slightly grey area between the legitimate indication of making views known and what counts as pressure. That may need to be teased out a wee bit more.
1229. **Ms McGrady:** I think that you are right, and that is where we are developing
- guidance. This insert into the planning code is very high level, and we are proposing to develop guidance that will deal with the specific actions.
1230. **Mr Weir:** What I am going to ask may well be contained in the code. However, with regard to the draft code and what you have said about this applying in the shadow period and applying to new councillors, I presume that there is some caveat in it, because the bulk of the planning stuff is stuff when it is devolved. You should not put undue pressure on an officer anyway, but a lot of this stuff should not be related to the pre-transfer of planning. If you intend to bring in the code at that point, I presume that there will be some differentiation so that that part of the planning code will only become effective once planning is devolved.
1231. **Ms Broadway:** That is something that we can look at. The provision to apply the code to current and new councillors will be through the transitional provisions regulations that make provision for the shadow arrangements. We are finalising those at the moment, but we can look at that provision again.
1232. **Mr Weir:** The problem is that there are other references to planning, and you need something that is quite explicit, because, in the broad sense, leaving aside the caveats that Tom and I have highlighted, a few things on the broader planning stuff may need a bit of tweaking, but there is a lot of stuff in there that would not be appropriate at present but would be appropriate on the planning side once planning was devolved. On those aspects, it would be massively too restrictive if this were pre the transfer of planning. However, a lot of the wider stuff about the code of conduct is fair enough.
1233. **Ms Broadway:** We can look at that, and we can look at reorganising the code so that all references to planning are in the planning section.
1234. **Mr Weir:** Yes, so that it says, for example, that section 8 shall not apply

- until the Department makes an order, or whatever.
1235. **Mr Boylan:** The key element to that is the capacity-building. I know that you have the code and everything else, but there is an expectation out there. Councillors are going to be making decisions, and they need to understand. This is the back end of it as regards putting pressure on the likes of —
1236. **Ms McGrady:** We recognise that, and a significant amount of capacity-building will be carried out, particularly for councillors who are sitting on planning committees. We will develop that, and, once we finalise the guidance, we intend to carry out a significant amount of capacity-building.
1237. **The Chairperson:** There seems to be some inconsistency between councils. There was a recent case of a planning application opinioned by the planner to Belfast City Council for approval, and one councillor asked for a deferral, which led to the decision being reversed. I heard that other councils were asking how Belfast City Council could allow a single councillor to delay the process —
1238. **Mr Weir:** I am not sure that what was reported is necessarily what happened. If a deferral is asked for, the application for deferral is brought at a planning committee meeting. The planning committee has to then agree with the deferral, and then the officer can agree for the decision to be deferred or whatever. That is the formal process. People can raise a particular objection, and Planning Service may react and say that it is looking at that objection and may pull it off the schedule. However, with regard to a deferral, there is nowhere — in Belfast or wherever — where there is the capacity for one person to say that he or she objects to something and consequently it is deferred. The planning committee would have had to agree to it. It is possible that, because one councillor raised the issue, the fact was reported that one councillor got it deferred, and that was not accurate. Sometimes, the
- press reports of these things do not necessarily reflect reality.
1239. **The Chairperson:** Some councillors wanted to know how that was the practice in Belfast City Council, and how one councillor could ask for the decision to be looked at again. I suppose that Peter answered my point.
1240. **Ms McGrady:** I will take up that point. We intend to develop a regional protocol to ensure consistency of approach across all council areas in planning and the workings of planning committees. Obviously, we will discuss that with key stakeholders and take all comments on board. It is of paramount importance to the Minister to ensure that there is consistency of approach on planning when it transfers to council.
1241. **The Chairperson:** There have always been complaints about inconsistencies between planning offices, let alone in future when planning goes to councils. Are there any more questions for the team?
1242. **Mr I McCrea:** I raised with Dr Frawley the issue of having compulsory training on standards, to use his wording. I believe that such training should be compulsory, not for the sake of it but to protect councillors in the new bodies, whether on the planning function or on any other aspect of their role. Have you given much consideration to including it as being compulsory? What is your current position?
1243. **Ms MacHugh:** Yes, that has been raised with us before. We are looking at ways, either through legislation or operationally through council procedure, of requiring councillors to sign a declaration to become a councillor that they know and understand the code of conduct and have adopted it. We are trying to weigh up whether we should legislate for that or put it into operational procedures. We will have to put that to the Minister. As the law stands currently, there is not a statutory obligation for training for the code of conduct. The code of conduct is a statutory code. We are considering that.

1244. **The Chairperson:** You are considering strengthening it. will kick in from day one as opposed to on the devolution day.
1245. **Mr Weir:** On the training issue, I think that there may be a gap between the ways that people will interpret things at present. There are specific provisions on, for instance, the planning side, and there are implications with some of that because some of those directly apply to quasi-judicial functions, where it is a licensing issue. Obviously, there are certain areas where licences are issued by councils already, such as entertainment licences and pub licences. I think that most people will understand fairly easily broader declarations of interest and all those types of things. That is fairly straightforward. With a bit of training, they can understand the planning stuff, which will not come in immediately.
1246. To take an example of the quasi-judicial functions, if, as part of entertainment licences for pubs, you are saying that there will now be certain levels of restrictions on what can be said and what indications of support can be given, it will be fairly commonplace, certainly in my locality, that you will have a number of pubs and clubs that, historically, have been built in the centre of residential areas or very close to residential areas, and councillors will get lobbied, quite vigorously on occasions, on particular aspects of that. I think that, although people probably can see that something very different is happening with planning and will keep that in mind, unless there is very clear-cut training, councillors could very easily make a major mistake by way of local residents complaining that they do not want a general extension into the early hours of a Saturday morning, or whatever it happens to be, because they think that that is in a different category from planning. So, as you move ahead on that, you will maybe want to make sure that that is got right. I think that that is a key area on which there needs to be very clear-cut early training. From what I read of that, although it will be a bit less restricted than the pure planning stuff, it will be something that
1247. **The Chairperson:** Thank you very much. I am sure that we will see you soon.

23 January 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Tom Elliott
 Mr Ian McCrea
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Julie Broadway *Department of the*
 Ms Mylene Ferguson *Environment*
 Ms Linda MacHugh
 Mr John Murphy

1248. **The Chairperson:** You are very welcome again, Linda, Julie, Mylene and John. I am sure that you have all been working overtime on this. It is a large piece of legislation, and there are so many comments and issues about it that trying to take them all on board could give you a headache.
1249. You gave us eight papers, Linda. We were waiting for them but did not get them until 5.00 pm yesterday, which was a bit disappointing. I kept my e-mail on to see whether I could get the tabled papers. I tried to read some of them this morning, but none of us really has the time to read through them. So, I would appreciate it if you could go through them thoroughly with us. We have set aside an hour for you.
1250. **Ms Linda MacHugh (Department of the Environment):** That is fine. Thanks for the opportunity to do this. I know that these are areas that have received quite a number of comments from others and that you need further clarification on. We did try to get the papers to you as soon as possible. We were told on Friday afternoon that they were needed, so we worked quite hard to try to get them to you, at least in advance of the meeting. We did not expect the Committee to have the time to read through them in advance of us coming here today, so we will go through them individually in some detail.
1251. I am joined by members of my legislation team. Julie and John will take you through the first six papers, and then I will talk to the seventh. At various points, however, any of us may come in if there are additional questions. I will ask Julie to take the first paper, which is on removing the blanket prohibition on council officers being councillors.
1252. **Ms Julie Broadway (Department of the Environment):** I think that clarification was needed about the various pieces of legal advice and legal cases on the issue.
1253. Section 4(1)(a) of the Local Government Act (Northern Ireland) 1972 specifies that:
- “a person shall be disqualified for being elected or being a councillor if—*
- (a) he holds any paid office or other place of profit ... in the gift or disposal of that or any other council”.*
1254. We first became aware in 2005 that there was a human rights issue in that when the Department received correspondence from a solicitor acting on behalf of a council employee. That alleged that that provision violated article 10 of the European Convention on Human Rights, which provides the right of freedom of expression.
1255. We sought legal advice on the matter, and that indicated that there was a strong argument that section 4(1)(a) was disproportionate to the legitimate aim pursued. The advice went on to indicate that it could be convincingly argued that the provision posed a:
- “general, automatic and indiscriminate restriction on a vitally important Convention right”.*
1256. The advice pointed to the possibility of a successful legal challenge to the

- provision on the grounds that it would violate article 10 of the European Convention on Human Rights. The case law that is quoted in support of the legal advice that we got was *Hirst v the United Kingdom (No 2)* [2005]. That was to do with the Representation of the People Act 1983, which barred Mr Hirst and others from voting in parliamentary and local elections. It was held to be incompatible with the European Convention on Human Rights.
1257. **The Chairperson:** That is quite different, though. It is about voting, not standing for election.
1258. **Ms Broadway:** It is a relevant judgement, in that it is about blanket restrictions for elections and voting. That particular case was about voting in parliamentary and local elections, whereas the section 4 case is about placing a blanket restriction on someone being a councillor.
1259. The intention had been to bring forward the necessary amendment to section 4 as part of the legislation that is associated with the local government reform programme. The then Minister of the Environment confirmed in 2009 that the position was that we would take forward an amendment to section 4.
1260. Let us look at the position in the jurisdictions of England, Scotland and Wales. We carried out research on what happened to see how the issues of employees as councillors was dealt with elsewhere and to assist us in identifying how we could best remove the blanket prohibition. In England and Wales, prior to 1989, an employee of a local authority was disqualified from being a member of that authority by virtue of section 80 of the Local Government Act 1972. The equivalent provision in Scotland is section 31 of the Local Government (Scotland) Act 1972. Those provisions allowed a local authority employee to become a member of another local authority. That was known as “twin tracking”, whereby you could be a councillor in another authority but not in the authority by which you were employed.
1261. In 1985, in response to adverse publicity about twin tracking, the UK Government established a committee of inquiry into the conduct of local authority business. That committee considered the issue of local authority employees also being members of a local authority. Three arguments about twin tracking were considered. First, there could be a conflict of interest; secondly, there could be an issue of excessive paid leave; and thirdly, there could be an issue with political impartiality. The committee rejected the first argument and concluded that the second could be dealt with separately with rules for remuneration and time off. The third argument, about political impartiality, led to the recommendation that senior officers of a council should not be politically active and, as a consequence, should not be councillors.
1262. The UK Government accepted that recommendation. In 1989, they made provision on the disqualification and political restriction of certain officers and staff. The Local Government and Housing Act 1989 subsequently provided that:
- “A person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of a local authority if he holds a politically restricted post under that local authority or any other local authority in Great Britain.”*
1263. Section 2 of the 1989 Act sets out the persons that are to be regarded as holding “politically restricted” posts for the purposes of section 1.
1264. Subsequently, a number of senior local authority employees in the case of *Ahmed et al v the UK Government* took a case to the European Court of Human Rights on the basis that regulations made under section 1 of the 1989 Act interfered with their rights under article 10 of the charter. In its judgement, the court found that:
- “restrictions imposed on applicants not open to challenge on grounds of lack of proportionality — Regulations only applied to carefully defined categories of senior officers like applicants who perform duties in respect*

of which political impartiality vis-à-vis council members and public is paramount”.

1265. So, it is not as though there was a blanket ban; the judgement was that, as long as there was not a blanket ban or an indiscriminate ban, it is perfectly OK that those people who held politically restricted posts should not be allowed to be councillors.
1266. In the Republic of Ireland, the Local Government Act 2001 provides that persons who are employed by a local authority are not eligible to be elected members unless they belong to a class, description or grade that may be specified in subordinate legislation. That is really linked to the maximum level of remuneration that someone will be paid. So, anyone above the grade of clerical officer is restricted. The Department's position is that we have made provision in the Bill to remove the blanket prohibition on council employees, because the advice that we got in 2005 was that that could be challenged under article 10. The enabling power in schedule 1 to the Bill allows us to specify in regulations those offices and employments to which individuals are appointed by a council that will disqualify that individual from being a councillor.
1267. The Department recognises the concerns expressed in relation to permitting a council employee to be a councillor on his or her employing council, so we are seeking advice from the Department Solicitor's Office on whether the provision as introduced would allow the Department to specify in the regulations that we can make under schedule 1 that employment on the council to which election is sought would be included as a disqualifying employment. We are working with the local legislation working group on what should be in those regulations. We will then put recommendations to the Minister on that.
1268. **The Chairperson:** How do you pick what are deemed to be politically sensitive posts? It looks like the Republic of Ireland makes it easiest — above a certain grade.
1269. **Ms Broadway:** Yes.
1270. **Mr John Murphy (Department of the Environment):** In England and Wales they have disqualified the head of the paid service, which is perhaps the equivalent of our chief executive or clerk; statutory officers, like, for example, the chief finance officer; or officers who regularly provide advice to the council or one of its committees — those who are actually involved, you could argue, in the decision-making process of the council. It would be staff who are working to the chief executive but not perhaps the administrative staff, so you try to define it very clearly at that high level. As Julie said, we are working with local government senior officers to refine the list for advice to the Minister. Then, subject to his views, we will go out to consultation.
1271. **The Chairperson:** There needs to be consistency between councils as well. What about employees of one council standing for office in another council?
1272. **Ms Broadway:** We are getting legal advice on that issue about whether the enabling power that we have would be sufficient to allow us to specify that, if the Minister wants to do that, so that we can do it in the regulations rather than needing to make an amendment to the Bill. As soon as we get that legal advice we will of course bring the outcome of that to the Committee.
1273. **The Chairperson:** Would there be a restriction on the politically sensitive staff standing for other councils as well?
1274. **Ms Broadway:** In many ways there are two elements. One is whether someone who is an employee should be allowed to be a councillor on their own council. The advice that we are getting is whether, because of the comments we have received about that and because it causes so many difficulties and conflicts, it would be advisable if that was not the case. That is one element. The other element is this issue of politically sensitive posts. What posts in

- a council should prevent you from being a councillor in any council, not just the one that you are employed by?
1275. **Mr Murphy:** That is where the Ahmed judgement provides us with the case law that you can have that level of restriction.
1276. **The Chairperson:** But we cannot have a blanket ban, as you say.
1277. **Mr Murphy:** Yes.
1278. **Lord Morrow:** Paragraph 8 of your paper refers to the three arguments against twin-tracking and to conflict of loyalty. Are “loyalty” and “interest” the same word here?
1279. **Mr Murphy:** No, it is whether your loyalty as a councillor lies with your party and its views rather than with the council that you are there to serve as an officer.
1280. **Lord Morrow:** I have a problem with it in that it would be difficult for any council employee to sit on that council wearing two hats. Surely there would be umpteen occasions when they would have to opt out of discussion and debate, perhaps leaving the room. Their whole career as a councillor could well become dysfunctional. Indeed, I suspect that their employment career would also become dysfunctional. They would find themselves having to make declarations of interest not only at their place of employment but at council meetings. Is that not right?
1281. **Ms Broadway:** Is your main concern if they were an employee of the council on which they are a councillor?
1282. **Lord Morrow:** More so in that instance, but I believe that it would also be prevalent even if it were another council. I am thinking, for instance, of the appointment of staff. These are emotive issues. It has got to the stage, perhaps long past it, where councillors do not participate in the appointment of staff. Take, for instance, the appointment of a chief executive. Councillors have some input into that appointment up to a certain level. Where would a person who has a dual role find themselves in that?
1283. **Ms Broadway:** That is actually why we have been researching this issue. We have received comments about it. The Committee has raised issues about it, and trade union side and councils have raised issues about this — in particular, people being allowed to be councillors on the council that employs them. There seems to be so many practical issues involved with that. That is why we are carrying out research to put advice to the Minister. The legal cases seem to point to the fact that a challenge could be made if it is an indiscriminate ban. Therefore, we have to look at what level would be acceptable. As some of the people from Belfast City Council said earlier, in England and Wales, there seems to be a minimum level where people who are in politically restricted posts cannot be councillors. Equally, you cannot be a councillor if you are an employee of that council. We have been looking at this again because we recognise the issues that have been raised.
1284. **Lord Morrow:** Are you in the position where you are saying that the Department would much prefer that this was not the case? I recognise the case that has been highlighted and understand that you must try to address that and deal with it. However, is it true to say that your starting point is that you would prefer the status quo in that this is not the position because, because, because, because.
1285. **Ms Broadway:** It is an issue that we need to put to the Minister and get his views on.
1286. **Lord Morrow:** In fairness to the Minister on this one, whatever his personal view is — and I do not know what it is, and it is a good job that we do not know at this stage — I think that, if I were the Minister, my view would be that it should not happen. I recognise that that would not be a good enough answer because of the things that you folk have cited, not least in your paper. However, is it not reasonable that the Department should say, “No; we feel that the status quo is the best, safest and most transparent way forward here”?

1287. **Ms MacHugh:** It needs to be taken in the context of the legal position. If the legal position has been clearly defined and the status quo is deemed to be unlawful, illegal and challengeable, there is a role for the Department to play in making sure that the framework that we put to councils is workable and will not lead to undue challenge. Therefore, the Minister would have to weigh whether it is practically acceptable or feasible in the Northern Ireland context against the potential for legal challenge. We will have to put it to the Minister. We are doing a lot of work to develop his briefing on the basis of all of this.
1288. **Lord Morrow:** I fully understand and accept what is being said. You have a dilemma because of the legal position. We can talk about these things now, because it does not exist at the moment. We are all free to talk about them because we do not have a case in the back of our minds. We are talking from a clean sheet of paper, as they say. Bearing in mind the legal and challengeable position, I think that, if we go down this road — and it may well be that we have to — it will present enormous problems.
1289. **The Chairperson:** The Department's hands are tied. You have to do something. You have to find the best way to safeguard the proper working of the councils.
1290. **Ms Broadway:** We have to find a balance to address the legal advice that we have received, while —
1291. **The Chairperson:** The thing is we have never been challenged. However, the law will be here for another 50 or 60 years, and you never know.
1292. **Mr Elliott:** Thanks for that, folks. Again, it is clarification. Let us be absolutely clear that, so far, there has been no test case locally, in the UK or in Europe that says that what we have at the moment is wrong.
1293. **Ms Broadway:** Because the situation is different in England, the cases in England —
1294. **Mr Elliott:** But that is what I am saying. There is no test case locally, in England or in Europe that says that our current position is wrong.
1295. **Ms Broadway:** We have been pointed to other cases that say that it is wrong to have an indiscriminate rule.
1296. **Mr Elliott:** Yes, but I assume that that is the judgement that was made in Europe on the English case. It might be useful to give us the exact form of words that was used.
1297. **Ms Broadway:** That is fine; we can send that to you.
1298. **Mr Elliott:** The second advice relates to the 2005 case on prisoners' voting rights. However, that is only advice. There has been no test of that.
1299. **Ms Broadway:** That was a case.
1300. **Mr Elliott:** It was a case on prisoners' voting rights, but it was not a case on the law in relation to stopping council employees being councillors.
1301. **Mr Murphy:** That is right.
1302. **Mr Elliott:** So we do not have any case law that currently stipulates our particular case; that is the key point here. There is advice, obviously, but no case law. I do appreciate the difficulties of trying to strike the balance. I totally accept that it is a difficult one. Obviously, we do not want to get on the wrong side of the law. However, as others have pointed out, it would be impractical to allow senior council employees or people in politically sensitive posts — or whatever way it is put — to become councillors.
1303. **The Chairperson:** In reality, council employees would probably not touch it with a barge pole. It would be to their detriment to be caught in the middle, between their work and their party's policies.
1304. **Lord Morrow:** Chair, you need to square that term "to their detriment". I thought that it was not to be to their detriment.

1305. **The Chairperson:** If they are caught between carrying out their work duties impartially and being a member of a political party, that may create issues with whatever policies or decisions are made by committees or councils. They could be caught in the middle.
1306. **Mr I McCrea:** Yes, but, if the protection is there to allow them to do it, they are protected. No matter what detriment there is, there is that element of protection for them, because they have that political protection almost immediately.
1307. **The Chairperson:** Well, yes.
1308. **Mr I McCrea:** Like Lord Morrow, I have major concerns about it. I understand the legal aspect, but any right-thinking party would think twice about allowing it to happen. You cannot account for independents, but hopefully that is a thing of the past.
1309. **Mrs Cameron:** I agree wholeheartedly with most of my colleagues' comments on this issue. It does not seem workable, and it would be a real dilemma to have someone in this position. What is the major risk? If the legal advice comes back allowing you to obtain a blanket ban, would the biggest risk be someone taking the case to court?
1310. **Ms Broadway:** Yes. In 2005, that is how we became aware of this. A solicitor for an employee wrote to us to say that they were thinking of taking a case because of the blanket ban. That is when we got the legal advice.
1311. **The Chairperson:** But, in practice, other parts of the UK are doing it now and have restrictions on employees. So, it is working in the rest of the UK. Do we know what percentage of employees in other jurisdictions have this dual role?
1312. **Mrs Cameron:** You might have to speak to those employees to see if it does work. The positions are there, but how effective they are as employees, I do not know. Maybe that question might be asked.
1313. **The Chairperson:** It is not only difficult for the employers and the councillors, it is difficult for the employees themselves. If you do not feel that people have confidence in your judgement and advice, why bother working? Ian, do you want to come in?
1314. **Mr Milne:** My point was covered by Tom. I thought that there would be examples throughout Europe or the world of a system like this that has been in place for a while. If there was, they might have discovered after a period of time that they had to rejig it because of whatever it threw up with the employees. I take it that there has been research done on other systems in Europe.
1315. **Ms Broadway:** We looked at systems in other jurisdictions, namely England, Wales, Scotland and Ireland. We did not look at other European countries, but we can have a look to see whether there is anything there.
1316. **Mr Milne:** All I am saying is that if there was, and it had been there for 10 years or more and they had tested the system to see how it had worked out, maybe we could learn something from it. That is my thinking.
1317. **Lord Morrow:** Does it happen in the Irish Republic?
1318. **Ms Broadway:** It really appears that people who are paid a certain level are allowed to be councillors. There is a maximum level of remuneration above which you cannot be a councillor.
1319. **Lord Morrow:** Is that challengeable?
1320. **Ms Broadway:** No, because that is not a blanket prohibition.
1321. **Lord Morrow:** So you can go so far in a council, but no further.
1322. **Ms Broadway:** Yes. That is why it is a balance between ensuring that we do not fall foul of the European human rights legislation and ensuring that the system is practicable and workable.
1323. **Mr I McCrea:** It might be allowed, but does it happen? Are you aware of it

- actually happening? It may be allowed to that level, but is there any —
1324. **Mr Murphy:** It would be difficult to do the actual research because, whilst you could identify the individual councillors, you would not necessarily be able to find out whether they were employees of a council unless you went to all of the councils and asked for a list of their employees.
1325. **Lord Morrow:** You could spend the day phoning around.
1326. **Mr Milne:** When was it introduced down South?
1327. **Mr Murphy:** I think it was in 2001.
1328. **Mr Milne:** Maybe the question should be asked about how it is working there. What difficulties are they finding? This is the only way that you can find out these things.
1329. **Ms Broadway:** We can certainly consult our counterparts to see whether they are aware of it causing a major issue.
1330. **The Chairperson:** At what grade are we really talking? Can administrative —
1331. **Ms Broadway:** It is clerical staff.
1332. **The Chairperson:** Only clerical staff?
1333. **Ms Broadway:** So really anyone of clerical officer and below can be a councillor, but anyone above that cannot. Once again, that is not a blanket prohibition.
1334. **Lord Morrow:** Are there different grades of clerical officers?
1335. **Ms MacHugh:** That is a complication in local government in Northern Ireland. At times, there is a lack of consistency in who does what job at what grade from council to council. That is something that councils are working at, but it is still not there. I do not know exactly, but possibly that is why a level of pay has been set, as opposed to a grade — because that was seen as the best proxy for positions of responsibility. We can certainly contact our counterparts to see whether it is an issue that has been raised with them.
1336. **The Chairperson:** I do not want to dwell on this too much, with so many papers to go through. Julie, are you taking the next one?
1337. **Mr Murphy:** I will take this one, Chair. I will give a very brief introduction to cover the next three papers, because they are all based on proposals that came from one of the policy development panels. I remind members that, following Arlene Foster's statement on the Executive's decisions on the future shape of local government in 2008, the Department established the strategic leadership board, chaired by the Environment Minister and with representatives from the five main political parties, to develop policy and implementation proposals for the reform programme. That board, in turn, established three policy development panels, again with elected representatives from the five main political parties, all of whom were serving councillors. One of those panels was responsible for looking at governance and relationships. To put it into context, the policies reflected in the Bill are drawn largely from the work of that panel.
1338. The Executive were and remain committed to governance arrangements in the new councils that provide for the sharing of positions of responsibility across the political parties and independents represented on a council. In considering the issue, the policy development panel considered a research paper that was prepared by the joint secretariat comprising officials from the Department and officers from NILGA. It identified the various processes that you could use to achieve that proportionality. There were the divisor methods of d'Hondt, which everyone knows through its operation in the Assembly, and Sainte-Laguë, which is a similar process except that the divisor is slightly different to allow for greater sharing. There are also the two quota methods — droop quota and quota greatest remainder. If you used those, you would determine that a particular party was entitled to a certain number of

- seats or positions, and it would be for it to select.
1339. At that time, the Alliance Party put on the table a paper recommending and advocating the use of the single transferable vote (STV), which would have allowed members of the council to vote for those people they felt best fitted a particular position. It would have allowed parties to come together in the election of that individual. The panel, in its deliberations, felt that, in order to provide flexibility for councils in the new arrangements, they should have a list available so that they could use d'Hondt, Sainte-Laguë or the single transferable vote. However, it was very clear from the discussions of the policy development panel that, although you would provide that flexibility at a local level, for the councils that chose to use d'Hondt, we would specify how that should operate the same with Sainte-Laguë and STV so that you have a consistency of approach across all the councils. I would use the term "prescribed flexibility". As I say, the council could chose from d'Hondt, Sainte-Laguë or STV, but the approach to using that method is prescribed. The panel also agreed that that decision should be taken by qualified majority voting, so there would be a degree of protection there for the interests of smaller parties and minority communities. That was what was coming through. So, as I say, there is that —
1340. **The Chairperson:** So, sorry, deciding on the option or method needs a majority vote?
1341. **Mr Murphy:** Yes, and if you do not achieve that then the default position would be d'Hondt. That was an agreement across the political parties on the policy development panel. There is that flexibility built in by having that choice.
1342. **The Chairperson:** So the default position is still d'Hondt if there is no local agreement.
1343. **Mr Murphy:** Yes.
1344. **The Chairperson:** OK. I heard yesterday that we had a research paper on STV that has been withdrawn.
1345. **The Committee Clerk:** A few words have been changed in it.
1346. **The Chairperson:** There are some mistakes in it, so a new paper will be issued on the STV. We asked research staff to produce a paper to explain STV.
1347. **Mr Weir:** I suppose the other reason why there is a prescribed flexibility is that there has been — particularly in d'Hondt, although it applies to almost any of the bits — something that has been used by a lot of councils as regards the positions of responsibility. The problem is either, simply because they have seen it but they have just want to use it in a different way, sometimes through ignorance or whatever, that the actual formula has been applied differently. The concern is that, on occasions, in different bits, it has maybe been applied simply on a one-year basis. If you are looking to have a broad proportionality, then arguably the fairest from that point of view, is that if you simply use it in one year, what you actually do is sometimes perpetuate a particular inequality that will just keep coming up year after year, whereas a lot of it irons out mathematically if you do it on a four-year basis. Sometimes, for various reasons, a bigger party will be keen to use it on a one-year basis on the basis that they would get two-thirds of the places on something, perpetually and disproportionately. If d'Hondt or indeed any of the formulas are going to be used, it has got to be used in exactly the same way across every council to stop the abuse of position, either inadvertently or advertently.
1348. **The Chairperson:** Is STV a better solution for councils that do not have one party that has particular dominance over the other? Would that be a fairer system?
1349. **Mr Murphy:** I would say that that is a matter for the —
1350. **Mr Weir:** There was a reasonable amount of discussion. When STV was debated within policy development panel A, one of the reasons it was specifically mentioned was to provide people with

- many options. The problem with STV is that it works quite well if you have — again, it is a wee bit mathematical — a very small number of positions over a larger electorate, in the same way as by electing this, you are electing six. If you have, for instance, 40 councillors, which will be the case in most councils, and, for the sake of argument, the only positions being appointed are a ring-fenced group of six, then STV can work fairly well.
1351. From a practical point of view, once you have the pool of positions and a very large number of positions, STV becomes fairly meaningless. For example, say you are filling — particularly if you apply this across the board — external appointments, councils may well have, through main chairmanships and external positions, say 40, 50 or 60 happening in a particular year, and you apply that across the four years. So, by that system, you select for 200 positions with an electorate of 40. Everyone casts one vote, so the quota is about 0.2% of one vote. The higher the number of positions to ensure equality, the less suitable STV becomes to a particular position. That is where the complication lies. The only way you could do that would be to keep on breaking it down into individual bits. However, that also presents a problem. Say you have, for example, something that works reasonably well with 40 positions, but you have only six positions to fill. You break that down to 10 groups of six and keep on repeating the exercise. You could have a situation in which a party has three councillors, but, because nobody else votes for or transfers to them, they will always be kept out of those six positions. With a one-off, very small group, it works quite well, but, beyond that, it can run into much greater difficulties.
1352. **The Chairperson:** OK.
1353. **Mr Weir:** I will send in a joint consultancy fee with Peter McNaney later.
1354. **The Chairperson:** John has never been a councillor, and the practicalities can be difficult to grasp.
1355. I will have to declare my hand: the Alliance Party would be keen to table an amendment to make STV rather than d'Hondt the default position.
1356. **Mr Weir:** Try getting that through the Assembly with QMV. *[Laughter.]*
1357. **The Chairperson:** Members do not have any further questions on positions of responsibility, so we move on to the next paper.
1358. **Mr Murphy:** The next paper deals with the political governance arrangements and the decision-making structures that the new councils will be able to operate. The Bill provides for two basic forms, which were debated by the policy development panel. The panel looked at a research paper on what was happening in England, Scotland and Wales in particular. The Local Government Act 2000 required local authorities in England to adopt executive arrangements, which took three forms: an elected mayor and cabinet; an appointed mayor and cabinet; or a leader and cabinet appointed by the council. The smaller local authorities could operate alternative arrangements, which are basically streamlined committees, but still in executive form.
1359. Scotland had also moved along the road of developing executive arrangements to improve and speed up the decision-making process. Some local authorities in Scotland had a strict cabinet-style executive, some adopted a streamlined committee and others retained the normal committee system, doing so on a voluntary basis within the provisions of the Local Government (Scotland) Act 1973.
1360. The policy development panel felt that executive arrangements in the full cabinet or streamlined committee model would provide for improved decision-making in the new councils, which will have more functions and cover a larger area. However, it also recognised that the committee system worked well in Northern Ireland for many years so should be included in the available options. It is interesting to note that

- the Localism Act 2011, recognising that there were difficulties in some cases, restored the ability of local authorities in England to use the committee system. Sometimes, there is confusion over the streamlined committee system in particular because of the fact that —
1361. **The Chairperson:** They are executive committees, really.
1362. **Mr Murphy:** — it mentions committee, but it is a form of executive. Therefore, streamlined committees would take decisions. In the cabinet-style model, all the power or decision-making is vested in one group of a maximum of 10 councillors, whereas the streamlined executive allows you to split the same responsibilities across a number of committees, so it begins to allocate the responsibility across other members. The key aspect is that both have within them an overview and scrutiny committee arrangement, so there is that level of protection in the decision-making.
1363. In both executive arrangements, a council still has the ability to arrange for the discharge of its functions by a normal committee that would either make decisions itself or make recommendations to the council. In England and Wales, planning and other regulatory and quasi-judicial functions are not devolved in executive arrangements. They remain the responsibility of the full council to determine how it wishes them to be discharged. The council can then decide whether it wants to have a committee that will look at an issue and refer it back to the council for a full decision, or it can allow that committee to make decisions because, within that decision-making process, there are rights of appeal outside of the overview and scrutiny arrangements.
1364. **Ms Broadway:** Licensing and planning committees, for example, fall into that category.
1365. **The Chairperson:** PAC, too, is outside of the councils.
1366. **Mr Murphy:** Yes.
1367. **The Chairperson:** Any questions on the governance structures? I recall some members querying the mayor not being allowed to be in the executive.
1368. **Mr Murphy:** That comes down to the fact that the mayor and deputy mayor, or the chair and vice-chair of the council —
1369. **The Chairperson:** Are they one and the same?
1370. **Mr Murphy:** Yes. The mayor and deputy mayor head a borough or city council. The view is that they are there as the civic representatives and represent the whole council, so they should, in some respects, be seen as separate from decision-making. In the normal council structure, they would chair meetings and have a casting vote, but that would not be the case in the executive.
1371. **Mr Weir:** May I make a suggestion? I appreciate that you are trying to separate the two functions, but I am not sure that it is quite as neat as that. With the greatest respect, the mayor, or the council chairman, would be seen as the council representative and completely detached on the executive side of things. On the other hand, I can see how that could be the case in an executive situation — I suspect, to be honest, that we will probably have executive situations in the future. Surely the important thing is that the mayor or council chairman is fully aware of what is happening and, perhaps, even able to express a view. I do not know whether this is part of the legislation or part of the recommendations. Surely the thing is to provide for the mayor, council chairman, deputy mayor or whoever to be an ex officio member of the executive committee but as a non-voting member. In that way, they have access to the meetings and are able to hear what is going on. They would not affect the mathematics of whatever was in place and would not have a particular portfolio under those circumstances.
1372. As I said, much of that might be slightly moot in the short term because I cannot see any of the councils going immediately for an executive-type

- position. Many councils will have a situation in which, for instance, the mayor and the deputy mayor will be ex officio members of every committee. I suspect that whether they have a vote might vary from place to place, but, from a practical point of view, they would have a right to be at any meeting. That may be the way to square the circle and ease some of the concerns.
1373. **The Chairperson:** I find it very odd that someone could be the head of a council and yet not in the executive. Boris Johnson would never agree to something like that.
1374. **Mr Murphy:** Madam Chair, as far as attendance at meetings is concerned, the other provisions on access to meetings and documents would provide for other members of the council to be at an executive meeting, but certainly —
1375. **Ms Broadway:** We can consider that and bring it back to the Minister.
1376. **The Chairperson:** There are no further questions on this paper. We will move on to the next one. John, is it you again?
1377. **Mr Murphy:** Yes. The final paper in this group considers the issue of call-in and qualified majority voting. I know that there has been quite a bit of interest in that. It was also the subject of quite intense and interesting debate by the policy development panel when it discussed how protections for the interests of minorities in the decision-making process could be developed. Initially, the panel started looking at those in the context of executive arrangements, whereby decisions were being taken outside of the full council framework. It was then expanded, and elected representatives felt that it should also apply if a council opted for a traditional committee system. As I said, it is a means of protecting interests.
1378. The panel looked at the operation in the context of an executive. In England and Wales, such a mechanism is used largely for procedural matters: for example, after an executive has made and published a decision, members of the authority decide that it had not taken certain factors into account or taken into account factors that it should not have. It is known as the Wednesbury rule. The panel took the view that that was fine as far as basic procedures were concerned, but it felt that it also needed to build in a system for call-in when a decision or recommendation that came from a committee for ratification by a council could have an adverse impact on a particular section of the community. We are working with senior officers from local government through the legislation working group to try to refine and work through the criteria for both call-in processes and also the process that would apply. As the Minister stated in answer to an Assembly question, those would be covered and included in standing orders as a mandatory element so that there was consistency in the operation of the process across all new councils.
1379. On the other side of that, the panel looked at what other protections could be created and came to the view that qualified majority voting was one option. There was a discussion about the level at which that should be set, both for QMV and the trigger for call-in. It was recognised that councils, because of their potential make-up, would need different levels. However, the panel's view was that you could not get into that and that you can never predict what an election result might do to a council's make-up.
1380. Therefore, the panel agreed that QMV had to be standard across all councils, and it felt that 15% as the trigger for call-in represented a suitable balance between providing that protection and trying to ensure that we would not allow one or two people to block decision-making. That is because a number of councils in England, although they do not have the call-in for adverse impact, have a situation in which three members of, say, a 50-member local authority can call in a decision for scrutiny by their overview and scrutiny committee. So the panel looked at how to strike that balance.

1381. It was the same when it came to consider the threshold for qualified majority voting. If that is set too high, all business will come to a standstill. Equally, if you set it too low, there may be circumstances in which an individual party or number of parties could put things through, so a balance had to be struck.
1382. The panel then discussed the list of issues that would be subject to qualified majority voting. At that stage, there was clearly an issue with the method to be used to ensure proportionality in the governance arrangements. It was clear that some of the other statutory functions of a council — the likes of setting the rate — would be outside the scope of call-in and QMV because a council has to strike a rate by a certain date. We understand that there are such difficulties, so we are working with senior officers from a number of councils to try to refine the list. It is about trying to get the right balance of providing protections but not blocking every aspect of a council's work.
1383. **The Chairperson:** As I said to you earlier, a list can never be a catch-all.
1384. **Mr Murphy:** Yes.
1385. **The Chairperson:** That is your difficulty. Peter said that you could include parks, leisure centres and so on. Setting the criteria will be quite difficult if you try to cover everything.
1386. **Mr Murphy:** Yes. It is a case of trying to establish a list that covers the issues that could have an impact and require the support of the majority of the council. Acting in response to a valid call-in on the grounds of adverse impact also needs to be there. However, we are working on refining that.
1387. **The Chairperson:** A number of councils have spoken of their worry that, if there is a low call-in percentage and such a high QMV, councils' decisions could grind to a halt or be delayed.
1388. **Mr Murphy:** Yes.
1389. **Mr Weir:** There are a couple of separate issues. The 15% and 20% figures were agreed by all five major parties collectively and unanimously. There is clearly an issue about defining what qualifies for call-in. I am extremely worried and wary about what might be on the list for call-in. I appreciate that certain issues, such as those concerning positions of responsibility, will require QMV and need to be put in that category.
1390. If, beyond that, there was a list of issues that — outside of a call-in — required QMV, that would create a major minefield. In that situation, it could be argued that almost anything should be on the list, and the whole thing could grind to a halt. The principal protection of QMV should be the call-in, and, outside of maybe one or two examples, that, rather than a long list of potential circumstances, should be the trigger point for QMV. That point was made by the chief executive of Belfast City Council, who raised the issue of anything impacting on a range of DEAs being subject to QMV. He said that the vast bulk of his council's decisions impact on a range of DEAs, as I suspect, is the case, increasingly, for many other councils, which means that almost anything could be subject to QMV, creating a major problem. You have quite good protections for call-in to lead to QMV. However, I am very wary about the case for going much beyond the likes of positions of responsibility, which clearly will be part of the legislation.
1391. **The Chairperson:** Others have mentioned the timescale. Will you include a timescale for call-in and decision-making?
1392. **Mr Murphy:** Certainly. The work that we are doing with the senior officers looks at the whole process for call-in, so we are looking to have manageable time frames that allow for people to look at the decision or recommendation and decide whether they want to call it in. Then, however, it should be turned around as quickly as possible because the whole —

1393. **The Chairperson:** If not, people could use it as a tool to delay.
1394. **Mr Murphy:** Yes, so we are seeking to ensure that we do not have that. Another issue is how many times the same decision could be called in. We are looking at the whole process. As we keep saying, we must strike a balance between providing the protections that the Executive and politicians want and allowing the business of councils to proceed as effectively as possible and ensuring that services are delivered to the ratepayers.
1395. **The Chairperson:** Yes. As Peter said, if things grind to a halt, you lose the confidence of the public and are not doing the job.
1396. **Ms Broadway:** That is why we included a provision that allows the percentages to be amended. That would be achieved by legislation approved by draft affirmative process, so it would need to be debated in a plenary meeting of the Assembly before we could change them. If it becomes clear that there is a problem, particularly with QMV — maybe it is too high a percentage — we can revisit that.
1397. **The Chairperson:** That might be particularly difficult for the likes of Belfast City Council, which has a fairly even distribution of power. Both sides have more or less equal votes.
1398. As there are no further questions, we will move on to the next paper on ethical standards.
1399. **Ms Broadway:** A number of issues have been raised about the proposed new ethical standards and, in particular, the issue of how you would challenge a decision of the Commissioner for Complaints. So we thought it might be helpful to provide you with some background on what happens in other jurisdictions. Ethical standards frameworks in other jurisdictions differ significantly from one another, with different arrangements for investigating and adjudicating on cases. The procedures for challenging decisions of the adjudication body also differ across the various jurisdictions.
1400. In England, the ethical standards framework changed as a result of the Localism Act 2011, and each authority must now adopt its own code and put in place arrangements for investigating allegations and making decisions on them. Those arrangements must include the appointment of an independent person whose views must be sought and taken into account before a decision can be taken. Ethical complaints would be made to a councillor's monitoring officer, who would make initial findings on whether to proceed and, if so, an investigation could be undertaken by an officer of the council or an independent investigator. They then produce a written report to the monitoring officer, which goes to a committee of the local authority, usually the standards committee or the audit and governance committee, which is responsible for setting up a subcommittee to hold a hearing on the matter to determine the complaint.
1401. On hearing all the evidence, the committee considers its decision, determines whether a breach has taken place and decides on the appropriate action to take. The action to be taken is not prescribed, and the question of sanctions is open to the lawful discretion of local authorities. The legislation makes no provision to put in place an appeals mechanism against such decisions, but the decision would be challengeable by judicial review.
1402. In Wales, the ethical standards procedure is the responsibility of the Public Services Ombudsman for Wales. Cases are either investigated by the ombudsman or referred to a council standards committee for action or consideration. The standards committee will consider case investigation reports by the ombudsman where the ombudsman has referred the case to a standards committee for determination. It will also consider cases that the ombudsman has referred to the council for investigation by the council monitoring officer and adjudication by the standards committee; and cases referred to the council for local

- resolution. In assessing any report of an alleged breach, the committee must decide whether the code has been broken and, if so, what penalty would be suitable.
1403. In cases retained for investigation by the ombudsman, following investigation, the ombudsman will prepare a report for the Adjudication Panel for Wales. The panel's role is to form case and interim case tribunals to consider whether members of county, county borough and community councils, police, fire and national park authorities in Wales have breached the authority's statutory code of conduct.
1404. In cases where the adjudication panel has adjudicated, the person who is the subject of the complaint may seek the permission of the High Court to appeal the decision. In cases where an authority's standards committee has adjudicated, a member may appeal against a decision of the committee to the Adjudication Panel for Wales. In those appeal cases, a tribunal of the panel will decide whether to uphold or overturn the determination of a standards committee. Where it upholds the decision of a standards committee, it will either endorse the sanction imposed or refer it back to the committee with a recommendation that a different sanction, up to a maximum suspension of six months, be imposed. There is no right of appeal against a decision of a tribunal formed to hear an appeal against the decision of a standards committee.
1405. **The Chairperson:** I am sure that they can go for a judicial review, ultimately.
1406. **Ms Broadway:** It is always open to judicial review.
1407. In Scotland, the Commissioner for Ethical Standards in Public Life in Scotland, a post established in July 2013, is an independent office holder with responsibility for investigating complaints about councillors, Members of the Scottish Parliament (MSPs) and members of devolved public bodies. If appropriate, the commissioner will report on the outcome of the investigation to the Standards Commission for Scotland, which is an independent body that works with councils to promote high standards of conduct, issues guidance to councils and makes determinations on a commissioner's report. The commission may decide to hold a hearing and direct the commissioner to carry out further investigations or take no action. Should the Standards Commission decide to hold a hearing, a panel consisting of members of the commission will determine whether a breach has occurred and, if so, what sanction to apply. Sanctions include censure; suspension or partial suspension not exceeding one year; and disqualification not exceeding five years. An appeal against the decision of the commission is made to the sheriff principal.
1408. In Ireland, if the ethics register of a local authority becomes aware of a possible breach, it will refer it to the manager and mayor of the local authority, who will consider what action should be taken; whether they should carry out an investigation; whether there should be disciplinary procedures; whether the matter should be referred to the Director of Public Prosecutions; or whether they should take any other action that they consider appropriate. In cases where there is a perceived conflict of interest, the matter may be referred to the Standards in Public Office Commission, in which case an inquiry officer of the commission will conduct a preliminary inquiry and report to the commission with the recommendation. The legislation setting out the ethical framework deals mainly with declarations of interests, and there is no mandatory code. To date, there appears to be no evidence of any investigative breaches that have warranted further action and no information on provision of appeals.
1409. That was a quick run-through of what happens in other jurisdictions. There is a variety of processes. In England, it is judicial review. Where the challenge goes depends on the adjudication body

- involved. If it is a standards committee in Wales, the challenge goes to the Adjudication Panel for Wales. If the Adjudication Panel for Wales makes the decision, the challenge goes on appeal to the High Court. In Scotland, where there is a different court system, the appeal can go to the Sheriffs Principal. So, that is the issue of who appeals and what challenges there can be in other jurisdictions.
1410. We are aware of a couple of other issues that have been raised on ethical standards. One deals with minor complaints. Many people raised the issue that there seems to be no way of dealing with minor complaints of breaches of the code. Under the ethical standards framework provided in the Bill, all complaints, which are in writing, are referred to the Commissioner for Complaints for consideration. Concerns have been raised that that is a far too stringent way of dealing with minor complaints.
1411. The ethical framework would not preclude a council from dealing with minor complaints that have arisen in the council by seeking local resolution or mediation on the issue before it reaches the stage of a written complaint being sent to the commissioner. If, for example, an issue arises between two councillors, or between a councillor and a council officer, the council could try to deal with the issue in-house before it got to the stage of a written complaint being sent to the commissioner. We recognise that there are concerns that there is no formal way of dealing with minor complaints, and we have researched how they are dealt with in other jurisdictions. We are about to put a paper to the Minister on possibly providing means of local resolution.
1412. **The Chairperson:** I am sure that all councils have officers who deal with disciplinary procedures. Something similar could step in and look at issues relating to complaints against councillors, with, maybe, councillors sitting on it as well.
1413. **Mr Weir:** I will wait to see what comes forward on that; but we do not want to put some council officers in a slightly invidious position. There may be a mechanism involving a council officer coming from a different area, or something of that nature. One reason why the idea of having a standards committee in the council was moved away from was that you would leave an officer in the situation where they were doing this work occasionally as part of their job. It would be very difficult if that officer was dealing with a complaint against a councillor one day while dealing with the same councillor on other issues during the rest of the week. Alternatively, if the officer's job were ring-fenced to deal with complaints, it might almost be the case that someone would be trying to generate work for themselves. There is an issue with that.
1414. **The Chairperson:** You could have a small complaints committee made up of councillors.
1415. **Mr Weir:** I know that some concerns have been raised, at times, that with a complaints committee you could have someone being accused of bias or enmity in ruling against a particular councillor either from their party or outside their party? It is questionable as to how satisfactory that would be. Obviously, there is further work to be done on that.
1416. An appeals mechanism is needed, and if it does not come from the Department, I suspect that the Committee or some of the parties may need to introduce it. Judging from the reaction of different parties and councils, there seems to be broad consensus on the fact that the only real appeal mechanism, ultimately by way of judicial review, is not regarded as satisfactory and that a formal appeals mechanism needs to be built in on the merits of the case.
1417. You can have the situation where you do something that is correct procedurally but that, even with the best will in the world, gives the wrong result. Councillors may find themselves barred from council for five years. They might

- take, and even win, a judicial review; but, in the meantime, they may also find that somebody else has taken their seat, elections have taken place, and their reputation has been dragged through the mud. Even if they win, they might end up with a very large legal big.
1418. I am detecting from people that there seems to be broad consensus that there needs to be an appeal mechanism built into the legislation at a level below that of judicial review. What that mechanism is, and where the appeal goes to, I do not know, but I think that something has to be found now. I certainly urge the Department to come back with something of that nature, because if it does not do so, I suspect that the rest of us will have to put something in the legislation.
1419. **The Chairperson:** Tom Frawley said in his presentation to us that, either way, it would be very expensive for anybody to bring an appeal after he has made his decision, because you still need legal representation.
1420. **Mr Weir:** It depends on the way it is put. If you have, in any situation, a broad appeal mechanism that is going to be used by a public figure, say, a local government auditor or whoever it happens to be, that should be preferable to a judicial review, at least from the point of view of time. Leaving aside the fact that a judicial review is longer and more expensive, the problem with it is that the grounds for review are limited. You have to show not that the decision was wrong but that it was either procedurally wrong or so unreasonable that no right-thinking person could come to that conclusion. The problem with that is that a councillor who could well be in the right has been wrongly convicted via the process, but that the decision is not so absurd that nobody in their right mind could have come to that verdict. You are putting up a bar, by way of judicial review, that is so high, so long and so cumbersome for people that you will need some sort of mechanism in between.
1421. **The Chairperson:** I think that Tom also said that that is the way in which we are dealing with complaints.
1422. **Mr Weir:** With respect, although I appreciate that I was not here for all of what Tom Frawley said, I do not take his position on this as gospel.
1423. Looking at it, I suppose that most of us round the table have experience of local government, having been councillors. From a councillor's point of view, Tom Frawley's assurances will not, to be honest, give people a great deal of comfort. I think that they want the situation where they can have some level of justice. It is one thing if somebody is investigated and told, "You said something that you should not have said. We ask you to issue an apology". However, we are essentially talking about people's careers and their names being dragged through the mud. Not everybody who is making —
1424. **The Chairperson:** It is the same system here though, is it not?
1425. **Mr Weir:** As?
1426. **The Chairperson:** For complaints about MLAs. We have an Assembly Ombudsman who makes a judgement —
1427. **Mr Weir:** I might be wrong on this, but I am not sure whether, in respect of the powers of the Assembly Ombudsman —. You can make a complaint against a Department or individuals.
1428. **The Chairperson:** He makes a judgement, and that is the end of it.
1429. **Mr Weir:** With respect, I am not sure that the ombudsman has, for example, the power to bar, suspend or remove somebody as an MLA. That is where there is a qualitative difference. Ultimately, the ombudsman's report goes to the Standards and Privileges Committee, which will or will not accept the ruling.
1430. If people are barred from council, particularly because a serious allegation is been made against them, I think they have the right, beyond simply judicial review, to some level of appeal. Their

life and certainly their political career could be, effectively, ruined. That is not really the situation regarding an MLA. MLAs might get a slap on the wrists, but they will not be disqualified from the Assembly. That has never happened. There needs to be something more robust. It is all very well for Tom Frawley or anybody else to say, “We are reasonably happy with the system”, but, to be fair, Tom Frawley is not going to be on the receiving end of this. Sometimes, again from my experience of people, complaints are very genuine.

1431. **The Chairperson:** Well, he has been in the job for a long time.
1432. **Mr Weir:** Yes. But with the greatest respect, he is the one holding the gun rather than the one facing the gun, if I can use that analogy. Sometimes there are complaints that are very justifiable and genuine, and there are also times when people take a very bull-headed attitude and are completely irrational. That is not to say that somebody will not then suffer an injustice because of that. I detect from virtually all the submissions that we have got from anybody involved in the local government sphere that they want to see an appeal mechanism built in and something that is not simply a judicial review.
1433. **The Chairperson:** How can that be managed, Julie?
1434. **Ms Broadway:** We have heard all the evidence that people have given to the Committee, and we need to go back to the Minister about that.
1435. **The Chairperson:** Tom Frawley’s point is that we have been dealing with complaints to public bodies and public representatives in that way. If we make an exception with local councillors, it may turn the system — and I am paraphrasing — upside down, and we may then need to provide further appeal mechanisms for other complainants.
1436. **Mr Weir:** Chair, maybe the system needs to be turned on its head, because there is the situation where people are potentially getting complained about and do not realistically have any proper right of appeal. That is wrong. If we are making changes, it might mean that, in other cases, you have to look at appeal mechanisms of some description. That may show that the whole thing is a bit out of step.
1437. **The Chairperson:** I am not against equality and fairness. If we need to build in an appeal system, we will look at it. I am just reminding members what Tom Frawley said in his presentation. Members, we will move on. The next one is community planning.
1438. **Mr Murphy:** It is community planning with particular reference to the duty on the statutory bodies and the Department. I will look at the duty on the statutory bodies first. As an overview, I can say that the Department fully recognises that the statutory bodies and Departments need to be tied in to the community planning framework because statutory bodies are responsible for delivering a range of services in the council district, and Departments are either delivering services or setting the policies for the delivery of certain services.
1439. When we looked at the duty on the statutory bodies, we included a provision in the Bill that is comparable with the provision in Wales:
- “Every community planning partner of a local authority must participate in community planning for the authority’s area to the extent that such planning is connected with the partner’s functions; and must assist the authority in the discharge of its duties.”*
- The legislation in Wales states:
- “For the purposes of this section, a reference to an action to be performed or a function to be exercised by a local authority or one of its community planning partners is a reference to an action or function which is within the powers of the authority or partner.”*
1440. In other words, it ties the statutory bodies in. They must participate and take actions but can act on only the areas that they have legal responsibility to act on.

1441. **The Chairperson:** The voluntary sector said that the language in the Bill is not strong enough in that it says “seek to promote” rather than “must do”.
1442. **Mr Murphy:** Yes. We can investigate that. The wording is also stronger than the provision in Scotland, which simply specifies:
- “It is the duty of the bodies, office-holders and other persons specified ... to assist the local authority in the discharge of its duties under section 15”.*
1443. So, as you can see, it is weaker. In England, absolutely no duty is placed on statutory bodies. In England, community planning, or community strategies as it is in the Local Government Act 2000, simply requires a local authority to prepare a community strategy:
- “for promoting or improving the economic, social and environmental well-being of their area and contributing to the achievement of sustainable development in the United Kingdom.”*
1444. It does not go beyond that.
1445. The view is that the legislative framework will be supported by statutory guidance that the Department will develop in collaboration with local government, other Departments and statutory bodies so that we can ensure that it is supported adequately. There is a point that I want to come on to after I have talked about this, because it covers the statutory bodies and Departments. We have gone further than any of the other jurisdictions on the duty on the Departments. In the other jurisdictions, the duty is simply on relevant Ministers to, as far as is reasonably practicable in exercising their functions, aim to promote and encourage community planning. That is where it goes in Scotland. We have gone one step further by saying that Departments have to have regard to any implications of a community plan in the exercising of their functions. I caught a bit of the evidence from the researcher earlier. The Bill places the duty on Departments because, in Northern Ireland, the responsibilities are vested in

them rather than in Ministers, whereas, in Scotland and Wales, the authority is vested in the relevant Minister. That is the difference.

1446. Underpinning both duties is the attempt to tie them in while recognising the different accountability arrangements. The statutory bodies are accountable to their boards of directors and, ultimately, to the Department and the Minister who established them. Equally, the Departments are accountable to their Ministers and, through their Ministers, to the Assembly. It is about trying to strike a balance between ensuring that you have that framework to have those bodies involved and recognising that they have separate accountability mechanisms. They will not always be able to do what a council wants them to do. There is tension in that regard.
1447. **The Chairperson:** I think that that is the major concern expressed by NILGA, councils and Community Places. Community planning is a great idea if it works, but you need people to buy in, particularly Departments and statutory agencies. As Peter McNaney said this morning, it is about aligning departmental policies with community plans and putting in the resources from the plans to make it work. If not, it is going to be a talking shop. As I said before, I was on the south Belfast neighbourhood partnership. You get only DSD’s staff to say yes, and then very junior level staff come from the Health Department and the Department of Education, sit through the meetings and do not say a word and do not commit to anything.
1448. **Mr Murphy:** I appreciate that issue. As I said, community planning is about building relationships between the various partners, and about the various partners recognising how community planning can assist them all in delivering their desired outcomes and benefits.
1449. **The Chairperson:** How can the Bill strengthen this to try to make the Departments more committed to the community plan? Are you minded to do that?

1450. **Ms MacHugh:** Again, this is something that the Minister and the wider Executive will have to look at. As has been pointed out already, there is clearly a need to align local need with regional policy and service provision. Departments also need to align what they are doing with the Programme for Government, which is the accountability framework set for Departments. I think that, at times, local government believes that community planning is a vehicle through which it can call central government to account. That is going too far. Central government is accountable through its Minister to the Executive and the Assembly. That is the accountability mechanism. However, as John pointed out, community planning will work when it is clearly articulated how actions at local level can contribute to and help Departments or agencies to meet their Programme for Government targets.
1451. That is a process that will take some time to bed in. In 2015, when councils get their full community planning responsibilities, a lot of work will be required to identify what local need means, and then to work together with that top-down and bottom-up approach so that everything starts to align. That is a key piece of work that the partnership panel will have to get its head around in the early days, namely to get agreement between central and local government on who is responsible for what and how that joint relationship will develop and deliver in a way that is better for the citizen and maximises the use of public sector money, which is what this all about.
1452. It is an exciting but challenging area, and it will take a bit of time to bed in and get right, as we saw in Scotland, where it took time to bed in and start to produce results.
1453. **The Chairperson:** They are now reviewing their whole community planning system and putting in a statement of ambition and all the single agreements.
1454. **Ms MacHugh:** It is easier to do that in Scotland, where local government has responsibility for a much wider range of key services. Although councils will be getting more powers and more services to deliver under this reform programme, they will still not have the full range of powers that councils have in Scotland, for example. That is all the more reason to make sure that this partnership gels.
1455. **The Chairperson:** That is why NILGA is concerned that you may be raising false hopes and expectations of what community planning can and will do. Any more questions? OK, we will move to the next item.
1456. **Ms MacHugh:** Performance improvement flows quite neatly from community planning because, as the chief executive of Belfast City Council so eloquently put it, there is a clear alignment between the outworkings of community planning and performance improvement in local government. We are aware of comments that were made about the performance framework and the view that it is top-down, top-heavy and that central government is dictating to local government about how it looks at its performance improvement.
1457. The rationale for the framework proposed in the Bill was worked through the policy development panel and agreed by the strategic leadership board. At that time, the agreement was that the new framework would comprise various elements. There would be an updated statement of a council's duty to secure continuous improvement in the delivery of its services, the establishment of a regime of performance indicators and standards, and regional indicators agreed through the partnership panel.
1458. Councils would prepare and publish a corporate plan that included an improvement plan. Appropriate monitoring and support mechanisms should be in place to provide accountability, and a facility for external assurance of the council's improvement plan should be provided. Following endorsement by the strategic leadership board, the Department looked at ways in which that external assurance could be

- provided, and a number of models were considered.
1459. The outworkings of all that are in Part 12 of the Bill, which looks at performance improvement and the framework on two levels: local government level and central government level. There is a provision for a clear role for councillors and councils to set their own performance targets and indicators against which they want to assess themselves. So, there is a level of self-determination with regard to the improvement matters that local government wants to set for itself.
1460. The Bill also would not preclude the sector, if it so wished, from setting regional targets for itself. That may be something that local government might wish to consider, for example, as a further outworking of the improvement, collaboration and efficiency (ICE) programme, by which it seeks to drive improvement at a regional level. So that is an interesting area, which local government could explore for itself.
1461. There is also provision for the Department, acting on behalf of other Executive Departments and particularly those which are transferring functions to councils or which have placed duties on councils to perform specific services, to specify performance indicators and standards of a regional nature. That is required because, whilst functions and services are being transferred or powers conferred to local government, clearly the policy responsibility remains with the Departments. Departments and their Ministers will need — as, indeed, the Assembly will need — some assurance that policies set at a regional level are being effectively delivered at local level. That is the case particularly where policies have Programme for Government targets attached, because there needs to be a mechanism that determines that local government is delivering against those targets. That is why there is provision in the Bill for targets to be set centrally.
1462. I turn to the role of the local government auditor. I want to make a statement at the beginning to set —
1463. **The Chairperson:** Can I just go back to the improvement framework? Councillors are concerned about the proposal that different Departments can inspect and set targets. How do you alleviate the concern that there is going to be micromanagement of local government by Departments?
1464. **Ms MacHugh:** I think that the targets, the framework and the measures set by central government need to be coordinated. We have seen the experience of Scotland, where, in the early days, through a mixture of targets set by central government and those set by the local government itself, councils had over 600 targets to meet. We certainly would not want to see that sort of situation develop. That is something that the partnership panel will have to get to grips with quite quickly when it is set up. How do we coordinate the sets of targets and make them manageable? They will be very high-level and focused on the key issues that Departments feel that they need delivered to meet their obligations, especially if it is the Department responsible for setting policy for those issues. So there will have to be a lot of work done in consultation and by agreement with local government. And that is a role for the partnership panel.
1465. I turn to the role of the local government auditor. This Bill is not intended to provide a root-and-branch review of the local government audit arrangements in general. However, it provides for some amendments that are required in relation to local government reform and the new responsibilities that councils are going to have.
1466. It may be helpful for me to explain the current relationship between the Department, the local government auditor and local government itself. It is not same relationship that, for example, the Northern Ireland Audit Office and the Comptroller and Auditor General (C&AG) has with Departments, where

- it is responsible and answerable to the Assembly through the Public Accounts Committee. The duties placed on the local government auditor are in the context of the Department — the DOE — having statutory responsibilities for the provision and oversight of local government functions, including the provision of the local government audit function. In 1972, the Local Government Act made provision for the Department of the Environment to appoint local government auditors to audit the accounts of local government bodies. In those days, the people appointed were employees of the Department.
1467. That process evolved, however, and further legislation, the Audit and Accountability (Northern Ireland) Order 2003, put in place the present arrangements, whereby the services for local government audit are provided by staff employed by the Northern Ireland Audit Office and designated to perform local government audit functions by the Department. That was further amended by the Local Government (Northern Ireland) Order 2005, but that did not alter the Department's statutory responsibility for designating local government auditors. So, although the transfer to the Comptroller and Auditor General resulted in the Comptroller and Auditor General having more direct responsibility for the provision of staff to deliver local government audit services, the Department of the Environment, on behalf of the Executive, remains legally responsible for designating members of the C&AG staff to support the Department in its responsibility for ensuring that local government's financial responsibilities are exercised properly.
1468. The local government auditor function is distinct and separate from those of the C&AG and the Northern Ireland Audit Office. While the Northern Ireland Audit Office reports to the Assembly for its role in auditing central government, the same relationship does not apply for its role in supporting and providing the audit provision for local government.
1469. The Department's power of direction in relation to requiring a local government auditor to undertake an audit investigation or inspection in respect of bodies for which it has a legitimate and statutory interest does not compromise the independence of the local government auditor in conducting individual audit investigations and inspections, because, clearly, those remain at all times under the control of the local government auditor and her staff, in line with standards set out in the Financial Reporting Council. The conduct of the requested audit or inspection and the results and conclusions are a matter for the local government auditor.
1470. Finally, on clause 97, which I know has been discussed today, there is the issue of the local government auditor having to assess in advance whether the council has arrangements in place to meet the statutory requirements. It is about whether they have the arrangements in place; it is not designed to ask the local government auditor to directly determine at that stage whether they are going to meet their performance improvement targets. It is not the intention to have some sort of crystal ball gazing. Maybe there is a bit of wording that we need to look at to clarify that, but it is to make sure that the appropriate arrangements are in place, not to determine whether the performance plan is going to be met.
1471. **The Chairperson:** What about resourcing? That is an issue that has been repeated over and over again, because they now have the additional role of monitoring improvement. Is there going to be extra resourcing for the auditors?
1472. **Ms MacHugh:** At present, the local government auditor invoices local government for the services it provides, so, clearly, if there was additional service provision, that would need to be paid for. I suppose the issue about cost is that cheaper is not always better. You have to balance the additional costs against the improvements and the cost-effectiveness of those improvements. The costs would need to be looked

- at in the round, both what it cost to do the audit and the outcomes of the improvement plans and the potential for cost savings as a result.
1473. **The Chairperson:** Another issue, which Louise Mason mentioned, is that the auditing of councils should be targeted, rather than doing all councils every year. Is it going to be allowed?
1474. **Ms MacHugh:** In terms of performance improvement, we have heard the comments from the local government auditor and the proposal that a risk-based approach might be taken. I suppose that some baselining will need to be done if a risk-based approach is taken. The proposal is based on the principle that performance improvement audits will be done every year, at least in the beginning until things settle down. Perhaps at a future date there may be a way of amending that, but, at least in the initial stages, the proposal is that each of the audits would be done each year. An amendment to change that arrangement would be a policy change that we would need to take back to the Minister and the Executive.
1475. **The Chairperson:** To allow that to be reviewed.
1476. **Ms MacHugh:** Yes, or for an amendment to be made to the Bill. That would be a distinct policy change.
1477. **The Chairperson:** It makes sense. All 11 new councils probably will not need to be checked all the time. It will probably only be one, two or three. If we have an arrangement that will create the same report every year, it will be a waste of resources. However, you will need to benchmark it.
1478. **Ms MacHugh:** Yes, benchmarking and baselining will need to be done in the initial stages.
1479. **The Chairperson:** There are no questions from members on the last paper. I have a question on this new term that we had never heard of, the “super affirmative procedure”. That came from the Statutory Examiner of Rules.
1480. **Ms MacHugh:** Yes.
1481. **The Chairperson:** Will it be difficult?
1482. **Ms Broadway:** Of course, we have to get the Minister’s view on it, but we have discovered legislation in which a similar sort of procedure was used. That was the Local Government (Best Value) Act (Northern Ireland) 2002. We will send that to you. In that Bill, there is a form of procedure that looks like super affirmative procedure. We are looking into that at the minute.
1483. **The Chairperson:** Will you need to propose an amendment to the Bill to introduce that? At the minute, the Bill uses negative procedure.
1484. **Ms Broadway:** Yes, we would.
1485. **The Chairperson:** It would not only be affirmative procedure but super affirmative procedure.
1486. **Ms Broadway:** I think that, at the minute, it is affirmative procedure. However, they are suggesting that there needs to be an additional level of —
1487. **The Chairperson:** An extra layer or level really.
1488. **Ms Broadway:** I think that it is an additional consultation level.
1489. **The Chairperson:** Yes. You will have the draft order and then the final draft order.
1490. **Ms Broadway:** We are looking at that.
1491. **The Chairperson:** OK. There are no further questions. Thanks very much indeed. Are you coming back next week?
1492. **Ms Broadway:** Yes. *[Laughter.]*
1493. **The Chairperson:** Lovely. We will have permanent seats for you.
1494. **Ms Broadway:** Thank you very much.

23 January 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Tom Elliott
 Mr Ian McCrea
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Mr Ronan Cregan *Belfast City Council*
 Mr Stephen McCrory
 Mr Peter McNaney
 Mr John Walsh

1495. **The Chairperson:** I welcome the chief executive of Belfast City Council, Peter McNaney; Ronan Cregan, director of finance; John Walsh, town solicitor; Stephen McCrory, democratic services manager. What does that mean, “democratic services manager”?
1496. **Mr Stephen McCrory (Belfast City Council):** I have yet to find out.
[Laughter.]
1497. **The Chairperson:** Just to remind everyone, this session is being recorded by Hansard. Thank you all very much for coming; you are very welcome. We have your detailed written submission, which we appreciate. Can you give us a five-minute run through the main points? Then we can take questions from members.
1498. **Mr Peter McNaney (Belfast City Council):** I would be delighted to do that, Madam Chairman. Thank you very much once again for the opportunity to provide a briefing. We know that you are working very hard, and we have read transcripts of some of the other submissions in Hansard. I will keep this brief and focus on some of the key issues, insofar as we believe them to be relevant.
1499. To be fair to the Department of the Environment, its officials have worked

very hard in putting this Bill together. I have been in local government for 30 years, and this is the most comprehensive piece of legislation on local government that I have seen. We appreciate that it is a hard job for everybody.

1500. We are here on behalf of the council, which would want us to emphasise how supportive it is of the local government reform programme and its commitment to working with partners to ensure that it is successful. Belfast is slightly different in local government reform in that it is not merging with other councils; it is increasing in size to take in parts of Lisburn and Castlereagh. That has a consequence for the transfer of liabilities, and John Walsh will say something about that later. However, just to deal with a small technical point, there should be a standard rule about the transfer of assets and liabilities. I was a lawyer in a previous life, and what happens is that, 30 years after 1972, we were still dealing with transfer of assets and liabilities issues. Having a standard rule in legislation can sometimes be very helpful, as it takes away any doubt.
1501. We have made submissions in relation to call-in and qualified majority voting. We understand that this is a political decision. We support the broad principle of call-in being available, but we have concerns that the current definition of the two circumstances in which call-in would apply — when a decision has not been arrived at after proper consideration of relevant facts and issues, or when the decision would disproportionately adversely affect any section of the inhabitants of a district — are so broad that an interpretation of them could lead to a very high percentage of decisions being subject to call-in. Those things will play themselves out through councils, but one of the most important issues is to continue to

- make decisions and provide services to the public. The potential of the process to elongate the time in which decisions might be taken is a matter that the Committee may wish to consider.
1502. Local government has operated on a simple majority, and although we understand the reasons why that might be changed, we think that the potential for unnecessary tensions and delays in the decision-making process need to be considered fully.
1503. We are very supportive of community planning and of local authorities leading and facilitating it. We are of the view that the community-planning provisions could be strengthened, as there is no statutory duty on Departments. Although Departments deliver through agencies and bodies, if we are all to take community planning seriously, perhaps they should do more than promote and encourage it, and there should be a duty to implement it.
1504. I will move on to performance improvement. Before everyone's eyes glaze over, I cannot tell you how important the performance improvement processes will be to the proper implementation and success of community planning. My experience tells me that a proper performance improvement system and a proper performance management system drive the resources and the direction, not just of the council, but of other organisations towards their goal. For instance, community planning is about the integration of resources to prioritise actions that community and other statutory bodies and delivery agencies have agreed, whether it is health inequity, employability or action on youth unemployment. Unless you direct and align the focus of resources, you are just talking about it. Research from Scotland, Wales and England into community planning demonstrates that the more effective the performance management system that drives it, the more effective community planning is.
1505. I cautioned at the outset because there is an obsession in community planning with the achievement of outcomes. Of course, outcomes are critical, but they are always long term. For instance, in a city such as Belfast, which has high levels of health inequity, if you have an outcome to reduce the mortality rate of males, and, of course, Madam Chairman, you realise that in Belfast, males die on average at the age of 77, while women, who have a much easier life, live until they are 82 — that was a jest — you cannot tell whether you are having an effect unless it happens over 10 years. An outcome is not enough. You have to have a process, you have to have an input, you have to have some sort of output in the meantime, and you have to have an aligned, integrated plan, because the council resources will be nowhere enough to do that. You will need social services, you will need the Housing Executive, and you will need a whole range of other bodies. However, according to the Bill, the only organisation that the auditor will audit for community planning is the council. If it is about integrated services, that seems to be a bit of a gap. You have to have an audit of the effectiveness of a community plan, which means that you have to look at the inputs and processes of the other people who contribute to it. That is the real issue that I want to make about performance improvement.
1506. We made a submission from a chap called Clive Grace, who used to be the audit commissioner for Wales. They have done some really good research, setting out the broad principles of a performance improvement system. That should be built into the Bill or, at least, a direction that it is picked up in the development of guidance. It says that you cannot focus on outcomes alone; that you have to have other intermediate measures; that you have to have clear and concise targets spread across the bodies; that you need a standard set of measures that is driven; and that you need to have local organisational indicators. The improvement objectives are set out at clause 88.

1507. The only other issue — this comes from managing an organisation — is that, at present, councils are driven by the Best Value Act, which requires us to perform our functions, having regard to a combination of economy, efficiency and effectiveness. I understand that, and we can advise councils on it.
1508. In future, we will have to drive our functions by strategic effectiveness, service quality, service availability, fairness, sustainability, efficiency and innovation. I will draw your attention to one critical thing: you do not have the word “economy” in that list. “Economy” means making the best use of resources, which, in my view, is different from efficiency. Efficiency means that whatever resources you put in, you get the most out of; whereas economy means using the least amount of resources that you need to use in order to achieve the outcome. There is a balance between economy, efficiency and effectiveness. The National Audit Office defines “value for money” as a mixture of economy, efficiency and effectiveness. The Committee should consider taking advice from others, as there is a gap. Affordability is a critical issue, particularly in councils where the prime driver is the rate. That is the thing that you will have the biggest conversation on.
1509. I have dealt with performance indicators, but I am a bit troubled by clause 97, which relates to the role of the local government auditor. Louise Mason spoke about the crystal-ball gazing clause. It is very difficult to guess whether someone is complying with their responsibility, particularly when you go back to look at the delivery of the responsibility. I agree with the auditor that if you are minded to keep the clause in — personally, I see no value in it; I do not understand why you would guess whether someone would comply when you are going to look at whether or not they comply — it should be done. You are looking at whether a body has the capacity to deliver that clause.
1510. We are also conscious that the elected members of a council have the democratic
- mandate to set the priority and the delivery against it. The right balance needs to be struck so that elected members have that primacy and that it is not overcome by audit. Ultimately, audit needs to look at the process and whether what you do has the effect that you say it has, but, in respect of priorities, democratic legitimacy needs to be paramount. Our members are very firm on that, and they have asked me to stress how important it is that you take that into account. As democratic members, I am sure that you will.
1511. Finally, we leave you with the alternative, in terms of the work that we commissioned from Clive Grace. We shared it with Departments and asked them to consider the critical issue, which is the alignment of local government delivery through the community plan, with the priorities set out in the Programme for Government. If there is alignment in youth unemployment, regeneration and poor health, the ability to deliver on local priorities and to tap into the resource priorities of Departments is much enhanced. Without that alignment, you will get confusion and tension, and, in my view, unnecessary obstacles. I do not want to add a great deal more, other than to say that we think that there is, boring as it might seem, a real criticality in ensuring that we have an aligned system, an integrated system and an audited system across all the bodies involved and, finally, that enough resources and capacity are put into that. In my view, that should not just be an investment in audit; it also needs to be investment in the capacity of the sector. The sector needs to take responsibility. I conclude by thanking you for the opportunity to make the submission, and if we can add any value to your questions, we are happy to try to do that.
1512. **The Chairperson:** Thank you very much, Peter. As usual, you were succinct but very clear. I reread your written submission, having read it the first time you sent it in. It makes a lot of sense. Thank you very much for reminding us of Dr Clive Grace; we hope to meet

him or bring him over to talk to us. I know that you have done a lot of work with him. The outcome approach is very good management speak, but it is a very long-term process and is very difficult to evaluate, and it should be on a long-term evaluation purpose rather than immediate performance indicators. Anyway, I did all that in my masters in management about 10 years ago, and you reminded me of my lectures. You mention capacity building a few times in your written submission and reminded us again in your presentation. In what structure do you see that? Who will take it and what needs to be put in?

1513. **Mr McNaney:** There is a whole history to performance improvement across local government. Different approaches have been taken in England, Scotland and Wales, and, in Northern Ireland, we have a local government that has much fewer functions and is a much smaller size. In England, they set up a body called the Improvement and Development Agency for Local Government, which is now incorporated in the Local Government Association. That was driven by the sector approach, which mentored, added capacity and brought expertise to councils to improve. That is one approach.

1514. Wales has taken the approach of no direct top-down-driven accountability, although the Commission on Public Service Governance and Delivery published a summary report in January 2014, which got some publicity and is a review of the delivery of public services in Wales. Very bravely, it says that the quality of public services in Wales is patchy and poor and goes on to make some recommendations. I have an obsession with performance and performance management, and there is a whole chapter in the report about how they might more properly and better integrate services. In Wales, they set up local services boards to drive community planning, and they had audit overseeing the local services boards. This recommends that that is discontinued because it became too mechanistic and became driven by process rather than by

achievement of better social outcomes and benefits.

1515. Before the creation of the Improvement and Development Agency, England had a very top-down legislative-driven process through a thing called comprehensive performance assessment that was driven by audit inspection, and Scotland has a sort of in-between system of partial regulation and partial self-help. Personally, I think that that is the best. Of course councils should be encouraged to improve internally, but they should also have the spectre of external challenge and being held to account, and that push-pull system is probably the best.

1516. **The Chairperson:** Yes, and they need to have ownership of it.

1517. **Mr Weir:** Thank you, Peter. From looking through the submission that has been made by Belfast City Council, I agree with the bulk of what is there, although not absolutely everything. I fully endorse everything that you have said today.

1518. I want to probe a bit on the details and get your thoughts. You raised concerns about the application of the qualified majority vote — I think that that is a crucial area — and linked in with that is what is an automatic call-in or, indeed, the circumstances in which councils have a legitimate call-in. I suppose that there are two aspects to that, which I want to get your views on. First, there seems to be two headings on the call-in, and the first of those is procedural irregularities, if you like. I place a caveat on this by saying that, whatever mechanism is there, we need something that will deal pretty quickly with any level of challenge so that it does not simply become a delaying mechanism. The procedural side of things is relatively straightforward, and I suppose that the key focus is on the interpretation of what counts as a legitimate call-in on the grounds of, essentially, breach of community balance or disproportionate impact. Leaving aside the direct definition of that, which I will come to in a moment, at present, the legislation has the testing mechanism of that

- being that the chief executive or town clerk simply refers that to a solicitor or a barrister — I cannot remember the exact wording — and gets an opinion on that. That seems to me to be quite a loose concept, and, as you said, Peter, with both of us being former lawyers, depending on which lawyer you get, you can sometimes get different interpretations. What are your views and thoughts on that? Whatever way there is for call-in, there has to be some level of test of the legitimacy of that. What are your thoughts on that as a mechanism for testing that out? If you believe that that is not necessarily the best format at present, what do you see as an alternative mechanism?
1519. **Mr McNaney:** I agree with you totally that the lawyer that you go to will very much impact on the advice that you get.
1520. **The Chairperson:** It depends on who pays for it too.
1521. **Mr Weir:** I suppose that it is a bit like consultants in that regard.
1522. **Mr McNaney:** Absolutely. I think that this needs to be assisted by guidance. Guidance needs to be given on the type of factors that would constitute a disproportionate impact. Of course, councils already have a statutory duty under section 75 to promote equality, and that already will require, in many policy initiatives, an equality impact assessment to be carried out. On this, I have a schizophrenic view. As a chief executive, I think that you will abrogate chief executives' responsibility for advising on the management of councils by saying that, every time there is a call-in, they will go to a lawyer and seek an opinion. Ultimately, I think that they need to have "responsibility" to advise their council, but that should be against a consistent set of guidance that they apply objectively and which, hopefully, will allow a consistent and fair administration of the council's duties. I think that there is a role for lawyers, and John, our lawyer, is here. There are plenty of circumstances where they are needed. For instance, we have standing orders around notices of motion. When Stephen receives them, he refers to me. We often refer those to the lawyers for comment on whether they comply with the conditions that we have set out in the standing orders on notices of motion. I think that this is the only real way, in practice, that this will apply. I also think that it is very difficult if, all of the times, you go to an outside lawyer, because, until such time as they become sufficiently cognisant of the affairs of the council and how it makes decisions, that could delay decision-making.
1523. **Mr Weir:** This may not be something that could be enforced in legislation. If there is a test of whether something is a legitimate call-in, I think that the ultimate test on that has to be outside of the council. I think that everyone will agree with the need for clear guidance on that. Having said that, whether or not there is some level of encouragement through a very short informal arrangement, I suspect that a lot of these things will tend to be a case of a party from whatever side saying, "We are not happy with that decision, and we are going to try to call that in". There could perhaps be an informal approach internally first of all to ask their views on whether that meets the targets. There may be some merit in doing that and not looking at a formal mechanism.
1524. **Mr McNaney:** I will respond to that very quickly and bring in Stephen and John. I think that is right. Stephen, you were talking to me about that yesterday. Do you want to come in?
1525. **Mr McCrory:** I will say something about the call-in on the community impact. We are not here to discuss the percentages. We accept that the Committee and the Minister have taken a view on the 15% for call-in and the 80% on qualified majority. In the new Belfast district council or city council, when we get the status, that will be nine members, and it is likely that, in any projection of election results, three or four parties alone will constitute that number. So, there is no cross-community element, and you are right, Mr Weir, in saying that it allows a party that does not find

a decision acceptable to call it in on community-impact grounds. You are quite right that the call-in on procedural issues is a little more straightforward. The opinion from the solicitor is only putting the decision to the full council in a traditional committee system on a weighted majority vote. So, anything that you call in on community impact ends up requiring an 80% majority of the council to support it. It causes some concern in Belfast where, if there is a very divisive issue, it might often not be possible to get 80% to vote for anything.

1526. **Mr Weir:** I have seen that argument, and I slightly disagree with you about a different sphere of it. I appreciate the impact directly on Belfast, but I would have thought that the argument for it in Belfast would be stronger than in most areas in the sense that, if the argument in a particular area is that 25% is hostile to something but may be able to block it, a situation where it is maybe on a 55:45 being imposed, where it is regarded as being legitimate, there are stronger grounds for saying that a particular thing should not happen.

1527. **Mr McCrory:** I fully understand that. However, from an administrative and an administrator's point of view, it opens up the possibility of a council not taking a decision to do anything, and, therefore, it is a decision to do nothing on certain of the issues that are uncomfortable.

1528. **Mr Weir:** Finally, may I ask about the definitional side? To be fair, I am throwing this at you and you may want to follow up in writing. How do we tie down in quite a tight manner the definition of community disadvantage? It seems that the thinking behind it is to essentially say that a decision in a largely unionist council that would adversely affect the nationalist community should be subject to some level of protection and vice versa in a nationalist council. In some stuff that has come out at times from the Department, there have been suggestions that QMV, for instance, would be automatic where it cuts across DEAs. That is clearly nonsense. Most particularly, you will know that, in Belfast, a very large percentage of your

decisions would be affected, and that is a recipe for gridlock.

1529. Part of it is that we must ensure that we have something that provides protection but does not become so wide that it becomes a blocking mechanism and is used for purposes that were not originally intended. For example, a neighbouring council felt that, down the years, too many small play parks had been put around an area and that those were very difficult to maintain. It felt that the area would be better off with a smaller number of play parks that were much more modern and larger. If you apply that to Belfast or anywhere else — presumably we are looking at it from the point of view of interpretation — a council might, for the sake of argument, be either rationalising its play parks or, alternatively, saying that it wants more play parks. If a policy was being driven through that meant that, for the sake of argument, overwhelmingly, all the play parks were getting put in nationalist areas or in unionist areas, that would clearly result in community disadvantage. If, on the other hand, you say that, as part of this, we will close eight smaller play parks throughout the city to try to concentrate resources on another element, you could almost certainly, particularly because of the geography of Belfast — it would apply in other areas in a similar fashion — point very easily to one of the play parks and say, "That area is overwhelmingly nationalist or overwhelmingly unionist". If you take that in isolation, the decision to close that play park could clearly, in a very narrow interpretation, be counted as a community disadvantage. However, you may be in a situation where you are closing eight play parks; four in nationalist areas and four in unionist ones. It is clearly an overall policy and one that is driven by overall need. That would clearly be an example.

1530. Maybe, therefore, we should try to get quite a tight definition, whether it is in the legislation or in guidance, to tie this down, so that it becomes a very clear-cut issue, which people will see as being properly legitimate, as

opposed to their saying simply, “There is something happening in our area that we do not like, and we are going to use this mechanism to stop it.” Or, as sometimes is the case as well, it almost becomes a sort of pork barrel-type issue, and people say, “If you are going to take something that affects our DEA, we will block that unless you agree to such-and-such in another area.” That is not good politics either, and it is not to the advantage of citizens. If you can give us any thoughts on how to tie in that definition, that would be helpful as well.

1531. **Mr McNaney:** We are happy to do that, and I think that that is a very good example. From my experience, the key issue is that you always have to look at a decision in two ways. You have to look at its local impact and at its borough-, city- or district-wide impact. To look at something just on the impact of one of those can lead to unfairness in the other. The issue of play parks is a good example. The solution might lie in a consideration of balancing disproportional impact, taking into account the overall effect it has on the borough, city or district. Otherwise, you could be held a hostage to fortune. That is one of the problems in the continuous improvement regime, which actually puts in service availability. As a manager, I am deeply troubled by that, because it does not allow you to balance it with economy. For instance, to use your example, one of the things that we are looking at is that we have 13 leisure facilities provided because of the sectarian geography or where people live in the city. They live in different places. If we tried to rationalise that to improve the quality of service and perhaps have only six on a citywide basis, we would be in real trouble with the definition as it stands. So, we will be happy to offer some thoughts. I think that it is a good point.
1532. **Mr Ronan Cregan (Belfast City Council):** There is also the issue of the hierarchy of decisions. We agree an overall capital programme, which hopefully demonstrates balanced investment across the city. However, you then have sub-decisions within that,

such as, “Where do the playgrounds go?”. So, one of the issues is that setting the rate of the capital programme at the major decision level is a different issue from where you put the playground. I think that there needs to be a balance about the hierarchy of decisions within that call-in as well.

1533. **Mr Weir:** Let us keep using the analogy of play parks. I chose it because it is quite an easy one to get your head around. You may find that you have an overall balanced picture, but, arising out of that, there may be a need for individual decisions on particular playgrounds. They may or may not happen as a block; they may happen individually, depending on timing. I appreciate that Belfast is in a situation where, generally speaking, the level of resources tends to be bigger than that of most councils. However, most councils pursuing a play park strategy will say, “We have enough money to do two playgrounds this year and two next year”, or whatever it happens to be. So, there may well be an overall strategy, which then prioritises and sequences developments, but the individual decisions that are taken, purely from the point of view of capital, may be such that they cannot be green-lighted all in the one go. They may need to be staggered.
1534. **The Chairperson:** The departmental officials have told us that they are taking on board all the comments about call-in — the percentage and all that — and they are going to issue very clear criteria on what issues can be called in. But is that enough? You can never have an exhaustive or totally inclusive list. That is one way of maybe dealing with it. Are you saying that you want to lower the majority voting?
1535. **Mr McNaney:** That is not really a question for us, as officers. I think that that is a political conversation, and a political balance needs to be struck. What we are saying is that, in making that decision, you should have cognisance of the impact that setting it at too high a level may have on the efficient dispatch of business. Look at the core issue, which is confidence

in democracy. We have always looked at the standing in which the council is held, and that goes up and down depending on some decisions you take, the potential impact they have on people and how people are unhappy. However, we have found from our surveys that not taking decisions leads to disengagement by the public and a questioning of the organisation's relevance. Therefore, I caution you that, in an attempt to protect against one mischief, you can counterbalance too much and cause a greater mischief, which is a disconnection, as people are not satisfied that their democratic institutions take decisions quickly enough and in the interests of everybody. Let me qualify everything that I have said by adding that, of course, decisions should be made on the basis of trying to serve everybody and having due regard to the need to promote equality and access to services. We, as officers, have always tried to advise along those lines. So, it is a delicate balance, and I am glad that you are making the decision, rather than us.

1536. **The Chairperson:** But, certainly, you want to see the smooth running of the council. You want to provide continuous services rather than have stalemate all the time.
1537. **Mr McNaney:** That is absolutely right, Chair.
1538. **The Chairperson:** Tom, you have been very patient. It is your turn.
1539. **Mr Elliott:** Thank you very much for your presentation, folks. Let me just follow on with the call-in issue. Do you think that it would be useful if criteria were set for all the councils in Northern Ireland, as opposed to each council making up its own criteria? I suppose that, particularly, I am asking about the qualified majority. Sorry, I should have said that, because, obviously, that has to be built into standing orders.
1540. **Mr McNaney:** I think genuinely, at the start, particularly for qualified majority voting, there should be guidance that is consistently applied across Northern Ireland. As you say, building it into the standing orders and making it a process that is consistently applied to every decision is essential. I just caution that people are careful on the criteria for QMV, because, as people said earlier, if you use a criterion such as, "This is an issue that affects more than one DEA", as has been suggested, any decision will be subject to it. We have loads of universal services: cleansing, leisure, planning, and regeneration. Decisions will always affect more than one DEA. Potentially, that means that you will have everything called in.
1541. There are also certain decisions that a council has to take. A council has to legislatively set a rate. You cannot have QMV on setting a rate, because what is the alternative? You do not set one, and you do not have any resources. Similarly, there are other decisions. When you look at the nuts and bolts of a council, my advice is to follow the money, because that is where the impact of the decisions will be. Look at the agreement of the capital programme, for instance. A capital programme must benefit all the ratepayers, but you cannot benefit all the ratepayers at one time. Sometimes, you might have to do it over a period of two capital programmes, over eight years. So, it might be that you are doing the north of the city in the first four years and the east of the city in the next four. If you must achieve 80%, you are going to have pork barrel politics all the time. It is going to be one for you and one for us. It may be that that is what you want, but that will be the consequence. And, therefore, I think that —
1542. **The Chairperson:** And we have seen plenty of that in action in the last 40 years.
1543. **Mr McNaney:** Absolutely. Therefore, I think that the balance of consideration has to be this: yes, you have determined that you want QMV; now, you have to balance the potential mischief that that could cause by being quite specific about the circumstances in which it will apply.
1544. **Mr Elliott:** On the issue of control arrangements in councils, I know that there have been suggestions around the

- committee style, which most councils currently use, or the executive style, which probably is not as popular in Northern Ireland as it is in other areas. What are your thoughts on that? Being the biggest council in Northern Ireland, you may have more opportunity to trial the executive model than others. I sometimes think that the current council system in Northern Ireland is probably too small to use the executive-type system. I am keen to hear your thoughts.
1545. **Mr McNaney:** Again, I encourage my colleagues to come in.
1546. We are presently doing an exercise in the council, assisted by a body called iESE, which is the improvement agency for the south-east of England. We are doing a governance review, and that agency is heavily involved with our elected members in looking at the three potential styles of governance, which are committee, executive and scrutiny, and streamlined committee. The feedback that we are getting — this will be a political choice, as you know — shows a preference from our elected members for a streamlined committee system, which will encourage inclusivity. It will mean that everyone is involved, but, at the same time, it will allow decisions to be made with more dispatch and more quickly.
1547. Personally, in a divided community, I think that inclusivity is important. As an officer, if I was being entirely selfish, I would prefer an executive system, because it means that you have a dedicated group of eight to 10 elected members who you could go to, who could make a decision quicker, and who could then front that decision to the press. However, it is likely that our preference, politically, will be for a streamlined committee system. I would not knock the committee system; I think that the committee system, which has stood in place since Victorian years, has many strengths. One such strength is that, particularly in a council such as ours, when we make decisions in committee, there is always the opportunity, before it goes to full council for approval, for further political discussion and for further information to be given to refine decisions. I think that having that gap in time between making a committee decision and going to full council has always served us relatively well.
1548. **Mr Elliott:** Can you see the executive-type system causing difficulty for the councillors themselves, in that it would provide a two-tier councillor system, where one set of councillors is on the executive and the rest of them may feel that they are being marginalised and are not as important?
1549. **Mr McNaney:** Yes, I think that that would be the case, but, if you look at democracy overall, is that not always the case? Are there not Back-Benchers? Are there not members of Committees? Are there not Ministers? I think that there is a question to be asked. There will always have to be a differentiation in role. Even in a council with the present committee system, you will have councillors who are members of the committees, you will have a party group, and you will have a chair of committee. We have party group leaders who we pay special responsibility allowance to, and we have civic positions. So, there is a range of positions of responsibility. We operate in a system whereby our party group leaders meet informally and are paid special responsibility allowance to try to discuss and agree matters where there are political differences. Their decisions are not formal; they are fed in through the committee system. It is to encourage political dialogue.
1550. **Lord Morrow:** But they are paid for that?
1551. **Mr McNaney:** They are paid a special responsibility allowance. That is common across the UK.
1552. **Lord Morrow:** Is it common in other councils?
1553. **Mr McNaney:** I am unable to answer. I do not have that knowledge.
1554. **Lord Morrow:** Well, I can tell you that it is not done on the council that I served

- on. Maybe other councils do it. I do not know.
1555. **Mr Elliott:** I can confirm that there are other councils that do not do that either.
1556. **Mr McNaney:** There are 51 councillors in Belfast. It is harder to talk to 51 individuals.
1557. **Mr Elliott:** I want to ask about a couple of things that are slightly outside the Bill. You said that Belfast is a different case, not a special case, but it is different from other councils because there is not the same merging. Do you feel that there will not be the same significant costs or savings in the reorganisation in Belfast as there will be in other areas?
1558. **Mr McNaney:** I am wise enough to defer to my director of finance and resources on that.
1559. **Mr Cregan:** I think that there are bigger opportunities for the other councils through merging three councils. They have the potential to have one system instead of three, such as one payroll system and one finance system. Belfast, through the members, has already had an efficiency programme for the past six years. We have taken £18 million of pure cash out of the estimates.
1560. **Mr Elliott:** So, your rates have come down every year.
1561. **Mr Cregan:** Our rates last year were set at zero, and, hopefully tomorrow, they will be set at zero again for this year. In real terms, that is a cut of around 5%. That was done purely through the savings or cash, so they are given back to the ratepayer. The big issue, although not at an individual council level, is the potential for regional collaboration across the 11 councils in areas such as common IT infrastructure. That is where the big potential is, and collaboration can also take place on the bigger procurement items. So, I think that the issue will be how we put governance arrangements in place that will support savings at that regional level.
1562. **Mr Elliott:** There is no huge onus or responsibility to carry that out at the moment, is there?
1563. **Mr Cregan:** No, because each council sets its own rate, and the efficiency savings have to be integrated. We have integrated that into the rate-setting process. I think that, when the councils come together, they will look at that. Seventy five per cent of our money comes from the rate. The key driver for us was that, over the past number of years, the rate base has been stagnant, so there has been no growth in the rate. So, if you want to keep the rate low, you need to take cash out of the system.
1564. **Mr McNaney:** I think that there is an opportunity. Again, it is a balance, as all things normally are. The key driver in most councils is the rate and its level. We receive representation all the time from businesses in these economically stringent times saying that markets have realigned rental values but rates have remained the same. Obviously, as officers, we are very sympathetic to that, but the problem is that, once you have invested the rate in services, the only way to lower it is to cut services. There is no political will to do that.
1565. I think that, therefore, you have to look for the opportunity. There are always three elements to efficiency. The first is that you can increase your income. It is not just that you cut services; you can make yourself more efficient. We have derived a lot of efficiencies. For example, we completely reconfigured our insurance procurement. We were spending maybe £2 million a year on insurance, and a lot of that was due to our bad claims experience with our drivers and our fleet of vehicles. We intensively worked with our fleet in training, and we dramatically improved our accident-reduction rate. In turn, we did different procurement for our insurance and reduced our insurance figures by, I think, half a million pounds. I think that joint procurement is critical. Belfast City Council has an information services bureau where 90 people work. We sell our services to across the

- UK, and we provide services to many councils in Wales and in England.
1566. **The Chairperson:** What services do you provide?
1567. **Mr McNaney:** ICT services. We design systems, and we have customer relationship management (CRM) systems that we sell. The problem in Northern Ireland is that everybody, quite understandably, wants the services provided in their area or district. Therefore, I think that the only way forward that we will get agreement on is if we get away from this issue that you have to have one centre for Northern Ireland and move to a conversation that means that you might have three subregional centres. So, you might have one in Enniskillen, one in Dungannon, one in Belfast and one in Derry/Londonderry. I am desperately looking around to see whether there is anyone here from there. The only way that you can do it is to have subregional centres of excellence that do those types of services. I think that we are going to waste loads of time trying to get agreement that it is in one place because people will not want it in Belfast or other places. So, if you have five or six councils or three or four councils collaborating, that is likely to add benefit.
1568. I also think that there are shared services that people do not see on the ground. People do not see back room services, such as payroll. There may be pressure going forward on councils to set a low rate.
1569. My final issue is that you cannot have local government reform that brings councils together, puts rates up and closes facilities. The public are just going to say, "Well, this has really worked for us, hasn't it?" You have to have local government reform that shows an improvement. That means that there is going to be a lot of pressure on, say, the three councils coming together. There will be the opportunity to rationalise services, but in whose district are you going to close the leisure centre? Are you going to close it in Armagh, Banbridge or Craigavon?
1570. **Mr Cregan:** The other key strand of the efficiency was the actual rate base. Members set us a target of maximising the collectable rate. That does not mean that you increase your rates by putting them up. Through a forensic analysis of the actual rate base, we have increased by about £11 million the amount of rates that Land and Property Services collect. So, we have been able to compensate for the loss of rates through the recession by doing forensic analyses on inspections of vacant properties, to give an example. If a property becomes occupied, we know straight away that that person should be paying rates again. Through that, we have been able to stabilise the rates income, and that will be a key part of our financial strategy for the new council.
1571. **Mr McNaney:** I have one very quick observation to make. The sharing of data between statutory agencies and Departments is critical. For years, we struggled to get access to the data. Land and Property Services told us that it could not give the data to us because of data protection. You pay rates only if a property is occupied, so we cross-referenced vacant property rates with the premises that we were collecting bins from. It is a good hint that, if you are collecting a bin, there might be somebody in it. We found 13,000 properties that people said were vacant but were occupied.
1572. **The Chairperson:** You have to pay rates now, though, when they are vacant.
1573. **Mr McNaney:** It is 50% now, but it was not when we did that. However, you are quite right, Madam Chairman.
1574. That sharing of data between agencies for public benefit is critical. It will also be critical for community planning.
1575. **The Chairperson:** Your corporate community plan will set the direction for all committees, whether executive, streamlined or whatever, as will your code of conduct. Everybody knows the

- goals and the behaviour that they need to demonstrate. That is the main thing.
1576. **Lord Morrow:** Do you see absenteeism as a driver?
1577. **Mr McNaney:** We have worked very hard on absenteeism in our council. We have reduced our absenteeism from 16.7 days. We are very hopeful this year of getting it down to 9.8 days. Clearly, absenteeism is a critical health indicator for an organisation. We have found that you can get the rate to come down, but only with absolute dedication to the management of effective absenteeism. We have put additional resources into the management of absenteeism, our occupational health and trying to motivate staff. Absenteeism is a good health indicator of the strength of an organisation, and I believe that it is incumbent on the management of public services organisations to manage it very carefully.
1578. **Lord Morrow:** I will ask a supplementary question on that. You gave the very good example of the cross-referencing of data on occupied and unoccupied properties. Do you see any potential in doing a similar exercise on this issue?
1579. **Mr McNaney:** Across absenteeism?
1580. **Lord Morrow:** Yes. Local government has a record of very high absenteeism. I am talking not about Belfast but about local government in general. Do you see any new initiative that could be introduced across local government to bring the figure down? You said that you have brought your rate down from 16.7 to 9.8 days, which is quite significant.
1581. **Mr McNaney:** It has taken a lot of time and effort. I am referring to the report on achievement, accountability and improving performance in local government. One of the core findings of that report is that the sharing of comparative data across authorities is critical to improvement. So, there is no question that, in setting a proper performance framework for councils, absenteeism should be an indicator of organisational efficiency. It is common in performance management that what gets measured gets done. The biggest difference that we made to absenteeism is that I made it a performance target for each of the directors. I have to make that admission. You either get your absenteeism down or you get a bad performance appraisal. We also put massive additional resource into managing the policy and the environment, and we have been successful. I think that 9.8 days is still too high, but we are restrained by the standard terms and conditions across local government. The standard terms and conditions in the green book are that you get six months' half pay and six months' full pay when you are sick. You probably do not see that in the private sector. However, if you have worked for the council for 30 years and all of a sudden get cancer, maybe it is fair that you have that time. However, I agree with you, Lord Morrow, that it would be good to have comparative data on absenteeism and for a performance indicator to drive performance across councils.
1582. **The Chairperson:** The figure is usually affected by long-term sick, such as people hurting their back —
1583. **Mr McNaney:** That is absolutely right, Madam Chair.
1584. **The Chairperson:** — or stress, and they take six months off.
1585. **Mr McNaney:** Of course, nobody who works for me would ever be stressed.
1586. **Lord Morrow:** You take all the credit.
1587. **Mr McNaney:** Not for much longer. My job is in the paper today. I will not have to take it for much longer.
1588. **The Chairperson:** Will you not steer the ship to new horizons?
1589. **Mr McNaney:** After 13 and a half years, I am happy to pass the baton on to some other poor soul.
1590. **Lord Morrow:** What does the stress part of the job description say?
1591. **Mr McNaney:** It says to be resilient.

1592. **The Chairperson:** It is not to take a couple of tablets — headache tablets, I mean.
1593. **Mr I McCrea:** I am glad that, when you referred to which leisure centres should close, you did not mention Cookstown, Dungannon or Magherafelt. That is because a former councillor from each of those areas is here. So, we would all probably have a conflict of interest.
1594. Nonetheless, I am more interested in your submission where you referred to whether staff and employees of councils should become councillors. The submission more or less says that, in England or Wales, officers can be councillors as long as it is in a different authority. My experience, from speaking to senior officers, is that they have concerns about all aspects of any member of staff of a council either working or becoming a councillor in their council or in any other council. I can look at the flip side of that and tell you that, in my 12-year experience of being on a council, I cannot honestly tell you that I know 100% how any member of staff of Cookstown District Council voted. It was never discussed, and I never cared to ask. An important part of the role of a councillor and a member of staff is that you treat them all the same regardless. The difficulty that I have is when a member of staff is sitting beside someone else who, all of a sudden, declares their political hand, as it were. In essence, it could make sickness absence an issue if people are using it as a means of trying to get off work as a result of bullying or anything else because of a different political opinion. I am interested in your view as a chief officer and in how you feel the issue would have an impact on the way that you treat a member of staff because they have some political cover. If, for example, they are a member of a party that may be in the majority on the council and they have that cover, they should not, but it is Northern Ireland. I suppose that, in a sense, although this happens in England and Wales, we are in Northern Ireland, and we are different because of the political make-up and the way that things are here.
- So, I am interested in how you see the management of that, if it was to happen.
1595. **Mr McNaney:** The staff code of conduct requires staff to be politically impartial and objective in how they give their advice. I am completely committed to that, and I think that it is utterly essential. From a personal point of view, I think that it would be an unwise course. Presently, under the Local Government Act, you cannot be both a council officer and a member of a council elsewhere. My understanding is that that has been changed because of human rights legislation, but I am not familiar enough with the detail of that. I think that we would have to manage that very carefully.
1596. If the legislation allows for that and you had a member of staff who was a councillor in another political party, I think that we would have to look at whether there were politically sensitive posts and whether there were certain posts in an organisation that were so politically sensitive that you would have to declare a conflict of interest if you were a councillor in another party. I think as well that we would also have to make sure that there was a special arrangement, whereby if you became a councillor elsewhere, you would have to sign up to some sort of memorandum of impartiality that set out the requirements in the context of how you perform your duties in that particular council. You would not be allowed to take cognisance of other things. That would at least put a management framework around it.
1597. If you are asking whether it would work, I think that you are quite right to say that Northern Ireland is a different place, and it would be extremely difficult. What would happen is that elected members from certain political parties would, I think, be cautious in accepting advice or sometimes accepting the impartiality of somebody who might be a member of a political party elsewhere. So, I think that it is something to be cautious about, and, if it does happen, it would need careful management.

1598. **Mr John Walsh (Belfast City Council):**
That is correct, and I think that what you will find is that the English model is the bare minimum that is regarded as necessary for compliance with human rights. The position adopted in the Bill was cognisant of the human rights position, so that is why it is there.

1599. **The Chairperson:** We are going to clarify that with the officials who are coming in after you. Certainly, research is showing that, in 1998, the case was thrown out of court. There was a more recent example, but I do not know what the outcome was.

1600. **Mr Walsh:** I think that the English model, where the councillor can be a councillor but not in an employing authority, is generally regarded as the minimum that is required for compliance with the Human Rights Act.

1601. **Mr Weir:** We will probe this with officials. A key issue in that is that there is a reasoned enough argument on that basis. If that has been the case for quite a long period in England and it has not been provoked as a result of a recent legal challenge, the other issue is why a particular position was simply allowed to happen for many years. Consequently, the question is why the imperative is there now. That is obviously something that we will probe with the officials.

1602. **Mr Walsh:** I think that the chief executive is right, in that you probably need additional provisions or protections in those situations.

1603. **Mr McNaney:** I have every confidence that Linda MacHugh will be able to clarify the situation.

1604. **The Chairperson:** No pressure, Linda. Thank you very much, gentlemen, and happy retirement. Are you retiring or moving on?

1605. **Mr McNaney:** No, I am too young to retire. I am going to dabble in other things. Can I say what a great pleasure it was to appear before the Environment Committee? I sincerely wish you well in your deliberations. I think that this

will be a notable piece of work and will stand local government in good stead for the next 30 years. Thank you very much for the opportunity to appear before you, Madam Chairman.

1606. **The Chairperson:** Thank you.

23 January 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Tom Elliott
 Mr Ian McCrea
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Suzie Cave *NIA Research Office*

1607. **The Chairperson:** Suzie, thank you very much for providing us with another four additional papers. Will you talk us through the main points? I am sure that members have read through the papers.

1608. **Ms Suzie Cave (NIA Research Office):** I will go through three areas this morning. The papers that I have provided are quite brief so, hopefully, they should not take too long to go through.

1609. The first, which was published by the Scottish Government and the Convention of Scottish Local Authorities, relates to the status of the statement of ambition in Scotland. It is not a statutory document. It sets out shared aspirations for community planning and how the existing framework through community-planning partnerships and single-outcome agreements needs to change to meet the aspirations suggested in the statement. It has been suggested that some of the recommendations will require legislation.

1610. Members asked for more information on the remit and appeals process against a complaint made on the basis of councillor conduct, particularly focusing on Wales. In my paper, I briefly looked at the Localism Act in England. In England and Wales, the remit covers members and co-opted members; however, there is no indication in the Welsh legislation that co-opted members include non-

elected members. That is not the case in England, where a co-opted member includes a person who is not elected but who is a voting member of a committee. The definition is given on page 4 of my paper.

1611. In Wales, appeals against low-level complaints are dealt with by local authority standards committees and can be made to the Adjudication Panel of Wales. However, appeals against decisions made by the ombudsman in relation to councillor conduct and higher-level complaints must be made in writing directly to the ombudsman's office, where they are dealt with by a senior member of staff. However, should a complainant not be satisfied with the decision, the ombudsman personally considers the appeal. There is no appeal against the ombudsman's final decision, but it can be reviewed on the basis of new information. In England, the Localism Act does not provide for any right of appeal for a complainant or member against a decision that is made by the local authority's monitoring officer or standards committee. However, if it is felt that the authority has failed procedurally to deal with the complaint properly, a complaint can be made to the local government ombudsman.

1612. At the previous briefing, members requested information to clarify the situation in relation to the exemption of council staff becoming councillors. The Local Government Act (Northern Ireland) 1972 introduced a blanket ban on any person who holds paid office or other place of profit in that or any other council being elected as a councillor. England and Wales also introduced arrangements in its own local government Act in 1972. However, that applied less strict disqualifications to council employees. The 1972 Act only disqualifies council employees from becoming councillors in the councils in which they are employed. In 1989,

- the Local Government and Housing Act introduced a prohibition on council officers who hold politically sensitive posts in engaging in any political activity and standing for political office. Those posts may include the head of the authority's paid service, statutory and non-statutory chief officers, deputy chief officers and monitoring officers. Sections 3 and 4 of the Act outline further criteria that could class a person as being in a politically sensitive post on the basis largely of salary and role.
1613. In 1989, a challenge to the Local Government and Housing Act was brought to the European Court of Human Rights.
1614. **Mr Elliott:** Sorry, was that 1989 or 1998?
1615. **Ms Cave:** The challenge was brought in 1998 to the 1989 Act. The petitioners all held politically sensitive posts and felt that the requirement was in interference with their rights for free elections and for freedom of expression, assembly and political participation. However, the case was not won, and the court ruled in favour of the restriction on those holding politically sensitive posts, based on the pursuit of impartiality for senior officers. In essence, the legislation has not changed. The provisions of the 1989 Act in relation to employees with politically sensitive posts still stand.
1616. Does anybody have any further questions or any other areas that they would like me to discuss?
1617. **The Chairperson:** There is still a lot of confusion about the disqualification.
1618. **Ms Cave:** Just to clarify: the case was taken in 1998 and it was in relation to the 1989 Act, so it can get a bit confusing between the dates.
1619. **The Chairperson:** We have also heard about cases more recent than 1998. There have been other challenges to the Act. Which is the most recent, the one that determines the proposed changes in the Local Government Bill?
1620. **Ms Cave:** This is the most recent case in relation to challenges on senior officers.
1621. **The Chairperson:** I do not mean challenges to senior officers in particular, just cases based on the human rights convention where the council did not allow employees to become councillors. There was a case in 2005. I had a quick look this morning at a paper tabled by the Department citing a case from 2005. We will leave that until later.
1622. **Ms Cave:** Yes. That is about the voting rights of prisoners.
1623. **The Chairperson:** Previously, departmental officials cited more recent cases or challenges that could create problems. I think that that is the reason why we are changing this. Is my memory of this correct? Julie is nodding her head.
1624. **Mr Weir:** I appreciate the nods of the officials. There is a specific case. This is one of the bits of confusion around this. When we met the Northern Ireland Local Government Association (NILGA) officials, they referred to a particular case that seemed quite a while ago. This case is referenced in the papers. You are right: it seems to refer to a case principally focusing on voting rights, which is a different thing. It may be helpful if the officials could give us the citation of the case and that maybe could be fed in so that we can see the direct reference to the particular case.
1625. **The Chairperson:** Peter, did you want to come in?
1626. **Mr Weir:** It was less directly on that aspect. I just wondered about the aspect of the code of conduct, with the challenges and appeals mechanism side of it. In England, there is not really an appeals mechanism. In Wales, it seems slightly odd that, on one level, one person out of the ombudsman's office clearly deals with the initial complaint if it is regarded as serious enough. And then the final appeal is to someone else in the ombudsman's office, an arrangement which seems to

- be a little odd. With respect to England and Wales, do we know what levels of sanctions are available to deal with breaches of the code of conduct? If it is a question of a relatively light-touch appeals mechanism, where sanctions are relatively low, that might be one thing. However, if it is a question that there have been circumstances where, for instance, councillors have been disqualified from being on the council or suspended from it, that is different. The greater the gravitas and the level of sanction, the stronger the case for an appeals mechanism. Do we know about the powers available?
1627. **Ms Cave:** I could certainly look into it.
1628. **The Chairperson:** It would appear that, ultimately, in Wales and Scotland, judicial review is used as the last resort in the appeals mechanism. Is that right?
1629. **Ms Cave:** Where they do not have the same form of appeals?
1630. **The Chairperson:** Yes. Or the appeal is dealt with by the ombudsman's office. I think that when the ombudsman's officials came to us, they said that it was not just as simple as dishing out the sanction: the judgement involved communication with the councillor, and the councillor can bring legal representation. In some ways, it is like the situation in Wales, where one complaint officer deals with the case and makes the judgement, and if someone is not satisfied with it, he can bring it back and talk over the matter.
1631. **Mr Elliott:** I wanted to talk about the restriction on employees standing for election as councillors, but I do not think that we can progress that much until we hear from officials.
1632. **The Chairperson:** Right. Thank you, Susie.
1633. **Ms Cave:** Community Places raised the issue of the duty for community planning being placed on the Department and said that in Scotland it is placed on Ministers. I had a very brief discussion with Legal Services, and, in fact, it does not seem to be just as clear-cut as I had hoped. Therefore it may warrant taking legal advice if the Committee wishes to take it further. It is beyond my remit.
1634. **The Chairperson:** OK. Community Places suggests that, instead of putting the duty on departmental officials, the duty should be placed on the Minister.
1635. **Ms Cave:** Yes.
1636. **The Chairperson:** Your paper says that it is not that simple, and you cannot do that.
1637. **Ms Cave:** Basically. Yes.
1638. **The Chairperson:** OK. Members, do you want to pursue this? Legal advice will be provided from within the Assembly. Are members content for us to pursue that?
- Members indicated assent.*
1639. **The Chairperson:** Thank you.

30 January 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Barry McElduff
 Mr Ian Milne
 Lord Morrow

Witnesses:

Ms Julie Broadway *Department of the*
 Ms Mylene Ferguson *Environment*
 Ms Linda MacHugh
 Mr John Murphy

1640. **The Chairperson:** I welcome Linda, Julie, John and Mylene again. This will be a long but worthwhile session.

1641. **Ms Linda MacHugh (Department of the Environment):** We are prepared.

1642. **The Chairperson:** We are ready for you. I am sure that you are ready for us, too, Linda. Just to remind everyone, this session is being recorded by Hansard for our report. Obviously Éilis is here with us, as well.

1643. Members, for each clause I will briefly remind you of the issues raised. This is only the initial consideration of the clauses to establish whether we have all the information we need, think that a clause may need to be amended or require further information from the Department.

1644. Clause 1 provides for how the names are to be formed and makes provision for the name given to a council to be ordered by subordinate legislation. We have comments on this, Linda. How is provision to be made for a council seeking city or borough status?

1645. **Ms Julie Broadway (Department of the Environment):** Well, I will just give some background to that particular clause,

which is a new clause on the naming of councils. As you will be aware, the name of a council is the name of the local government district followed by the status of the council. There is provision in the Local Government (Northern Ireland) Act 1972 so that, if someone wants to change the name of the local government district, or if the council wants to change the name, it can apply for the Department to make subordinate legislation to do so.

1646. The 1972 Act also says that, if the council changes its status — if it gets a charter or whatever — we do not need to make subordinate legislation to change the name of the council, because the name will then automatically change from whatever district council to local government district name followed by the new status. However, with the amalgamations of districts to form the new councils, there are going to be possibly some fairly incongruous names. If Lisburn and Castlereagh were to adopt Lisburn's charter, the name of that new council would be Lisburn and Castlereagh City Council. That council might have a difficulty with that name, so that provision in clause 1 enables us, through subordinate legislation, to change the name to whatever it is that the council has asked the Department to change it to. If it decides that it wants to move the "City" forward into the name, so that it is Lisburn City and Castlereagh, it can do that.

1647. The Bill itself does not really make provision in relation to charters, so the issues that have been raised are not necessarily about the Bill, because the 1972 Act makes provision about the status of councils. However, we are aware that this is an issue that councils are concerned about because you will have amalgamations of several boroughs coming together or a district and borough coming together. We need to make sure that councils are aware of

- the decisions that they need to make during the shadow period to enable them to decide, for example, if they want to adopt the charter of one particular council that is amalgamating with them. If you have two councils joining together and both are boroughs, they can decide which of the charters they want to adopt, or equally they can decide that it is a brand new council and that they want a new charter.
1648. **The Chairperson:** Would that be more likely?
1649. **Ms Broadway:** We are working with the NIO on the guidance that will be needed for councils to explain all of the implications of this and what decisions they will need to make during the shadow period. The transitional provisions legislation will legislate for that to allow them, during the shadow period, to make decisions about their names and status. We have also been working with local government on the transitional provisions through the legislation working group, and we plan to engage with the change managers of the statutory transition committees (STCs) so that everyone is aware of the decisions that they need to make.
1650. While in some cases it is not going to have a major effect, in the case of, for example, the cities, particularly Lisburn, it could have a major effect on their status. The boundary of Lisburn is actually the boundary of the current borough of Lisburn, so we need to explain to that transition committee the decisions that it needs to make so that it can have all of the information available to make the necessary decision on which charter it needs to bring forward.
1651. **The Chairperson:** So, if a council expands — we will use Lisburn as an example again. If it expands the boundary with the new councils, then will it lose the city status?
1652. **Ms Broadway:** If it does not adopt Lisburn's charter, then it could do. There is a case in England where that happened: a city council did not resolve to take forward the charter of the city, and the city lost its status. As you can understand, Lisburn City Council is very much aware of that and has been writing to the Department about when the subordinate legislation will be brought forward, so that it can start engaging and making decisions on that.
1653. **Mr Boylan:** I have a quick question. It is important that they are aware of it and have an opportunity through the transition to do that. The other thing is that you are now saying that you need subordinate legislation to address that issue. Is that right?
1654. **Ms Broadway:** It is one of the issues that will be taken forward in the transitional provisions legislation, which will provide for the shadow period and enable the shadow councils to make that decision.
1655. **Ms MacHugh:** It is important to stress that all the preparation work can be done and all the options can be laid out, but that the final decision will be for the new councils.
1656. **The Chairperson:** The new names will start in April 2015.
1657. **Ms Broadway:** Yes, but during that shadow period, they can make all the decisions that they need to. They can approach the Department about making the order to either change the name of the council or the name of the district, should they so wish.
1658. **The Chairperson:** There will be a lot of changes.
1659. **Lord Morrow:** We have heard about Lisburn. How many other towns, cities and councils will be affected? What about Armagh and Newry?
1660. **Ms Broadway:** It depends on the way the city has been established, and Lisburn seems to be the only one that there is a real issue with. The five cities were all set up and established in a different manner. The two historic cities, Belfast and Derry/Londonderry, were established in a particular way, and this will not affect their status. Lisburn

seems to be the only one that it will affect, and it is because the boundary of Lisburn is the boundary of the borough of Lisburn. It does not affect Armagh and Newry.

1661. **Lord Morrow:** It does not affect Armagh or Newry despite the fact that, I think, Newry was declared a city at the same time or thereabouts as Lisburn.
1662. **Ms MacHugh:** I think it was because the council determined that Lisburn city, as a city, would be the boundary of the whole council. Lisburn city actually starts in the far end of Dromara, runs through down to Derriaghly and beyond, probably down into Dunmurry at this stage.
1663. **Mr Boylan:** Half the country.
1664. **Lord Morrow:** What about Newry?
1665. **Ms MacHugh:** With Newry, I think it was more a definition of the urban area.
1666. **Ms Broadway:** We have a briefing paper on all this, because we had to get our own heads round exactly how the cities were established. If it would be helpful, we can provide the Committee with that.
1667. **The Chairperson:** Members, do you want to do that?

Members indicated assent.

1668. **The Chairperson:** It will prepare us for all that.
1669. **Ms Broadway:** This has been one of the most difficult issues to get our heads round. It is very complicated.
1670. **The Chairperson:** Those places fought so hard to get their city status. It would be a shame to lose it.
1671. **Mr McElduff:** The second part of that is borough status. If three councils such as Magherafelt, Dungannon and Cookstown come together and one of them — Dungannon and South Tyrone — has borough status, what are the implications there?
1672. **Ms Broadway:** If either several boroughs or a combination of boroughs and districts are joining, the incoming council during the shadow period will have to

decide whether it wants to retain one of the charters of one of the councils, whether it wants to remain a district council — they will all start off as district councils until they resolve the issue of their charters — or whether to seek a new charter. As it will be a brand new council and new district, councils might want to take a new charter, and we are working with NIO on procedural guidance that we can give to the STCs and the shadow councils to set out what they need to do and who they need to approach to take whatever decision they want to take.

1673. **The Chairperson:** How long would it take for them to take a new charter?
1674. **Ms Broadway:** It has been so long since that has been done. We are trying to work out the exact timescales with the NIO.
1675. **The Chairperson:** You do not have a lot of time for the changeover.
1676. **Ms Broadway:** I think it is about six months.
1677. **The Chairperson:** OK. Are members content with the comments?

Members indicated assent.

1678. **The Chairperson:** This clause requires a council to maintain a constitution and ensure that it is available for inspection by members of the public. There were a number of issues. The first is that no sanctions are specified for non-compliance. If people do not put up a constitution, the law does not say what sanctions they will get.
1679. **Mr John Murphy (Department of the Environment):** If a council does not prepare and publish a constitution, it is a means of last resort, but the control powers available to the Department under subsequent clauses could be used to require a council to put it up. My understanding is that most councils will do this. It is part of the transparency arrangements, so it is a purely factual document that will set out how a council will operate and include copies of its standing orders, schemes of delegation etc. We are working with senior officers

- from local government to develop the framework and set out the headings of the issues that a constitution should cover, without going into the specific wording — that will be a matter for individual councils, provided that they meet that core aim.
1680. **The Chairperson:** A template, really, for them to fill in the names and particulars.
1681. **Mr Murphy:** Yes.
1682. **Ms Broadway:** The clause that could be used is clause 109, which is a power of last resort. If a council fails completely to do something that it has a statutory duty to do, the Department can make an administrative order.
1683. **Mr Milne:** Surely councils have constitutions or standing orders at present.
1684. **Mr Murphy:** Yes, they all have their standing orders and schemes of delegation. In many ways, the constitution acts as a sort of binder. Some new material will go in about setting out how they operate, but it will then simply provide a source for members of the public and councillors for all the important documents that a council needs to operate. There will be introductory chapters on how a council operates, but then it will include standing orders, the scheme of delegation and any rules of procedure for committees etc.
1685. **Ms Broadway:** The other thing is that it pulls together into one place all the key documents, so there is one place for a member of the public to go for all those documents.
1686. **Mr Milne:** Just a bit of ignorance, but have any councils now got a constitution?
1687. **Mr Murphy:** I think Belfast is developing a constitution. They have been looking at this for some time because they knew that this was coming. They looked at what was happening in local authorities in England and Wales to see what it could do. Some of the constitutions in England and Wales run to 250-odd pages. We will try, through the template, to pull back a bit from that, but it will be for individual councils to decide the level of detail that they want to put in, provided that they are giving that transparency in terms of their operation.
1688. **Ms Broadway:** We are working with senior officers in local government on what a model constitution would look like so that we can get input.
1689. **Mr Boylan:** Thanks very much for that explanation, but I am a wee bit concerned. It would be unusual if they did not. They certainly have to undertake to do that but, clearly, it is finding out and being open and transparent.
1690. Clause 109(2) states:
“The relevant department may make an order”.
1691. We have had this debate about “may” and “must” for a long period. I do not know whether that would be strong enough. “Must” is a better word, and I would prefer that put in there. Even at that, I am just looking at clause 109 to see whether that is strong enough. The important thing is access to information from a public point of view, and whether that clause will be strong enough. The Chair has asked about sanctions; what would be involved in undertaking that proper sanction?
1692. **Ms Broadway:** Under clause 109?
1693. **Mr Boylan:** Under clause 109.
1694. **Ms Broadway:** Under clause 109, if a council has failed to do something that it has a statutory duty to do, the Department will by order write to them to tell them to put right the default, but the Department can appoint someone else to put right the default and to make sure that the constitution is produced.
1695. **The Chairperson:** And the Bill does not specify when that constitution should be put in place. Why not?
1696. **Ms Broadway:** I suppose because it will be a living document. As things change, documents will —

1697. **The Chairperson:** But at least to publish the first one?
1698. **Ms Broadway:** Yes, and that may be something that, if it was felt that it would be better if there was a given date, we could take that to the Minister and ask about that amendment.
1699. **Lord Morrow:** Chair, it is an important word that someone said — I do not know who said it — that this is a living document, so therefore a constitution could consist of two lines, which would put a constitution in place initially without a lot of determination or, indeed, direction. Why could that not happen very quickly? This document will be developed as it goes along, so it could simply have two lines or something of a constitution.
1700. **The Chairperson:** Normally, you do not rewrite a constitution. You could have very little of it, but it should be the main document explaining why you are there and the purpose of your work. It needs a bit of thought in it, not two lines.
1701. **Lord Morrow:** I just want to say this, because I want to hear your comments. It says here:
- “A council must prepare and keep up to date a document (referred to in this section as its constitution) which contains -*
- (a) a copy of the council’s standing orders”.*
1702. Now, does every council have a copy of standing orders?
1703. **Ms Broadway:** They will have.
1704. **Lord Morrow:** Do they have?
1705. **Mr Murphy:** At the minute, my understanding is that the majority — almost all of them — do, but under the provisions of the Bill at clause 40 or 41, there will be a requirement on all the new councils to have standing orders, so we are moving from having that sort of permissive provision to having a requirement.
1706. **Lord Morrow:** And do they all have a code of conduct?
1707. **Mr Murphy:** Yes.
1708. **Ms MacHugh:** There will be a mandatory code of conduct for everybody.
1709. **Ms Broadway:** That is actually a technical amendment that the Department needs to bring forward in relation to this Bill, because it would be more accurate, rather than to say “a copy of the council’s code of conduct”, “a copy of the code of conduct issued by the Department under this”. That would be the correct form, so we will be making that amendment.
1710. **Lord Morrow:** You have got the bones of your constitution in place there already. All councils have standing orders, the Department will insist on a code of conduct for all councils, and then other things will be added to as the weather gets better.
1711. **Ms Broadway:** And the Department can then see directly what other information is to be included in the constitution. It is a matter of working up a direction of whether there will be any additional information, but as you say, there are certain documents that we already know, because of clause 2, must be included in the constitution.
1712. **Ms MacHugh:** We are trying to get this balance right. It is endemic throughout the whole Bill that we are trying to get the balance between things that really must be there to make sure that things are consistent, but also giving local government the flexibility that it needs to get on with the job that we are giving local councils in adapting to what the local ratepayers wish of it. This is one area where, if you go too far in one direction, it will be a constitution designed and developed by the Department as opposed to by the new councils. It is about trying to get that balance right, I suppose.
1713. **The Chairperson:** What, in general, will be in the constitution?
1714. **Mr Murphy:** It will be about the composition of the council and whether it has gone for executive arrangements or the traditional committee system, or whether it has delegated authority to particular committees on planning or

- other regulatory quasi-judicial functions. So, it starts to get into those sorts of issues. If it would be helpful to the Committee, we could look and given some sort of indication of the key features that would be included in a constitution.
1715. **The Chairperson:** That would be useful.
1716. **Ms Broadway:** We could give you a brief summary of what is being discussed at the working group and what the thinking is about what should be in a constitution.
1717. **The Chairperson:** OK. So it is a process; you are talking of processes and procedures being put in.
1718. **Mr Murphy:** Yes.
1719. **The Chairperson:** I had a meeting with the Committee on the Administration of Justice (CAJ), and its members talked to me about the need for good relations and the definition of “good relations”. Apparently, during the Westminster passage of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010, your party colleague Mark Durkan tried to put in an amendment defining “good relations” in the Bill. The amendment was supported, but it was felt that it should maybe be left with devolved Administrations such as Northern Ireland’s to deal with. Would it be appropriate to put into the constitution something such as having good relations as a guiding principle?
1720. **Ms Broadway:** Of course, good relations is one of the key principles in the code of conduct.
1721. **The Chairperson:** There is no mention in the code of conduct of what constitutes “good relations” —
1722. **Ms Broadway:** Yes.
1723. **The Chairperson:** — because several pieces of law mention that the council should pay regard to good relations. Section 75 and the Race Relations Act 1976 say that councils must pay regard to good relations, but there is no definition of the phrase “good relations”, and CAJ said that maybe we could insert a definition in the Bill so that councils will not misinterpret or disregard what they should do.
1724. **Ms MacHugh:** There is also a wider issue around the definition that all of government is using for “good relations”. To define “good relations” in this Bill just for local government creates the potential for confusion if, say, OFMDFM decides on a separate and different definition. We need to consider that.
1725. **The Chairperson:** CAJ quoted what was used in England, Wales and Scotland under the Equality Act 2010, which we do not yet have. We have different pieces of anti-discrimination law, but not one Act to cover all of them. The Equality Act defines “good relations”.
1726. **Ms Broadway:** I know that, in response to the pre-consultation on the code of conduct, several people raised the issue of definitions of “equality” and of “good relations”. We are going through that pre-consultation, which finished on 21 January, and doing a synopsis, but several respondents raised that issue.
1727. **The Chairperson:** Will that come later on, in the regulations or guidance?
1728. **Ms Broadway:** Yes.
1729. **The Chairperson:** OK. Still on clause 2 — we are not going very fast — should copies of the constitution be displayed on the website, rather than in hard copy? I am sure that councils will put that on the website.
1730. **Ms Broadway:** Yes. I am sure that councils can do that. There is no problem with that.
1731. **The Chairperson:** A copy of the constitution should be free of charge to individuals. Is it the case that there would be no charge?
1732. **Mr Murphy:** There should be no charge. It should be there for inspection, and it should hopefully be on the council’s website.
1733. **The Chairperson:** Does it say that some documents requested by commercial organisations should have a charge that

is specified in legislation? It does. We will move on then.

1734. Clause 3 deals with qualifications. It sets out the conditions to be satisfied if a person is to be qualified to be elected or to be a councillor. We do not have any particular comments on that, so are members content to move on?

Members indicated assent.

1735. **The Chairperson:** Clause 4 deals with disqualifications. It gives effect to schedule 1, which sets out the conditions under which a person is disqualified for being elected or acting as a councillor. Those conditions include the introduction of a bar on MLAs, MPs and MEPs being elected or being councillors.
1736. I think that we have a few comments on that. We are struggling with the continuing issue of the blanket bar on employees becoming councillors. Do you want to comment on that?
1737. **Ms Broadway:** A set of regulations that will be subject to the draft affirmative procedure will make provision about those posts or employments. So, someone would continue to be disqualified from being a councillor. If you look at other jurisdictions, you will see that, for particular posts, namely politically restricted posts, it does not matter which council you belong to — you will be barred from being a councillor in any council.
1738. However, there is also the issue of not being able to be a councillor in the council that employs you. That would apply to any officer in that council. We think that that can be done through the regulations.
1739. **The Chairperson:** So, what will you opt for?
1740. **Ms Broadway:** We need the Minister's consideration of that.
1741. **Mr Eastwood:** I know what you are saying about employees, and that makes a lot of sense. However, what about people who work in posts that a council funds? They would not specifically be

employees of the council, but they could be on other boards that the council has a role in or funds.

1742. **Ms Broadway:** We have not actually looked at that, but we will do so for next week.
1743. **Mr Eastwood:** It has been an issue in the past, I think.
1744. **Ms MacHugh:** However, if you extend that out to considering, for example, times when councils get responsibility for urban regeneration and community development and actually end up funding quite a lot of posts in community and voluntary organisations, you see that the issue then is where you should stop.
1745. **Mr Eastwood:** I am not suggesting that they should be barred. It just needs to be thought about, perhaps in the code of conduct. [*Inaudible.*]
1746. **Ms MacHugh:** The potential conflict of interest should also be considered.
1747. **Ms Broadway:** Another issue that was raised with us through the legislation working group was whether someone who is seconded to a council but is not employed by it is covered by the definition. When we make the regulations, we will have to be very clear about disqualified employments and exactly what is covered there. I think that this is a matter for the regulations.
1748. **The Chairperson:** Sometimes you think that people themselves should take that responsibility. If you are in a senior position that will cause a conflict of interest, you need to think about whether you want to keep the public representative role or that of an employee.
1749. **Mr Boylan:** I am not in disagreement with this idea. The only thing that we need to be clear about is the conflict of interest issue. I was just talking to Ian about the possibility of someone having an unfair advantage if they were related to someone on the council, because they would know the system. Having said that, we clearly need to outline the conflict of interest issue [*Inaudible due*

to mobile phone interference.] to get that message out there.

1750. **The Chairperson:** Yes, even though you are not a councillor on that particular council.
1751. **Mr Boylan:** Yes.
1752. **The Chairperson:** If you are the employing council, there can still be a conflict of interest.
1753. **Mr Boylan:** There can be. As Colum indicated, you do not know what would arise from working in the council system.
1754. **The Chairperson:** OK. Are members content with the explanation?

Members indicated assent.

1755. **The Chairperson:** There were no comments on clause 5, which sets out the penalties for acting as a councillor while disqualified. Are members content with this clause?

Members indicated assent.

1756. **The Chairperson:** There were no comments on clause 6, which, as set out in schedule 2, requires a person who is elected as a councillor to serve a declaration on the clerk of a council before acting as a councillor. The declaration requires a person to affirm that they will observe the Northern Ireland local government code of conduct for councillors in the performance of their functions. No comments were received from stakeholders.
1757. Does that mean the person has to sign a piece of paper or just make a verbal affirmation?
1758. **Ms MacHugh:** They will have to sign.
1759. **The Chairperson:** They will have to sign a piece of paper. Lord Morrow, do you want to say something?
1760. **Lord Morrow:** You were looking for someone to say “agreed”, and I was going to agree. *[Laughter.]*
1761. **The Chairperson:** Again, there were no particular comments from others

on clause 7. The clause provides for a person to resign as a councillor at any time. Are members content?

1762. **Mr Eastwood:** I have question on a slightly different issue, Chair. Is there any consideration of issues with co-options or by-elections? Some councils have different arrangements than others. If someone resigned for whatever reason or died, would there be an automatically agreed co-option, or would there be a by-election?
1763. **Ms Broadway:** The legislation about co-option is an excepted matter, because it is about elections. However, the legislation on co-option was changed a couple of years ago, so it means that, in most cases, it will be done by co-option. It is only if a council cannot come to an agreement that it will go to a by-election.
1764. **Mr Eastwood:** Is that still going to be the case?
1765. **Ms Broadway:** Yes.
1766. **Mr Eastwood:** It used to be the case that if one councillor objected —
1767. **Ms Broadway:** That used to be the case. I can send you a briefing or bring it next week to explain what the legislation now says on co-option. As I said, it was changed recently, but it is not something that we could deal with because it is an excepted matter. I will provide a briefing note on that.
1768. **The Chairperson:** OK. Colum, are you OK with that?
1769. Clause 8, which deals with the vacation of office on account of non-attendance, provides for a person to cease to be a member of a council if they fail, subject to certain conditions, to attend any meeting of the council over six consecutive months. There was one query on this asking for clarification on whether the attendance requirement related to joint committee meetings where councillors may have to prioritise attendance at main council meetings.
1770. **Mr Murphy:** The way that the clause has been crafted means that it is up to councillors to decide how they feel that

- they want to conduct their representative role. There is flexibility that means that it is a matter for them if they feel that they need to be attending a council meeting because of a particular issue, as against a joint committee that may be scheduled for the same time. You have six months, and if you do not attend any meeting of the council, one of its committees or a joint committee, your position as a councillor is declared vacant. That is a re-enactment of section 9, I think it is, of the Local Government Act (Northern Ireland) 1972.
1771. **Ms Broadway:** I think that the only difference between clause 8 and section 9 is that the new ethical standards provision is now taken account of. Obviously, if someone had been disqualified as a councillor during the six months, that period would not count in the calculation of the six months. However, that is the only difference between that provision and what is in place.
1772. **Mr Milne:** What about exceptional circumstances? Is there anything in the clause for long-term illness, for example?
1773. **Mr Murphy:** That would be a matter for the councils. Is somebody was ill and receiving treatment and unable to attend, they could make that exception. I think that you have to take account of an individual councillor's personal circumstances in their ability to attend meetings.
1774. **Mr Eastwood:** You said that the council can make that exception. What do you mean? Would that be a vote in the council? I am saying that councils are political forums, and sometimes people might not act as honourably as you would like them to.
1775. **Mr Boylan:** Would it be a department in a council or the council itself?
1776. **Mr Murphy:** I think that it would be the council itself.
1777. **Ms Broadway:** We can find out and clarify what happens in councils at the minute.
1778. **Mr Eastwood:** You would hope that people would accept if someone were genuinely ill, but sometimes it is seen as an opportunity to get rid of somebody.
1779. **The Chairperson:** It could be that another member was substituted on the committee.
1780. **Mr Boylan:** If you won the Lotto, you would be all right.
1781. **The Chairperson:** It would be very easy for a female councillor to go off for six months on maternity leave.
1782. **Mr Elliott:** To be fair, the clause gives councils the flexibility to determine specific reasons. I do not see a major issue with it.
1783. **Lord Morrow:** It is not the clause; it is the council's flexibility.
1784. **Mr Eastwood:** I would leave it to the town clerk.
1785. **The Chairperson:** OK. We will now move on to clause 9, which deals with the declaration of vacancy in office in certain cases. The clause sets out the circumstances for which a council must declare a vacancy. We have received no comments from stakeholders on the issue. Are members content to move on?
- Members indicated assent.*
1786. **The Chairperson:** Clause 10 deals with positions of responsibility. It sets out the positions of responsibility to be held by an elected member of the council, which must be allocated across the political parties represented on the council. It also sets out the process that must be used for the allocation.
1787. As you know, we had a huge numbers of responses to that clause. Perhaps if I list them all you can respond. The first comment relates to clause 10(1) and states that individual councils should decide how to apply proportionality. It is felt that clause 10(1) is too prescriptive. The second comment is also on clause 10(1) on schedule 3 and is concerned that there may be skewing towards larger parties in the locating positions. The next comment is again on clause

- 10(1) and states that STV rather than d'Hondt should be used to protect minorities. That is the Alliance Party's view, so I have to declare an interest on that. The next comment relates to clause 10(1)(f) and states that councils should make public a list of external representatives.
1788. I think that you said that the Department is thinking of amending the clause or that you are going to produce guidance.
1789. **Ms Broadway:** We need to make a technical amendment to clause 10(4). We used the words "prescribed public body", but for the purposes of the Bill, the term "prescribed" means prescribed by regulations, and that is not what we are intending. What we mean is that, if another piece of legislation or statute indicates that a councillor should be on that body, we should probably use the words "statutory public body". So, that is a technical amendment that we need to make.
1790. **The Chairperson:** There is another comment about clause 10(4) that says that the words "other association" should be defined. The Bill states that an "external representative" is:
- "a person nominated by the council to serve as a member of any prescribed public body or other association."*
1791. Could the term "other association" be defined in some way?
1792. **Ms Broadway:** First, the provision is based on what came out of the policy development panel. The five main political parties agreed a position on this, and the clause reflects what was agreed in the policy development panel.
1793. **Mr Murphy:** That was set out in the briefing paper that we provided last week. The five main political parties agreed that councils should be provided with the flexibility to select a method from either d'Hondt, Sainte-Laguë or STV for the allocation of the positions. So, there is that flexibility for a council to determine the method that it wishes to use; it is not that we are saying, "You must use a particular model."
1794. Through schedule 3, we are ensuring that there is consistent application of a particular method. So, if three councils choose to use d'Hondt, they would all use it in exactly the same manner. We understand that different councils have applied some variations, and the political parties on the panel agreed that they needed that definition and consistency applied. So, as I said, there is that flexibility.
1795. In the context of it potentially skewing things towards the larger parties, the process will be applied over the full four-year term of a council and to all the positions that have been identified. The political parties on the policy development panel identified and highlighted those. However, you can have a situation where, over a four-year period, there is somewhere in the region of 100 positions to fill. When you think about it, you see that you already have eight for the chair and vice chair of the council, and as you start to get into the committee, you see that the list starts to develop quite quickly.
1796. We are saying that it would be for individual parties to determine the positions that they want to hold. So, the largest party will have first choice if a council decides to use d'Hondt or Sainte-Laguë. It may choose to have the chair in the first year, but it could select another position. When you work it through, you see that doing it over the four years provides an opportunity for political parties with lower levels of representation and independents to hold one of those positions.
1797. **Ms Broadway:** The way that it will work is that all the positions for the four-year term will be identified at the beginning of the process. For each position, there will be four choices: year 1, year 2, year 3 and year 4. When d'Hondt or Sainte-Laguë is worked through, the party that gets first pick will decide which position it wants and which year it wants it. The next party will then decide. So, the bigger parties will have a say at the beginning, but because you have so many posts, everyone should

- have a chance of having a position of responsibility across the four-year term.
1798. **The Chairperson:** That will still favour the bigger party, however, because it will have the first pick.
1799. **Lord Morrow:** That is called democracy.
1800. **Mr Eastwood:** I want to ask about a technical issue. There is no mention of the mayor or deputy mayor. It will probably be different in different councils. Sorry, I am not looking at the Bill.
1801. **Mr Murphy:** The interpretation —
1802. **Mr Eastwood:** That would just be chair.
1803. **Mr Murphy:** — would provide that the chair is a chair in a borough.
1804. **Mr Eastwood:** I understand that.
1805. **Mr A Maginness:** To clarify, Julie is saying that, whatever system you are using, that will be done collectively at the beginning of a council term for the whole period of that term and that it will stand.
1806. **Ms Broadway:** That is right.
1807. **Mr A Maginness:** There is no deviation from what is permitted under the legislation.
1808. **Ms Broadway:** If, for example, another position of responsibility is identified during that period, you would just continue running the system where you left off.
1809. **Mr A Maginness:** Yes, that clarifies things.
1810. **Mr Murphy:** The Department will issue the practical guidance to support the operation of the three mechanisms across the councils, which will go into those details. The policy development panel originally considered some of that guidance, but we are now refining that to make sure that it is clear how the process should operate.
1811. **Mr Eastwood:** If there is a situation where d'Hondt or whatever has to run on, in case somebody goes independent, will that be done on the basis of party strengths at the election?
1812. **Mr Murphy:** Yes. The whole process is based on the result at the local government election. The political parties on the policy development panel held that view. That was at a point in time when the public had expressed a view about who they wanted to represent them. That view was that they did not want continual reallocations simply because of the personal choices of individuals who had decided to either become independent or to move to a different political party. So, the local government election is the base point.
1813. **The Chairperson:** Does that mean that the positions of responsibility will be established shortly after the elections this year?
1814. **Mr Murphy:** Yes.
1815. **The Chairperson:** So, that means that it will not happen in 2015?
1816. **Mr Murphy:** There is an issue with that, and we will make provisions for it in the transition arrangements. It is unlikely that, in the shadow period, a council will have a clear idea of the number of committees that it wants to form. If you then applied d'Hondt after the election this year, it could skew the sharing of the positions across the various parties. We will be going out to consultation on that.
1817. **Ms Broadway:** We will be going out to consultation, and, of course, we have to put the draft regulations to the Minister for his agreement. We have been talking about this at the legislation working group, and the discussion is that this process should start from April 2015. Governance arrangements will apply during the shadow period but only for that period. For example, if during that shadow period, the incoming councils decide to set up convergence committees or whatever committees they think that they need to set up during the interim period to enable them to converge, the new governance arrangements will apply during that period but for that period. We are working through this, and it has to be presented to the Minister for his consideration.

1818. **Mr Eastwood:** I apologise if the answer to this question is somewhere else in the document, but will there be extra remuneration for positions of responsibility?
1819. **Ms Broadway:** Yes.
1820. **Ms MacHugh:** For some of them.
1821. **Mr Eastwood:** Will that be set out?
1822. **Lord Morrow:** For the ones who behave.
1823. **Ms MacHugh:** Not for some councillors; for some positions of responsibility. That is all being worked through with the outworkings of the remuneration panel's report. The Minister is going out to a targeted consultation on the proposals in that report, and he will respond to that. That is happening in the next few weeks.
1824. **The Chairperson:** Are members content with clause 10?
1825. **Lord Morrow:** I am not objecting, but I am reserving my position on this one. I suspect that this one has a wee bit further to go. That is what I mean when I talk about saying one thing in here and saying something else in the House. We all have experience of that, where we wonder sometimes whether we were at the same meeting. I am just saying that.
1826. **The Chairperson:** Members are at liberty to say whatever they want to say in the Chamber.
1827. **Mr A Maginness:** For the sake of clarification, Chair, the broad consensus — I put it as broadly as that — is the position that you have presented to the Committee today. That is the broad political consensus across the political parties.
1828. **The Chairperson:** It will be to share positions at the very beginning over the four years by d'Hondt, Sainte-Laguë or STV. It is up to the councils to decide which they want.
1829. **Ms Broadway:** Councils will have the flexibility to decide, but once they decide, a schedule will set out exactly how the process will work, and we will issue procedural guidance to help councils.
1830. **The Chairperson:** Are members content with the explanation?
- Members indicated assent.*
1831. We will move on to clause 11, which is on arrangements for discharge of functions of councils. Clause 11 provides that a council may arrange for any of its functions to be discharged by a committee, subcommittee or an officer of the council, or by another council.
1832. There are a number of issues with the clause. The first one is that the term “borrowing money” may be a bit vague and should be amended to “affordable borrowing limit”. There is a suggestion to amend clause 11(3)(c) to allow the acquisition or disposal of minor or technical correction of land and way leaves.
1833. **Ms Broadway:** We need to look at the issue of borrowing money, because we need to know how that reflects against the Local Government Finance Act 2011, under which a council has a duty to determine an affordable borrowing limit. We will perhaps need to make an amendment to that, but we will have a look at it.
1834. **Ms MacHugh:** It may not be a case of having either term but both, because an argument could be made that all of council would want to know — for example, before deciding on whether to proceed with a development project — where the money will come from and whether it should be borrowed. Therefore, there is not only the potential for individual decisions on what to borrow for but on what to put the limit at. That limit is set through the prudential code, and councils will need to determine, based on their assets and their borrowing ability, what they determine to be an appropriate level. They set their borrowing limit. The Department's current guidance suggests that that should be somewhere between 5% and 7.5% of the councils' total operations. Councils should not be in the red by more than that and

- should have enough cash to keep them going. That is looked at by the auditor. However, a council needs to make that determination for itself. We may need to look at amending the clause to include both, but we will consider that and put advice to the Minister.
1835. **The Chairperson:** Are members content with that explanation?
1836. **Mr Boylan:** I am trying to find out what NILGA said. If I remember correctly, it said that councils will be looking for a wee bit of flexibility. Linda outlined the percentages. I will need to come back on that, but I am content at the minute.
1837. **The Chairperson:** I am trying quickly to find out for you what it said.
1838. **The Committee Clerk:** It is at the very beginning of the comments on clause 11.
1839. **The Chairperson:** We do not have the page number. It is under Part 4, which is on discharge of functions.
1840. **Mr Boylan:** It is grand, Chair. I will leave it at this point.
1841. **The Chairperson:** The view of the Northern Ireland Local Government Association (NILGA) is that it:
- “has no objections to this clause , but would suggest that the list of functions reserved for the council is more clearly defined, for example, to exclude minor technical land disposals, way leaves, small loans etc.”*
1842. **Lord Morrow:** The Bill states that a council may arrange for the discharge of any of its functions:
- “by a committee, a sub-committee or an officer of the council”.*
1843. Is that an officer of any rank?
1844. **Mr Murphy:** That would be a matter for determination by individual councils within a scheme of delegation.
1845. **Ms MacHugh:** For example, if there were minor planning applications, and the council felt that those could be determined at officer level, it could make provision for that. Alternatively, the planning committee could decide that all planning decisions need to go through the committee. Again, the council would need to determine that for itself.
1846. **Mr Eastwood:** You now have the streamlined system in most cases.
1847. **Ms MacHugh:** Yes, and my planning colleagues are now talking very closely with local government to see how it would like to adopt the planning process. The Department intends to provide a framework, but, within that framework, there will be decisions that councils need to make for themselves.
1848. **The Chairperson:** You do not want to be criticised for being over-prescriptive.
1849. Members, we will move on to clause 12, which is on arrangements by one council for discharge of functions by another council. The clause places limitations on making arrangements for the discharge of functions under executive arrangements. One comment is that the clause seems unnecessarily complicated. What is your view?
1850. **Mr Murphy:** I think, Madam Chair, that the clause is in there to address the scenario in which, because we are providing options for the governance structures, council may be operating a traditional committee system where, by and large, decisions will be taken by a council but a neighbouring council may have opted to take executive arrangements for a range of functions, where the decision will be taken by that executive without further reference to the council. Its purpose is to ensure that arrangements are in place. We are not preventing the two councils from arranging for one of them to discharge the function of the other, but the clause sets out the processes for who makes those decisions if there are differing overarching governance arrangements. It is not the role of the Department or the intent of the clause to prevent that from happening. It is merely to set out the framework.
1851. **The Chairperson:** Are members content with that explanation?

Members indicated assent.

1852. **The Chairperson:** No comments were received on clause 13. It is on arrangements for discharge of functions by councils jointly. The clause provides for the establishment of a joint committee —
1853. **Mr Boylan:** Chair, on the previous clause, I am trying to think of an example of a council discharging the functions of another. Can you perhaps come back to us on that? I know that it is a difficult one. I am just trying to get an example of exactly what that would entail.
1854. **Ms MacHugh:** It could be, for example, to do with shared services. If a decision were to be made in local government that involved a specialised element of planning — for example, mineral planning permissions — on which there was not enough of a quantum of work for minerals specialists to be embedded in each of the 11 councils, you might find that councils end up sharing that expertise. That is one working example that comes to my mind, but I am sure that there are plenty of others.
1855. **Mr Murphy:** I think, and I may be wrong on this because my information may be out of date, but my understanding was that, in certain areas of Castlereagh Borough Council, refuse collection was undertaken by Belfast City Council.
1856. **Ms MacHugh:** It could simply be because of the geography of —
1857. **Mr Boylan:** But especially for shared services.
1858. **Lord Morrow:** Cookstown never did that for Dungannon.
1859. **The Chairperson:** Councils differ quite a lot in the things that they can and cannot recycle, for example.
1860. OK. We will return to clause 13. The clause provides for the establishment of a joint committee between two or more councils to discharge a function of the participating councils. Are we happy with the clause, members?

Members indicated assent.

1861. **The Chairperson:** OK. No comments were received on clause 14, which is on the exercise of functions not prevented by arrangements under Part 4. The clause provides that the council or a committee is not prevented from exercising a function if it has arranged for that function to be discharged by a committee or subcommittee. Are members content?

Members indicated assent.

1862. **The Chairperson:** Clause 15 is on the appointment of committees, etc, for the purpose of discharging functions. The clause provides that a council may appoint a committee, and two or more councils may appoint a joint committee, to discharge functions.

1863. I think that there was an issue with clause 15(3). A suggestion was made that clarification is needed on why external representatives may not be appointed to finance or audit committees. It is perhaps to do with outside influence. Are members content?

Members indicated assent.

1864. **The Chairperson:** Clause 16 is on the appointment of a committee to advise on the discharge of functions. Again, no comments were received. The clause enables a council, and two or more councils, to appoint a committee, which may include persons who are not members of the appointing council or councils, to advise on the discharge of functions. Are members content?

Members indicated assent.

1865. **The Chairperson:** Next is clause 17, which is on appointment of councillors to committees, etc. The clause gives effect to schedule 5, which provides for the sharing of membership of a committee between the political parties represented on the council. There were a couple of comments made. One was that it is too prescriptive as it relates to schedule 4. The other, again on schedule 4, is that precision of methodology will ensure consistency across councils.

1866. **Mr Murphy:** Again, Madam Chair, this comes from the discussions and outworking of the policy development panel. The representatives of the political parties agreed that there should be a formalised mechanism to ensure that the membership of a council committee reflects, as far as is practicable, the political balance on the council, so you are bringing that down to the different levels. The members agreed that two methods should be available for the council to choose from. One is droop quota and the other is quota greatest remainder.

1867. **The Chairperson:** Sorry, what is the second one?

1868. **Mr Murphy:** Quota greatest remainder. They are both quota mechanisms, but they have slightly different mathematical formulation. The formulas are set out in the schedule. As with the positions of responsibility, we will work with senior officers from local government to develop guidance on how it will operate in practice.

1869. **The Chairperson:** OK. Are members content with the explanation?

Members indicated assent.

1870. **The Chairperson:** Next is clause 18, which is on further provisions for joint committees. We received no comments on the clause, which provides that the expenses of a joint committee must be met by the appointing councils. Are members content?

Members indicated assent.

1871. **The Chairperson:** Clause 19 concerns disqualification for membership of committees. Again, we did not receive any comments. The clause provides that a person disqualified from being elected to or being a member of a council cannot be a member of a committee or subcommittee of that council, or of a joint committee on which the council is represented or one of its subcommittees. Are members content?

Members indicated assent.

1872. **The Chairperson:** We move to clause 20. There were no comments on the clause, which is on the declaration required of persons who are not members of a council. Clause 20 provides that a person who is not a member of a council may not act as a member of a committee until the person has signed a declaration agreeing to observe the Northern Ireland local government code of conduct for councillors. Are members content?

Members indicated assent.

1873. **The Chairperson:** We move to clause 21. There were no comments on this clause from stakeholders either. It is on voting rights of persons who are not members of a council. The clause provides that a person appointed to a committee who is not a member of the appointing council has no voting rights at meetings of that committee. Are members content?

Members indicated assent.

1874. **The Chairperson:** The next one is clause 22. Again, no comments were received. It concerns the termination of membership on ceasing to be a member of a council. The clause specifies that a person who is no longer a member of a council is also no longer a member of a committee of that council. Are members content?

Members indicated assent.

1875. **The Chairperson:** We move on to clause 23, which concerns permitted forms of governance. The clause sets out the forms of political governance that a council may operate for its decision-making. Those are executive arrangements, a committee system or prescribed arrangements. As you know, officials, there is a major issue with clause 23. It is unclear whether committees outside the executive, particularly quasi-judicial committees such as licensing or planning, would be subject to call-in or qualified majority vote (QMV).

1876. **Mr Murphy:** We are currently working with senior officers from local

government to look at the issues, which will then go to the Minister for consideration of how the clause will operate. In England, Scotland and Wales, planning, other regulatory functions and quasi-judicial decisions are not subject to call-in, because each will have its own inbuilt mechanism for appeal that relates to specific issues. Call-in could apply where there is a systemic failure or issue, but that is a matter that we are working through and will put to the Minister for his consideration.

1877. **The Chairperson:** OK, so there is no call-in on those committees? Is that right?

1878. **Ms Broadway:** On the quasi-judicial committees, such as planning. That is simply because they have their own means of appealing or calling in a decision.

1879. **The Chairperson:** I know that call-in is such a big headache now. It would certainly delay things no end if each committee could call in decisions. Are members content with the explanation?

Members indicated assent.

1880. **The Chairperson:** We move on to clause 24, which concerns the power to prescribe additional permitted governance arrangements. The clause gives the power to the Department to make regulations prescribing alternative forms of governance that may be adopted by a council. It provides that the Department must have regard to any proposals received from a council when it considers whether or how to make regulations under the clause.

1881. There are two issues with clause 24. One is whether the wording “must have regard to” is strong enough and should be changed to “must give effect to”. The other is to do with clause 24(6)(c), which states that additional governance arrangements must “be appropriate for all councils”. It is claimed that that may be a barrier to local government on governance.

1882. **Mr Murphy:** I will take the second issue first. That is there because we

are prescribing in the legislation a choice for councils between executive arrangements or a committee structure. We are not closing the door on other forms of political governance of councils. However, to ensure consistency, if a council comes forward with a form of governance that it feels would work for it, we need to assess whether it will fit in with the framework for the protection of the interests of minorities that are being built into those executive arrangements and the committee system.

1883. The Department has to ensure that any proposal that comes forward could be applied in any council so that you have consistency in the operation of the various factors. That is why the Bill states “have regard to”. A council may come forward with a proposed form of governance that the Department feels does not provide the protections and would not be applicable to the other councils in Northern Ireland. There needs to be flexibility for the Department to make that call. Any proposal coming forward would be considered by the Minister subsequent to officials having looked at it. It would then be specified in regulations that would be subject to the scrutiny of the Assembly.

1884. **The Chairperson:** Can you give me an example? What would the additional governance arrangements look like?

1885. **Ms Broadway:** At this stage, we do not really know what a council might come up with. The point is that, if a council comes up with another form of governance arrangement that is acceptable, we need to have a means to legislate for that. In considering that, we need to make sure that whatever form of governance they have come up with complies with the other provisions in the Bill on protection of minorities.

1886. **Ms MacHugh:** The spirit of power sharing is endemic in a number of areas of the Bill. That is something that the Minister certainly feels is required. The statutory transition committee regulations specify d’Hondt. Even

having specified d'Hondt, so many different versions of d'Hondt were used. It is an area in which we would like to see flexibility be applied for local government. However, for the purpose of consistency, in being flexible, we also need to make sure that the spirit and principles enshrined in the whole of the legislation are followed in whatever the alternative might be.

1887. **Mr Elliott:** Is that for all aspects of governance? In other words, could it apply to call-in and qualified majority vote, as well as to the form of governance, such as the executive or committee means of governance? Does it apply to all of that?
1888. **Mr Murphy:** It applies specifically to the permitted form. It is for if a council says, "Executive arrangements do not suit us. We do not want to use the traditional committee system; we want to come up with another form". However, as has been said, we would then need to look to see whether the form of political governance that it is proposing provides for and meets all the other requirements.
1889. **Mr Elliott:** Therefore, it is just to do with the form of governance.
1890. **Mr Murphy:** Yes.
1891. **The Chairperson:** OK, members. Lunch is outside. We will take a 10-minute break to get some lunch.
1892. **Mr Elliott:** We have only got to clause 24.
1893. **The Chairperson:** Tom, you came in late. I explained earlier that we would have a quick break and then go on until about 1.15 pm to try to get through as many clauses as we can. We have done very well, members. You have been excellent.

The Committee suspended at 12.00 noon and resumed at 12.20 pm.

On resuming —

1894. **The Chairperson:** Clause 25 relates to council executives. It provides that an executive of a council must take the form of a committee of the council, to be known as a cabinet-style executive, or

more than one committee of the council, to be known as a streamlined committee executive. There are a number of issues. With regard to clause 25(2) (b), it has been commented that the Bill does not specify which committees can be streamlined. With regard to clause 25(3), the chair and vice-chair are currently part of the decision-making process, with the chair often having a casting vote. That is not in the Bill. With regard to clause 25(5)(a), the minimum number should be more than four. Those are the three comments on clause 25.

1895. **Mr Murphy:** Clause 25 specifically deals with the executive arrangements. When this was being discussed by the panel, rather than going down the full route of saying, "A council will have a cabinet-style executive, the same as they have in England", we wanted to make provision for the transition from the traditional committee system to the full executive. So, there was the view that you would have the intermediate step of a streamlined committee executive, so that all the functions that would be the responsibility of an executive could be shared across a number of committees. It would still be an executive, but, rather than all the responsibility and power being invested in a single group of councillors, it could be spread across a number, and it would be for the council to decide whether that is two, three or four committees. That is a matter for each council to determine, if they go down that executive route.
1896. The chair and vice-chair of a council — or the mayor and deputy mayor, if that is the case — are excluded because they are holding almost a civic role and should be representing the whole district, and they should not be part of the decision-making arm. It also provides them with an independence, and if issues are called in and brought to the full council, they are looking at it without having the need to recuse themselves from the process. In saying that, there is nothing within the other provisions in the Bill on access to meetings etc that would prevent the mayor and deputy mayor or chair and

- vice-chair attending meetings of the executive so that they are aware of what is happening in the overall business of the council.
1897. **The Chairperson:** They can attend but not vote.
1898. **Mr Murphy:** That is correct. The chairs and vice-chairs of a lot of councils attend meetings of committees but do not have the right to vote. That facility would be available for them.
1899. The minimum number tried to strike a balance. If you look at other jurisdictions, you see that an executive can comprise a leader of the council and two others. It was felt that three was too few, whereas four started to provide the opportunity for a cross-party executive to be formed, if the parties wanted to take up those positions. That is why it was struck at four. The maximum was set at 10 on the basis that this was all around improving and delivering efficient and effective decision-making. If you start to get into a larger number, that starts to change, but there is the provision that we can change the maximum number if we find that it is not appropriate.
1900. **Ms Broadway:** There is no provision at the minute to change the minimum number. If it was thought that the minimum of four was too small, we can take that back to the Minister to get his view on whether we change that number to another number, such as five, or whether we provide a means by regulation to modify that once we have specified a number in the legislation.
1901. **The Chairperson:** Was the number four recommended by the policy panel? How did it come about?
1902. **Mr Murphy:** I cannot recall, Madam Chair, whether the policy development panel dug down into that fine level of detail. I know that there was a discussion around whether it should be enforced cross-party in terms of the positions of responsibility or whether it would be left as a matter for individual parties to decide whether they wanted to take positions on the executive or whether they wanted to reserve their position and take positions on the overview and scrutiny.
1903. **The Chairperson:** You run the risk of parties excluding others if they adopt a minimum number of four.
1904. **Ms Broadway:** As I said, we can take the issue of amending that number back to the Minister.
1905. **The Chairperson:** Members, what do you think?
1906. **Mr Eastwood:** On the first issue in respect of the mayor and deputy mayor and the chair and vice-chair, I have no fixed view on it yet, but, from my experience, it was always useful to have the mayor in there when decisions are being made, whatever the issues are, because they are the person who usually has to go out and defend it. It is not just a civic role; it is not just cutting ribbons. It is a lot more than that if you want it to be. It is almost a political role in that they have to defend the position of the council when something goes wrong. I always had to do that anyway. Nobody else was there to do it. I think that there is good practice in having them in there as part of the decision-making process.
1907. **Ms Broadway:** What about voting rights? I ask so that we can take it back to the Minister.
1908. **Mr Eastwood:** It is different now because every major decision was made by council eventually. In subcommittees that were created, you tried to get agreement, but the mayor always had a vote.
1909. **Ms Broadway:** An issue that was raised last week was the possibility of having mayors and chairs as ex officio members of the executive. That is something that we can take back to the Minister. As John said, if it is an issue about access to information, a mayor would, through the other provisions in the Bill, have access to information, but, as you said, it may be more about the debate or being aware of the debate.
1910. **Mr Eastwood:** If you are going to have to defend something, you want to be part of the decision. I can see the drawbacks

- in that it can skew d'Hondt. I understand all that, but I think that it is worth considering.
1911. **Ms MacHugh:** There is an issue around overview and scrutiny as well.
1912. **Mr Murphy:** It is not so much the skewing of d'Hondt; it is the fact that once you become part of the decision-making process in the executive, you are then excluded from the overview and scrutiny of that decision if it is called in. If it is called in and goes to the council, you have been part of that decision. You cannot be part of the overview and scrutiny arrangements under executive arrangements because it is different.
1913. **Mr Eastwood:** You could just be chairing the meeting of the council. As I have said, I am just asking the question. I have no fixed view, and I will consider it further.
1914. **The Chairperson:** We are at clause 25.
1915. **Mr Boylan:** I do not want to prolong the meeting. I understand where Colum is coming from. From my experience of executive operations in Armagh, we send a party colleague in there and they take the party view, and it normally goes as a recommendation to corporate council. I understand what you say about the mayors. In one case, there would be no point in forming the committees and electing chairs and sending party members in as a subcommittee to make a decision or perform a scrutiny role, and then turn round and have to have the mayor. Sometimes, the chair of that committee will speak on behalf of the committee. I see merits in both. It is a question of going back to the minutes, perhaps. I can see both arguments.
1916. **Mr Eastwood:** I will think a bit more about it.
1917. **Mr Elliott:** Just for clarification on those points — it is an interesting debate — I assume that the body has executive powers, though, so that it does not have to be taken to full council? I think that that is the issue. That is the issue that I would have concern with, if the chair and vice-chair were to be excluded from it. Obviously, they are pivotal to the council, especially in the system that we have here, in that they are just elected representatives who happen to be the chair and vice-chair by nomination, appointment or election of the council. They are not separately elected in the way that the Mayor of London or mayors of other bodies are. That just gives me some concern. I have to be convinced that it is the right way of doing it, and I am not convinced yet. I do not take on your reasoning at this stage, but I am here to be convinced, simply because I have not seen it in operation.
1918. **Ms MacHugh:** I suppose that the driver for barring them at this stage is that, as you say, if a decision is made by an executive, it does not go to full council; however, if it is challenged and called in to the full council to consider, what role would the mayor or chair play in that process if he or she had been an intrinsic part of making the original decision? They would have to excuse themselves at that point, and somebody else would have to take on that wider scrutiny role for the whole of the council.
1919. **Mr Eastwood:** The way it works normally is that councillors take on the scrutiny role. The mayor will chair the meeting, but it would not be the case that the mayor is scrutinising on behalf of the council, because all the councillors have that role.
1920. **Mr Murphy:** However, as was said, if they had been involved in the decision-making under executive arrangements, they cannot be involved in the scrutiny of the decision that they have actually made.
1921. **Mr Elliott:** Just for clarity, because this is an important point, does that mean that none of those executive members could be involved in the voting, within full council, during a call-in decision?
1922. **The Chairperson:** Yes. I see your point. They would have to excuse themselves because they were involved in the decision-making process.
1923. **Mr Murphy:** Yes.

1924. **Mr Elliott:** Yes.
1925. **Ms Broadway:** I think that we need to give that further thought. However —
1926. **Mr Eastwood:** Look at the parliamentary system. Ministers get votes on issues that they have decided upon. It seems a bit strange. Surely, we are trying to foster a joined-up thing, whereby everybody is involved in the process.
1927. **Ms MacHugh:** That is a very valid point. I absolutely accept that the whole of the council would be involved in the scrutiny process, but somebody would need to lead that process. If it is not the mayor or the chair, or the deputy mayor or vice-chair, who is it going to be? That leads to further —
1928. **Mr Eastwood:** I do not quite understand what you mean by “lead the process”. What they would be doing is chairing the meetings. Party leaders or whoever would be coming in then. It seems strange to me, but anyway.
1929. **Ms Broadway:** You do not think, then, that there is an issue where someone has taken part in the decision-making and, when it comes to the overview and scrutiny of the decision, is also scrutinising it? I ask so that we can be clear what we need to take back to the Minister and look at again.
1930. **Mr Eastwood:** Any Minister here votes in the Executive and then goes into the Chamber and votes on that decision.
1931. **Mr Elliott:** I do not see that as being an issue because under the current committee system — I can speak only from my experience — the chair and vice-chair are ex officio and have votes on all committees. So, they have a vote at the committee. It then goes to full council where they chair the meeting. They may not agree with the decision; they may have actually voted against it at committee, but they still chair the meeting, and they still have their vote in full council. So, I do not see the difficulty there. If there is one, obviously we need to tease it out here now or some time before the legislation goes through. It is an important issue, particularly given that it is reasonably new, apart from the likes of Armagh having a type of executive process, and I think that Castlereagh does it with some committee. There are small examples but nothing significant, and it may be a new concept that we need to get right because other councils may want to implement it.
1932. **Mr Murphy:** That is key because, under executive arrangements, unless decisions by an executive are called in, they will be implemented within a specified time. They will not be routinely referred back to the full council.
1933. **Mr Elliott:** I accept that.
1934. **Mr Murphy:** My understanding is that Armagh has an executive with four members — one from each of the main parties — then the full council acts as the overview and scrutiny. However, the chair of the council is not a formal member of that executive. It is just —
1935. **The Chairperson:** It seems so odd to think that the two supposedly most important positions of chair and vice-chair or mayor and deputy mayor are not included in that decision-making —
1936. **Mr Eastwood:** In the public eye, the mayor or chair is the face of the council and has to answer —
1937. **The Chairperson:** Yes, and it just seems so odd that they are not included in the decision-making process. Why should they be outsiders?
1938. **Ms Broadway:** I think that we are saying that we need to go away, tease out all of these issues, take them to the Minister and bring them back to you.
1939. **Mr Boylan:** We do not mean that you need to go away, away. *[Laughter.]*
1940. **Mr Elliott:** At this stage, I do not think that there is a huge argument over it. It is just that we want to get it right. I have heard from some councils that they are quite attracted to the idea of having an executive process. So, it might be used in a number of areas, and we need to make sure that it is right. That is all.

1941. **The Chairperson:** OK.
1942. **Lord Morrow:** When we try it out for 10 years, we will see how it works. *[Laughter.]*
1943. **Mr Elliott:** Then, we will review it for five.
1944. **The Chairperson:** What about the minimum number? Do we want the officials to go away and think about a higher number than four? Would six act as a safeguard? Would there be any problem with increasing it to, say, six?
1945. **Mr Boylan:** It is up to the council to decide whether it wants more.
1946. **Ms Broadway:** It is just a minimum of four, but they can choose.
1947. **Mr Murphy:** A council could choose to have five —
1948. **Ms Broadway:** Up to 10.
1949. **Mr Murphy:** — or whatever.
1950. **The Chairperson:** But the minimum number is five. So, it could be that some councils say that they will go for the minimum —
1951. **Mr Boylan:** The minimum number is four, Chair, but the whole idea is that it is up to the council. We have been asking all along in this process for flexibility. A council can select five or whatever it wants.
1952. **Lord Morrow:** Tell them to look out three wise men and three wise women from among them.
1953. **The Chairperson:** Your party colleague suggested five, Lord Morrow. I think that Peter suggested five.
1954. **Mr Boylan:** Give him a ring there, will you? *[Laughter.]*
1955. **The Chairperson:** Will we let it go and leave it at a minimum number of five and —
1956. **Mr Boylan:** Four.
1957. **The Chairperson:** Yes, and will we discuss further the positions of the chair and the vice-chair?
- Members indicated assent.*
1958. **The Chairperson:** There were no adverse views on clauses 26 to 30. Are members content that we move on to clause 31?
- Members indicated assent.*
1959. **The Chairperson:** Clause 31 relates to overview and scrutiny committees' functions. The clause outlines that executive arrangements must ensure that these committees have power to make reports and recommendations, either to the executive or the council, on any aspect of council business. Stakeholders commented that clause 31(2) needed to clarify at which point an overview and scrutiny committee should review a decision and whether call-in or the overview and scrutiny committee should take precedence.
1960. **Mr Murphy:** An overview and scrutiny committee is being given flexibility to look at the system that the executive is operating. The idea is not necessarily to drill down into individual decisions each time. It is looking at the policies and processes that the executive has in place. The call-in procedure provides a formal mechanism for decisions of an executive to be called in for scrutiny. We are working with senior officers from local government to develop the guidance on how overview and scrutiny will operate. As I said, the thrust of the policy- and procedures-oriented scrutiny should be around looking at and supporting the operation of the executive and the delivery of the council's functions. The specific decisions are really then dealt with through the formal call-in process that we are providing later in the Bill.
1961. **The Chairperson:** Sure. I understand.
1962. **Mr Eastwood:** If a council did go for an executive system, what is it envisaged that the full council would do outside of calling in those decisions now and again?
1963. **Mr Murphy:** It would be setting overarching policies for the direction of the council and undertaking its civic

- representation. Not every function would be devolved to an executive.
1964. **Mr Boylan:** Scrutiny.
1965. **Mr Murphy:** You have scrutiny committees. It is likely, as I said earlier, that regulatory quasi-judicial functions will not be matters for an executive, so the council will be able to set up committees on those. There is a range of issues that will not be the responsibility of the executive. That provides that role for councillors who are not on the executive.
1966. **Ms Broadway:** We have been working with local government on the regulations on executive arrangements. There will be regulations on the executive arrangements, and there will also be guidance in relation to executives, which will include the overview and scrutiny arrangements. There will also be procedural guidance to explain how things should be done. We have also written to Departments on executive arrangements. If Departments are transferring functions or, indeed, the legislation is already in place and they have a policy role in relation to functions that councils carry out, we have been seeking their view on whether there is anything that should not be for an executive but needs to be for the full council to decide on. We have just completed a consultation with Departments on that. That will all feed into the regulations on the executive arrangements.
1967. **Mr Murphy:** One of the more significant issues that will need to be thought about as councils move forward is the whole issue of community planning. Should that be an issue for the executive, or is that clearly a matter that should be taken forward by the council as a whole? There are those sorts of issues. It is not that you are stripping all of the decision-making away from the council as a corporate body.
1968. **Ms Broadway:** The council can decide what will go to the executive. The legislation will set out that certain decisions cannot be devolved to an executive, but there is a range of decisions on which it is up to the council. It could devolve it to an executive, but it may decide that it does not wish to.
1969. **The Chairperson:** Are members content?
Members indicated assent.
1970. **The Chairperson:** There are no adverse views on clause 32. We just need guidance, so we will move on. Clause 33 is the same. There are no adverse views, but we want guidance, and you are providing it anyway. No comments were received from stakeholders on clauses 34 to 36. Are members content to move on?
Members indicated assent.
1971. **The Chairperson:** There are no adverse views on clause 37. Again, we call for guidance, and you are providing it.
1972. The trade unions fear that clause 38(2) may lead to a lack of transparency in the employment process. Do members want the officials to explain this? It relates to meetings and access to information. The clause provides the Department with powers to specify in regulations the circumstances in which meetings of the executive or its committees must be open to the public and the circumstances in which they must be held in private.
1973. **Ms Broadway:** There may be HR and staffing issues where it would not be appropriate for the information to be open.
1974. **Mr Eastwood:** I agree. There are lots of issues that you would want to be worked out in private before they are made public. People understand that. However, it might be useful if there were an outline as to how that should be done. It just says that the executive would decide. Maybe some criteria could be used to decide whether a meeting should be held in private.
1975. **Mr Murphy:** That will be set out in the executive arrangements regulations, and we are working with senior officers from local government to develop those. As

- with council meetings, the presumption is that meetings of the executive will be open, but there will need to be clearly defined circumstances when they could exclude the public. That would be around confidential information —
1976. **Ms Broadway:** It could be commercial-in-confidence information or HR matters. As you said, there may be a whole range of issues.
1977. **Mr Eastwood:** It makes a lot of sense; but you want to have a framework for how that would be done.
1978. **Ms MacHugh:** There are two pieces of legislation that local government is bound by, as is every part of government. You have freedom of information on one side, where the presumption is that there is absolute transparency and availability of every single piece of information, and, on the converse side, you have data protection law, which may also include personal information. There is also the commercial-in-confidence issue. In framing the guidance, we will look at the exemptions in freedom of information and the obligations in data protection in order to determine what types of information should be excluded from the public domain.
1979. **The Chairperson:** That would be set out in the guidelines.
1980. **Mr McElduff:** Is there something stronger than a presumption in favour of open meetings? Is there anything stronger than presumption in favour, so that open meetings do not just take place in very exceptional circumstances or whatever?
1981. **Mr Murphy:** Looking at the provisions for council meetings that are already in the Bill, the regulations for meetings of the executive would be a tailored version of those because of the nature of its decision-making. However, council meetings “must” be open, except in specified circumstances; it would always be the position to provide for that. You are trying to make sure, as much as possible, that meetings are open while setting out the very clear circumstances when the public would be excluded.
1982. **Ms MacHugh:** The phrase, “presumption in favour” is not in our Bill. It is related to freedom of information, where you must start from the viewpoint that you would be releasing the information unless there was reason not to.
1983. **The Chairperson:** As Barry said, the presumption is in favour of public access with a few exemptions. However, they will be listed and put in the guidelines. What about the suggestion to record council meetings, if people want to go into the details? If members do not attend meetings, they can look at the minutes, which, obviously, are not verbatim. Is it possible to add something to say that all council meetings should be recorded?
1984. **Mr Eastwood:** There would be very long meetings. Everyone would have to speak.
1985. **Mr Murphy:** Is that not a matter for individual councils? Belfast has a live stream, but we are trying to put that framework in place for councils in later clauses and the executive in having openness and transparency in how they transact their business. It is a case of striking a balance between being prescriptive to cover that transparency but then requiring councils to record or broadcast, which places the requirement on them for additional technical matters rather than simply ensuring that, say, the papers for a meeting and the minutes of that meeting are available for inspection at the council offices or on its website.
1986. **Ms Broadway:** The Bill specifies the minimum in relation to access. If a council then decided that it wanted to live-stream or record, that would be a matter for the council, but it would not be appropriate for us to be placing that possible financial burden on all councils.
1987. **The Chairperson:** OK. There have been incidents in some councils when a member said something and then denied ever having said it. It was not minuted because you cannot minute every sentence.

1988. **Mr Boylan:** I agree. I have been a councillor and there are occasions when you need to discuss things. HR is one issue; for example if you are talking about jobs in a council. Scrutiny is another example of when a council needs to discuss things. It is just about allowing that flexibility and giving the opportunity, otherwise you would get nothing done because every question would be asked. That is not to deny the public access to any documents or anything else, because they do find out at the end of the process in most cases. So, I am supportive of it.

1989. **Mr Eastwood:** Will all decisions be made in public?

1990. **Mr Boylan:** Generally, most of the time.

1991. **The Chairperson:** Cathal, you are supportive of making exemptions.

1992. **Mr Boylan:** I am supportive of giving councils that wee bit of latitude on some discussions that have to take place. However, the majority of decisions, if not all decisions, go into the public domain anyway.

1993. **Lord Morrow:** But not a verbatim recording.

1994. **Mr Boylan:** No, not verbatim. That is a different matter.

1995. **The Chairperson:** OK, are members happy? No amendments to this clause?

Members indicated assent.

1996. **The Chairperson:** Clause 39 makes provision for written records of prescribed decisions to be kept for meetings of the executive held in private, including reasons for the decisions. There is the same comment from the trade unions as for clause 38 about fears that this may lead to a lack of transparency. Another comment states that a provision should be inserted that the public can attend joint committee meetings only on written request. That is overly prescriptive.

1997. **Mr Murphy:** That goes against the concept of providing openness and transparency. Having to ask whether you

can attend meetings suggests that a council or joint committee could refuse admittance. The only reason that you would maybe want to look at this is for health and safety reasons in terms of access to a council chamber and the number that it may be able to hold. Senior officers in the subgroup have been looking at that issue. We take the view that you should not have to ask whether you can go to a meeting.

1998. **The Chairperson:** OK, are members content with the explanation?

Members indicated assent.

1999. **The Chairperson:** There were no comments on clauses 40 and 41.

2000. **The Chairperson:** Clause 42 makes provision for the timing and general arrangements for council meetings and requires councils to make standing orders for the regulation of proceedings and the business of councils and their committees. The comment on clause 42(2)(b) is:

“Clarification of which decisions of a committee must be referred to, and reviewed by, the full council.”

2001. Is that too prescriptive?

2002. **Mr Murphy:** This relates to the call-in procedure. Although the facility to reconsider a decision is provided for by clause 45, it is saying that standing orders should make provision for it. So, we are working with senior officers from local government to develop the rules for the operation of the call-in, which are likely to specify the decisions that would not be open to call-in and those that would, and the circumstances around them. So, you will have that procedure.

2003. We will then be using the power, subject to the Minister's agreement, provided in clause 42 to specify those particular rules as a mandatory element of a council's standing orders. Those will be specified in regulations and approved by draft affirmative procedure in the Assembly. Having gone through that process, a council will not be able to change or suspend that standing order.

2004. This clause is designed to allow us to specify the mandatory elements, of which there are a number. The call-in process and qualified majority votes are the two key aspects that are mandatory. But, it is that provision to enable us to ensure that the arrangements that are being put in place to protect the interests of minorities in the decision-making are firmly embedded in the council's procedures.

2005. **Ms Broadway:** We are also working with local government on model standing orders.

2006. **The Chairperson:** Are member content?

Members indicated assent.

2007. **The Chairperson:** Clause 43 provides for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority. There was one comment on clause 43(4) which states:

"Clarification required of the term 'simple majority' in the case of a joint committee."

2008. **Mr Murphy:** It is 50% plus one.

2009. **The Chairperson:** Whether it is a joint committee or not.

2010. **Mr Murphy:** Yes.

2011. **The Chairperson:** Fair enough. Are members happy with that?

Members indicated assent.

2012. **The Chairperson:** Clause 44 provides for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority. A number of comments were made on clause 44(1). The first was:

"No need for QMV — simple majority has been tried and tested."

The second comment was:

"Use of QMV may lead to a lack of decision-making."

The final comment was:

"This could result in QMV being applied to a series of decisions at committee level then full council."

2013. On clause 44(2), there was one comment:

"A very high percentage — 80% — has been stipulated."

2014. What is your view?

2015. **Mr Murphy:** The 80% was agreed by the political parties on the panel. It is not envisaged that it will apply to committees because the decisions that are likely to be specified would clearly be matters for council. From our discussions last week, a number of decisions would clearly be included in that; for example, the form of governance that would be adopted. As provided for in the legislation, there are methods that would be used to allocate positions of responsibility and in response to a valid adverse impact call-in. We are working with local government to refine the list and will put it to the Minister for consideration. As I said, it is more likely that strategic matters will be matters for the councils rather than the committees.

2016. **Ms Broadway:** We also have a mechanism to amend the percentage by draft affirmative resolution should it prove problematic in the next few years. There are means of dealing with it.

2017. **The Chairperson:** Are members content?

Members indicated assent.

2018. **The Chairperson:** We move on to clause 45, which deals with the power to require decisions to be reconsidered. The clause provides for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority. This is the call-in.

2019. A number of comments have been made. The first is how the call-in procedure will relate to the overview and scrutiny committees (OSCs). The next comment relates to clause 45(1)

- (b) and is that the reason for call-in has not been properly defined. The next comment relates to clause 45(2) and is that there is a need for definition of “practising barrister or solicitor”. Those points have been well rehearsed.
2020. **Mr Murphy:** The call-in would take the decision to the overview and scrutiny committee for review. The committee would determine whether to refer it back to the decision-makers for reconsideration or whether it was content to support it. We are working with senior officers to develop the process, tie it down and ensure that we strike the balance between ensuring the protections that it is designed to give and that it takes account of the practical arrangements in councils so that it does not impact on the transaction of business. It is about trying to strike that balance and looking at the whole procedure for the operation of the call-in.
2021. **The Chairperson:** What about different solicitors or barristers having different opinions? How would we address that? Maybe we should ask Alban about that.
2022. **Mr A Maginness:** I will sit this one out.
2023. **Mr Boylan:** We would get only one opinion. *[Laughter.]* We would get only one view, Chair.
2024. **The Chairperson:** How would we address that?
2025. **Ms MacHugh:** We have given some consideration to the practical outworkings of how a designated solicitor or barrister might be appointed —
2026. **The Chairperson:** The same person right through.
2027. **Ms MacHugh:** — or whether to have a panel, a list or a call-in and how that would overlay with the normal provisions in councils for legal advice. We can certainly see where some of the arguments are coming from, but it is unclear what the practical solution might be. Again, it is something —
2028. **The Chairperson:** It is also about the cost of appointing someone to be there to adjudicate all the time.
2029. **Ms MacHugh:** Yes. Is there a proposal that a panel be appointed through public appointments mechanisms? If so, in calling off, could that decision also be challenged as it is a certain solicitor? We will have to raise that with the Minister as clear concerns have been raised. However, at this stage, it is hard to see a practical outworking for it as an alternative to just allowing a council to determine where it seeks its legal advice.
2030. **The Chairperson:** Wherever you go, if someone wants to challenge it, it will be challenged. Shall we move on from this clause, members?
2031. **Mr Elliott:** Chair, NILGA made a suggestion that I thought was quite good. It was that there would be a panel that could give advice. I am not sure how a panel would be challengeable if it was appointed through the Judicial Appointments Commission or whoever. Anything is challengeable, I accept that, but I am not sure how that would leave you more open to challenge.
2032. **Ms MacHugh:** It may not leave you more open to challenge, but it would certainly be an additional layer and an additional cost. Also, where would that panel sit? Would it be part of the legal process or a separate body set up to provide dedicated legal advice to local government? That leads into the wider debate on shared services and whether this is something that local government would like to consider setting up for itself. All of those issues would need to be worked through, particularly the policy intent and the practical outworking.
2033. **Mr Murphy:** I think that it also needs to be considered in the context that the role envisaged for the solicitor or barrister is to confirm whether the councillors who are requesting the reconsideration of a decision have articulated their case about the section of the community impacted on and the adverse impact. It is simply providing validation. The final decision will be for the council to take. The role of the solicitor or barrister is not to provide a legal opinion on the recommendation

- or decision; it is simply to confirm that the call-in is valid. The matter then goes back to the council for a decision by qualified majority vote.
2034. **Ms MacHugh:** It is not a legal judgement; it is a legal opinion or advice that is being sought.
2035. **The Chairperson:** So it is about whether it satisfies the criterion of having the potential for adverse impact.
2036. **Mr Boylan:** On that point, if it was found that the number of council call-ins featured over a number of years, a panel could sit over the 11-council model. There might be two or 20 call-ins over a given period, and a single panel would certainly save on cost. It is a consideration.
2037. **The Chairperson:** We will have to stop soon, so I will summarise where we are. Will you come back to us on whether you will put to the Minister the option of a panel of solicitors or simply discuss that with him?
2038. **Ms Broadway:** We need to get the Minister's views on that.
2039. **Lord Morrow:** Put the Minister on the panel.
2040. **The Chairperson:** We will not change the call-in percentage, but you will provide guidance, a list of criteria, under which a call-in could be justified.
2041. **Ms Broadway:** If it becomes clear that the percentage is unworkable, the means are available by which it can be amended by subordinate legislation subject to draft affirmative procedure.
2042. **Mr Boylan:** I want to clarify that I am not saying that we should set up a panel but that there needs to be a mechanism in the legislation should we need to do so in the future.
2043. **Ms Broadway:** So it is not about setting one up now but considering an enabling power.
2044. **Mr Elliott:** Chair, I have an important general point that may clarify some of the issues. Some time ago, it was confirmed that we would have sight of regulations or further legislation before approving this. Some of the questions that we have asked today may be answered in those regulations. I just wonder when we will get sight of them.
2045. **Ms Broadway:** We can do one of two things: send you a copy of the latest draft of all of the legislation and guidance, which is quite a lengthy body of work; or, if it would be of benefit, provide you with a summary of each piece.
2046. **Mr Elliott:** Chair, it might be useful to get a summary, particularly on the issues that we have detailed.
2047. **Ms MacHugh:** We can do that, with the caveat that the drafts to date are premised on what is in the draft Bill. Should that change, we will have to amend.
2048. **The Chairperson:** OK. Thank you very much indeed. We will see you again next Tuesday.

4 February 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Barry McElduff
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Éilis Haughey	<i>Bill Clerk</i>
Ms Julie Broadway	<i>Department of the Environment</i>
Ms Mylene Ferguson	<i>Environment</i>
Ms Linda MacHugh	
Mr John Murphy	

2049. **The Chairperson:** I welcome Linda, John, Mylene and Julie. It is good to see you all. I will briefly remind you of the issues that have been raised on each clause. At the previous meeting, Cathal suggested that, unless specific issues had been raised about the clauses, I should just jump over them and go directly to those that stakeholders raised concerns about. I reiterate that this is only the initial consideration of the clauses to establish whether we have all the information that we need, whether we think that clauses may need to be amended or whether we require any further information from the Department.

2050. I remind members that, in the previous session, we finished at clause 45. So, we are going to start with clause 46. We did very well last time. In one session, we covered 45 clauses, so we hope to be quite speedy today, but, obviously, speed is not the main thing, and we need to answer all members' questions.

2051. There were no concerns from stakeholders on clause 46, so we will

move on to clause 47, which deals with access to agenda and connected reports. The clause makes provision for public access to meetings of councils and to the agenda and connected reports on issues that are to be discussed at a council meeting. There are some issues from stakeholders about clause 47. You can refer to Sheila's table. I will just read them out. There were trade union concerns that the provision may be used to circumvent employment obligations; others were concerned that, for practical reasons, the joint committee should be exempt from this; and the trade union said that, under clause 47(1), minutes should be published on the website. Linda or Julie, could you respond to those concerns, please?

2052. **Ms Linda MacHugh (Department of the Environment):** Clause 47 is trying to strike a balance between transparency, which is part of the premise of the Bill, and data protection issues, which would kick in if discussions were of a confidential matter or related to personal circumstances. It is important that those are maintained. So, we do not believe that what is proposed in clause 47 would trump the other issues that councils would use to determine whether a meeting was open or whether the report of a meeting was in the public domain. We said at the previous meeting that all the issues around transparency and openness in councils are driven by freedom of information on the one hand, and by data protection on the other. If data protection issues pertain, clearly the meeting would not be in the public domain.

2053. **The Chairperson:** What about the suggestion, which I think I mentioned the previous time, about recording council meetings as a matter of reference? Is that going too far?

2054. **Mr John Murphy (Department of the Environment):** I think that it is a matter for the individual councils to determine how far they want to go on that. The legislation provides a framework for what should be open to inspection by the public. If an individual council wants to go for recorded meetings or to go as far as Belfast has gone and stream meetings on the web, that is a matter for the individual council.
2055. **The Chairperson:** If it is not in the Bill, however, councils do not have to do it.
2056. Do members have any questions? No. Are you happy with the explanation?

Members indicated assent.

2057. **The Chairperson:** We will move on to clause 48, which deals with the inspection of minutes and other documents after meetings. The clause makes provision for public access to meetings of councils and the agenda and connected reports on issues that are to be discussed at a council meeting. Issues that stakeholders raised include the logistical problems for councils in maintaining hard copies, meaning, therefore, that electronic copies may be adequate.
2058. **Mr Murphy:** I think, Madam Chair, that we are not necessarily specifying the method of storage. We are saying that the council must have those papers available for inspection for a specified period after the meeting. If a council was to move to holding a physical record for, say, a year, but then moved to electronic means, that is a matter for the council, provided that it can then access that information if someone comes along later wanting to inspect the papers.
2059. **The Chairperson:** That is fair enough.
2060. **Mr Weir:** I suspect that it may be the case that, as for a number of things that have been mentioned, it is a question not of changing legislation but of getting a bit more clarification. I wonder whether the intention for some of those issues is that, at some stage, the Department will give some guidance. What you said is fair enough, but I think that the clarity of having that in writing may be helpful.
2061. **Mr Murphy:** That is certainly something that we could consider putting out.
2062. **Mr Eastwood:** What happens to the minutes after the six-year stipulation?
2063. **Mr Murphy:** Again, it would be a matter for the council whether it wants to continue holding those or to destroy them. If an issue has not been raised within the six-year period, you can move on. That covers almost a term and a half of a council.
2064. **Mr Eastwood:** I am not so concerned with issues that might be raised. I think that six years is probably adequate for that. I am thinking historically, and access to those records could be useful, rather than being —
2065. **Ms MacHugh:** If they are seen to be a public record, I suppose that there is always the option of putting them into the Public Record Office of Northern Ireland. That is possibly the best place for them.
2066. **Mr Weir:** I presume that the six years was chosen because that is the period in which any legal action for negligence could be taken. The statute of limitations could have some relevance in that regard.
2067. **The Chairperson:** They will not be destroyed. If someone wants to find them, they can be found in the Public Record Office.
2068. **Ms MacHugh:** If, after six years, the council determined that it did not wish to maintain or hold the records physically itself, there would be the option of passing them to the Public Record Office.
2069. **The Chairperson:** Does that satisfy you?
2070. **Mr Eastwood:** I would like to see them held somewhere. I think that it makes a lot of sense if historians looking back can see them.
2071. **The Chairperson:** Are you happy with that, Colum?

2072. There are no responses from stakeholders to clause 49.
2073. We will move on to clause 50, which relates to applications to committees and subcommittees. It makes provision for public access to meetings of councils and to the agenda and connected reports on issues to be discussed at a meeting of the council. The issue raised is about concerns that were expressed at the application of public access to subcommittees as well as to committees.
2074. **Mr Murphy:** That is coming from the perspective of trying to provide transparency across the whole decision-making process. A council can arrange for a committee or a subcommittee to discharge a function, and, if a subcommittee is part of the council's decision-making process, it would be appropriate for those records to be open to inspection, because they fall under part of the record of how a council eventually arrives at the decision. Equally, the meeting should be open to the public, unless the subcommittee is discussing confidential or excepted matters.
2075. **The Chairperson:** That could be in closed session.
2076. **Mr Murphy:** Yes.
2077. **The Chairperson:** Are members content with that? I know that a lot of the issues that are raised at those meetings could be fairly informal, and, if a straitjacket were put on the councils to say that the minutes will be published, there may not be such a flow of expression.
2078. **Mr Weir:** It depends on the freedom of manoeuvre that there is in councils. At times, there is merit in not necessarily having some discussions in the public domain so that people can be very full and free in what they say. To look at this through the semantics of it, the only issue is that, if you straitjacket committees and subcommittees, I suspect that that discussion will simply happen outside those committees. So, from a practical point of view, how massively further forward would you be?
- All those things may be immaterial. It may be a conversation in a corridor or whatever, or it may have a slightly more formalised structure. I think that, with the best will in the world, people will always find ways to get around that. As has been seen in various councils at times, there have been issues because there was press coverage or whatever. Something stupid may have been said, not necessarily by a representative of the council —
2079. **The Chairperson:** No, never.
2080. **Mr Weir:** I will give an example that may not necessarily be a serious suggestion. For example, I can think of one council that was looking at public suggestions for a play park, and a member of the public suggested — facetiously, I suspect — that it should be called the 'Michael Stone Play Park'. That was a facetious comment, which, I suspect, none of the councillors took seriously, yet it was then reported that that council was seriously considering giving that park that name. You get a range of that type of thing where there can be misrepresentation. Whether it specifically excludes subcommittees or whether it could be done by informal arrangements, I suspect that there will be ways around it, no matter what is in the legislation.
2081. **The Chairperson:** With the new councils, we want to be seen to be transparent and accountable. If you say that you do not want to publish minutes of subcommittees, you will not get the public's confidence —
2082. **Mr Weir:** There may be a distinction with the publication of minutes that reflect decisions that have been taken, but there may be a slightly separate emphasis on simply having them completely open. Everybody could misrepresent what was said on that occasion. That is where there is a little bit of distinction in it, to be honest.
2083. **The Chairperson:** Do members have any other queries? Are members content?

Members indicated assent.

2084. **The Chairperson:** We will move on. The next clause is clause 51. There were no adverse views, but guidance and clarification were asked for.
2085. There is new information on clause 51. This clause concerns additional rights of access to documents for members of councils. It provides that, subject to specific exclusions, any council document relating to any business that is to be discussed at a meeting of the council, committee or subcommittee is to be open to inspection by any member of the council. The Examiner of Statutory Rules suggested that, under clause 51(5), powers should be subject to draft affirmative, not negative, resolution. We need an amendment to that. Are members content?
2086. **Mr Elliott:** Clause 51(2) states:
- “Subsection (1) does not require the document to be open to inspection if it appears to the clerk of the council that it discloses exempt information.”*
2087. Where is the definition of the exempt information? I am sure that it is in here somewhere.
2088. **Mr Murphy:** It is in part 1 of schedule 8.
2089. **The Chairperson:** OK. We will move on to clause 54(2). The Examiner of Statutory Rules suggested the same and said that the power should be subject to draft affirmative, not negative, resolution. Are members content?

Members indicated assent.

2090. **The Chairperson:** There were no comments from anyone about clause 55. We will move on to clause 56, which concerns the code of conduct. The clause provides for the Department to issue the Northern Ireland code of conduct for councillors. There were a number of issues. The first is the need for supplementary guidance to cover elected representatives on public bodies. In clause 56(1), there is a need for a code to address the relationship between staff and councillors, and there should be a duty on the Department to issue the code. The word “must” should be used, not just the word “may”.

2091. A suggested amendment to clause 56(3) is that the principles should be underpinned by fairness and equality, taking account of the categories listed in section 75(1) of the Northern Ireland Act 1998. I know that the Committee on the Administration of Justice (CAJ) mentioned community relations. Maybe that could also be clarified in clause 56(3).
2092. **Mr Weir:** The only point that occurs to me about that is that I thought that all legislation had to be underpinned by compatibility with section 75. I appreciate what is being said, but, apart from anything else, if there was direct reference in the Bill to section 75, is there not a danger that it could be interpreted that section 75 did not apply elsewhere? If you make something explicit in one part, and there is no reference to it elsewhere, that can sometimes give the impression that it is relevant only to that particular part.
2093. **Ms Julie Broadway (Department of the Environment):** The duty is already there.
2094. **The Chairperson:** The general rule is that you do not like to make reference to other legislation.
2095. Are members content with that explanation?
2096. **Ms MacHugh:** On the code of conduct for staff and the code of conduct for councillors, local government reform is looking at the code of conduct for staff. Clearly there is a need for a further piece of work to bridge the two codes, because there will be cross-referencing of how staff relate to councillors and vice versa. So, we intend to bring together a joint group of representatives from local government, including elected members and representatives from the forum representing employees, to look at the protocol that will link the two codes.
2097. **The Chairperson:** That is important, particularly, I think, with the planning function coming on board. You have the professional planners on the one side, then you have councillors who are maybe used to being lobbied by the

- business sector or residents. So, that is being developed.
2098. **Ms MacHugh:** A link between the two codes will be developed.
2099. **The Chairperson:** Is that going to go out for consultation?
2100. **Ms MacHugh:** I would imagine so. Certainly, there is a trade union consultation for anything that is agreed through the forum. However, it will also be part of the formal consultation on the code itself.
2101. **The Chairperson:** Are there any questions? As members are content with the officials' explanation, we will move on.
2102. It is suggested that clause 56(1) states that there should be a duty on the Department to issue the code. It is suggested not to use the word "may" but the word "must".
2103. **Ms Broadway:** The thing is that we are going to issue a code.
2104. **The Chairperson:** You are going to issue it.
2105. **Mr Murphy:** That is right.
2106. **Ms Broadway:** It definitely will be issued.
2107. **Mr Weir:** Chair, it is a very minor drafting point, but possibly the appropriate word is "shall" rather than "must".
2108. **The Chairperson:** "Shall" is the same level as "must", is that right? Perhaps the Bill Clerk could help us with that.
2109. **Ms Éilís Haughey (Bill Clerk):** Chair, as you will remember from other Bills, the "may", "shall" or "must" issue comes up frequently. Our advice is that the words "shall" and "must" have the same effect. Changing "may" to "must" does not necessarily always achieve the intended effect. It can, in certain circumstances, create a situation where, once the action is taken for the first time, the duty is thereby achieved and the Department has met the requirement. Therefore, changing it to "must" would not have the ongoing effect that members might wish it to.
- So, whether such a change would have the desired effect depends on the particular circumstances.
2110. **The Chairperson:** So, which is better if we are saying that they really should do it? Is "shall" the better word?
2111. **Ms Haughey:** It depends on the circumstances. If the Committee wants to look into that or is not satisfied with the Department's explanation, I can certainly look into a Committee amendment. However, I am alerting the Committee to the fact that it does not always achieve the effect that you may wish.
2112. **The Chairperson:** When you use the word "must".
2113. **Mr Weir:** No. I think that she is saying that, whether it is "shall" or "must", it does not necessarily have the effect that is implied, because it requires it as a one-off gesture and does not necessarily mean that it is an ongoing issue. I think that that is what Éilís is saying.
2114. **Ms Haughey:** It may be that *[Inaudible.]*
2115. **Mr Eastwood:** What if they promise to do it? *[Laughter.]*
2116. **The Chairperson:** It is in the Hansard report now, so you have to do it.
2117. **Ms Broadway:** Can we give an undertaking that we will do it?
2118. **The Chairperson:** You shall, you will and you can. *[Laughter.]*
2119. **Mr Boylan:** We will take Julie's word for it. *[Laughter.]*
2120. **The Chairperson:** We will move on. Are there no more questions? OK.
2121. Next is clause 57 on guidance. The clause states that the Northern Ireland Commissioner for Complaints may issue and publish any guidance on matters relating to the conduct of councillors. An issue was raised that the guidance should be issued for consultation, particularly the elements relating to the planning function. I think that the commissioner has said that he will

publish guidance that will go out for consultation. Are members content?

Members indicated assent.

2122. **The Chairperson:** Next is clause 58 on investigations. The clause provides that the purpose of any investigation is to determine whether there is evidence of any failure to comply with the code, whether action needs to be taken in respect of the matters under investigation and whether an adjudication should be made by the commissioner on the matter under investigation.
2123. A number of issues have been raised. The first comment is that it is inappropriate for the commissioner to deal with a complaint from or about a councillor in respect of a staff member. The second comment is that a provision should be inserted to include a review of the role of the commissioner. There is another comment that there should be a preliminary internal investigation of a complaint, and a further comment states that there should be a mechanism to deal with minor complaints and that, under clause 58(1), the word “may” should be replaced with “must”. Will the officials comment, please?
2124. **Ms Broadway:** The first point is about staff: the commissioner will have the power only to investigate alleged breaches under the code of conduct, so the issue would not arise.
2125. **The Chairperson:** It is for anyone, whether a member of staff or a member of the public.
2126. **Ms MacHugh:** If it is a staffing matter, it would be dealt with through the normal employment regulations —
2127. **The Chairperson:** Grievance procedures?
2128. **Ms MacHugh:** Grievance procedures and complaints procedures from staff.
2129. **Ms Broadway:** At the Second Stage debate, the Minister said that he was going to review the ethical standards framework in three or four years’ time, so he has given an undertaking that a review will be carried out. As for dealing

with minor complaints, we have been looking at what is happening in other jurisdictions, and we need to discuss an amendment with the Minister. We will, in fact, discuss these issues with the Minister this afternoon. We could bring forward an amendment to address dealing with minor complaints, but we may be able to say more after this afternoon’s meeting.

2130. In Wales, the commissioner is able to refer matters back for local resolution so that they do not have to reach the stage of an investigation. If the commissioner thinks that an issue should be dealt with in-house in a council, he or she can refer it back to a council to be dealt with or can try to mediate before reaching the stage of an investigation. We have been looking at that and want to take the Minister’s view on it.

2131. **The Chairperson:** I think that that makes sense. If everyone had to have a formal investigation, it would be a waste of time.

2132. Are members content?

Members indicated assent.

2133. **The Chairperson:** What about “may” and “must”? Will we just leave that alone?

2134. **Mr Boylan:** We may do. *[Laughter.]*

2135. **The Chairperson:** I may. We will move on to clause 59, which deals with investigations and further provisions. The clause provides that the person who is the subject of an investigation should be given the opportunity to comment on the allegation put to the commissioner. Only one comment was made by stakeholders on the clause, which is that the guidance issued should incorporate the full details of the investigation procedure. I am sure that that will be done.

2136. **Ms Broadway:** Yes.

2137. **The Chairperson:** Are members content?

Members indicated assent.

2138. **The Chairperson:** We now move on to clause 60 on reports, etc. The clause provides for the commissioner

- to produce a report on the findings of an investigation and, when the commissioner considers it necessary in the public interest, to produce an interim report prior to the completion of an investigation.
2139. Two issues were raised by stakeholders. The first is about clause 60(1)(a) and it is that the commissioner should be compelled to issue a report. The next comment relates to clause 60(5) and what sanctions will be introduced for bogus allegations.
2140. **Ms Broadway:** If a councillor makes a bogus allegation against another councillor, it would be a breach of the code. The Bill does not deal with situations in which a member of the public or someone else makes a bogus allegation. I am not sure —
2141. **Lord Morrow:** Councillors make allegations about their colleagues every day of the week. *[Laughter.]*
2142. **The Chairperson:** We are talking about formal bogus complaints.
2143. **Ms Broadway:** On the issue of whether the commissioner should be compelled to issue a report in all cases, it may be that the commissioner, having carried out an initial review of a case, thinks that there is no need to carry out an investigation. If you were to report on that, it would mean that it would all be in the public domain, even if there was no evidence of a breach.
2144. **Mr Elliott:** I think that NILGA raised that point. Its concern was that, if a bogus claim were made against a councillor close to election time, it could have a detrimental effect on a councillor's ability to get re-elected, and the report or response may not come out until after the election, by which time it would be too late.
2145. **Ms MacHugh:** A lot will depend on whether the initial allegation was already in the public domain. If it was not, and it was published, that would be the way that the public would know that an allegation was made even though it was bogus. However, if a very public allegation is made, and the commissioner found that it was bogus, that should also be published.
2146. **Mr Weir:** If an allegation is completely bogus, it may have been made either because the person who made it is mad or because the complaint is malicious in nature. If it is malicious, it is more likely to be in the public domain, as perhaps its purpose is to try and get a pound of flesh out of the councillor and to damage his or her reputation, as Tom said, ahead of an election or that sort of thing.
2147. **Ms Mylene Ferguson (Department of the Environment):** We are trying to address that issue by giving the commissioner the flexibility to instigate investigations. That would mean that it would not just be by written complaint and, if something was put into the public domain, the commissioner could take action. That in itself could be a deterrent, and if another councillor made the complaint, he or she would be drawn in under the code of conduct and could be dealt with. It would provide that flexibility so that the commissioner could take action if there was something in the public domain, even though there may not have been a written complaint about it. We have to discuss that with the Minister, but that would address that issue to some extent.
2148. **Ms Broadway:** On Mr Elliott's point, the evidence in Wales is that, coming up to an election, the number of cases almost doubles.
2149. **The Chairperson:** How do they deal with it? You would need to deal with it very quickly.
2150. **Ms Broadway:** Yes, but if someone makes an allegation, it has to be considered. The number almost doubles.
2151. **The Chairperson:** There needs to be a list of admissible criteria to decide whether a complaint can be dealt with.
2152. **Mr Eastwood:** What happens here is that someone makes a complaint, and whether or not it is admissible is not

decided until there is a preliminary investigation by the commissioner. Someone makes a complaint and then goes to Radio Ulster or whatever and says that they have made a complaint. If that happens a couple of weeks from an election, there is no way that the person who has been complained against will get his or her name cleared before the election. That could have an adverse effect on the person's electoral chances. I brought that up when Tom Frawley was here. Maybe there should be a moratorium for some time before any election, so that people would not be allowed to complain during that period, but, of course, the complaint could stand after that. However, something is needed to protect people because it happens all the time. We will see it again before the next election, and we will probably see it after this summer because we saw a lot of complaints after last summer. The process is being used as a political football. The vast majority of complaints are thrown out or are not even admissible. Something needs to be done to protect people. It is so easy to throw mud.

2153. **Mr Weir:** Colum's point is quite sensible. It is almost like a transfer window in reverse. If there was a moratorium for three or six months prior to elections, so that no complaint could be lodged during that period, however —
2154. **The Chairperson:** Six months is a long time.
2155. **Mr Weir:** I am just talking about timescales —
2156. **The Chairperson:** Four weeks, perhaps, before an election?
2157. **Mr Weir:** To be perfectly honest, if I were looking to make a malicious complaint to damage a candidate, I would not be put off by a period of only four weeks. You need some time — two or three months or whatever. Four weeks is too short, and six months may be right. Complaints could not be lodged during that period, but there is then a provision that, after an election, a complaint may be lodged relating to that period. A couple of amendments could probably cover that relatively easily. Colum is right. The problem is that people get on a radio programme, go to the local papers or whatever, and by the time the issue is properly investigated, the election is out of the way. It may be that that is the nature of the thing.
2158. **The Chairperson:** Yes, and mud sticks. Are members content for the departmental officials to go away and look at an amendment?
2159. **Ms Broadway:** Let us go and talk to the commissioner first and then come back to you.
2160. **The Chairperson:** OK.
2161. **Ms MacHugh:** I absolutely understand the concerns. However, I do not think that a moratorium on lodging complaints with the commissioner would necessarily stop a complaint being made in the public domain or directly to the press. It would just prevent —
2162. **Mr Eastwood:** No, but there is a difference. In the public mind, once you make a complaint to the commissioner or some public body, it seems to add a bit more weight in people's minds. You can complain about your colleagues all the time; that is grand and is part of the cut and thrust of public life. However, if you do it —
2163. **Mr Weir:** That is right. It gives newspapers a certain leeway in the way in which they can cover the matter. They could write: "Colum Eastwood" or "Peter Weir, who is currently under investigation" —
2164. **Mr Eastwood:** Exactly.
2165. **Mr Weir:** — irrespective of the fact that there is no merit at all in the allegation. I think that, with the best will in the world, some media organisations are much more likely to cover something that is an official complaint. If a newspaper simply gets a phone call from a member of the public saying, "I want to give off about Councillor So-and-so", there will be more reticence about jumping in to cover the

- story. This issue needs to be worked through.
2166. **Mr Eastwood:** As long as there is a protection for complainants that their complaint will be considered after an election. However, the clock should not start until after an election.
2167. **Ms Ferguson:** There are two issues here. The commissioner is aware that this sort of thing will happen coming up to an election. Obviously, the code will not be in place in time for this election, so nothing can be done for it. However, investigations will be done in private, so people should not know that a complaint has been made.
2168. **Mr Weir:** Except —
2169. **Mr Eastwood:** From the experience of everybody in this room, we know that that is exactly what happens. The BBC knows that it is reporting the facts, so it is difficult to argue with it.
2170. **The Chairperson:** The other side of the coin is that you can be criticised for having a gagging order. There may be really pertinent issues, but when you complain and are told that you are not allowed to bring it up before an election, people will say that this issue is so serious that it will influence voters' minds. Where do you draw the line?
2171. **Ms Broadway:** We will raise that with the Minister this afternoon.
2172. **The Chairperson:** Are Members content?
Members indicated assent.
2173. **The Chairperson:** Colum, you have the Minister's ear, and you can complain.
[Laughter.]
2174. **Mr Weir:** Just do not listen to him for three months.
2175. **The Chairperson:** Clause 61 is next. No comments were received, so we will go on to clause 62 on a decision following a report. The clause allows for the commissioner to adjudicate on any matter by deciding whether a person has failed to comply with the code, and it sets out to whom this information must be sent. Only one issue was raised, which is that there is no right of appeal against the commissioner's adjudication, other than judicial review. We have thrashed this out on a number of occasions. Over to you, Julie.
2176. **Ms Broadway:** As I said, we will meet the Minister this afternoon. We have put the cases for and against having a right of appeal and what the commissioner said about judicial reviews, so, hopefully this afternoon, we will have an idea of the way forward.
2177. **The Chairperson:** Are you also looking at other jurisdictions?
2178. **Ms Broadway:** Yes.
2179. **Mr Weir:** That is fair enough, Chair. A number of people raised that issue with us in their submissions, but the summary of responses refers only to Belfast City Council and the statutory transition committee in mid-Ulster. It may be that it was raised at the informal meeting with NILGA, but I know that other councils, including the one that I used to belong to, raised the issue. I will strongly indicate to the Department that the right of appeal needs to be looked at seriously. I suspect that the preferred route would be for the Department to come up with an appeal mechanism other than judicial review. If it does not, I suspect that some of us may put down an amendment to that provision. It is similar to the issue that Colum raised earlier: you could have a situation in which, if the only right is some form of appeal by judicial review, someone could be unfairly accused and convicted. They may be able to overturn a judicial review, although the grounds are quite narrow. However, that could be two or three years down the line, in which case they will have lost their seat and their reputation is mud. Some mechanism for a right of appeal seems to afford a reasonable level of justice. That needs to be given a bit of thought, and there seems to be a feeling in the sector that that should be the case. I suppose that the only issue is what route that takes, and nobody has a particularly clear-cut idea of what that would be.

2180. **The Chairperson:** Other jurisdictions seem to divide up investigation and adjudication, slightly removing the sanctions from the sanctions-giving body.
2181. **Ms Broadway:** All the other jurisdictions deal with the matter in completely different ways. In some, there is a right of appeal, and in others, it is judicial review. In England, it is by judicial review. In Wales, if it is a decision against the standards committee of a council, it goes to the Adjudication Panel for Wales. However, if it is a decision against the adjudication panel, it goes to an appeal in the High Court. In Scotland, it is an appeal to the Sheriff Court. They all deal with the issue in a slightly different way, and we have put all that to the Minister.
2182. **The Chairperson:** That is similar to judicial review, and it is sent to a court.
2183. **Ms Broadway:** In England, it is judicial review, and in others, it is an appeal.
2184. **Mr Weir:** That could be an appeal either on merits or levels of sanction. If it is restricted to judicial review, it is, broadly speaking, on the basis of the procedural side of things. Even if something is ruled against you, it may be that, procedurally, every step has been followed but that they have come to the wrong verdict. There is also the issue of reasonableness, and rarely are you able to show that an appeal verdict is so unreasonable that essentially no right-thinking person would have come to that verdict. There may even be circumstances in which additional information makes it very clear that somebody is innocent.
2185. **The Chairperson:** The commissioner said that it is not only about procedure. It can be to do with the reasonableness of the sanction or its severity.
2186. **Mr Weir:** Reasonableness is a pretty high hurdle, because it is on the basis that no reasonable person could have come to that verdict. That is an extremely high threshold to overcome, which is different from an appeal on the basis of the merits of the level of sanction.
2187. **The Chairperson:** You are going to talk to the Minister about that. Peter is right, and there have been quite a lot of comments on the same issue. It is a kind of natural justice. You want a mechanism whereby there can be possibilities and opportunities for appeal.
2188. Next is clause 63 on decisions on interim reports. The only comment is on the need for guidance. Will there be guidance on the procedure?
2189. **Ms Ferguson:** The commissioner has the power to issue guidance on all aspects of the procedure, and, when he sees fit, he will do so for any clarification that is required to provide transparency for members.
2190. **The Chairperson:** There will be a whole package of consultation on the guidance.
2191. **Ms MacHugh:** The Commissioner for Complaints has also been proactive in offering his support and that of his office for capacity building. That will cover the code and will also make councillors absolutely aware of the procedures that fall out of the code.
2192. **Ms Broadway:** NILGA is holding an event about the code of conduct in early March. I think that the commissioner is going to participate in that.
2193. **The Chairperson:** Obviously, councillors will also need to be trained on that.
2194. Stakeholders made no comments on clause 64. There was just one comment on clause 65. The clause provides for the clerk of the council to establish and maintain a register of the interests of the councillors, and for the council to ensure that the register is available for public inspection. One comment, under clause 65(1), is that a declaration of interest should be incorporated into the code of conduct.
2195. **Ms Broadway:** The pre-consultation on the code of conduct finished on 21 January, and we are now going through it to produce a fresh draft to go out to full

- consultation. Those issues have been raised, and we are looking at them.
2196. **The Chairperson:** Sorry, there is one more comment under clause 65(4)(a), which is that it is a waste of money to advertise in newspapers and that the website should be sufficient. Some people do not use websites, so it is the kind of thing that needs to be issued in newspapers as well. Are members content?
2197. **Mr Weir:** Maybe this sounds hostile to newspapers, but I am not sure that that is an unreasonable point. To be honest, not many people trawl through the small print of public notices in newspapers. It strikes me, from the point of view of registration, that, as I understand it, in the Assembly, the publication is essentially on the Assembly website. Clearly, because there is a degree of public interest, it will be republished from time to time because journalists might pick up on it and run a story, and that is perfectly grand, but I do not think that the Assembly has a requirement, for example. Does it?
2198. **The Chairperson:** When we send out requests for consultations, we advertise in three newspapers.
2199. **Mr Weir:** I understand that. Consultation is different to the registration of Members' interests. Basically, although I would not die in a ditch over the issue, it seems to me that the principle of the publication should be on the council's website in the same way that, if somebody is genuinely looking up an MLA, they will go to the Assembly website; they will not go trawling through newspapers to get that, with the best will in the world.
2200. **Mr Eastwood:** It is a bigger argument than just this, though, because there are so many things that councils put in local papers, and the same argument could be made that maybe they should not.
2201. **Lord Morrow:** By the same token, there are probably a whole lot of things they put in newspapers that they should not be put in.
2202. **Mr Eastwood:** That is what I am saying.
2203. **Mr Weir:** Increasingly, as people look to cut costs on things that are not seen to be 100% relevant —
2204. **Mr Eastwood:** All I am suggesting is that it is much bigger than this particular point.
2205. **Mr Weir:** I understand.
2206. **The Chairperson:** I wonder whether they are only required to put a couple of lines in the local papers to say that the declaration of interest is on their website so that people can go and refer to it, rather than have a whole page listing members' interests.
2207. **Ms MacHugh:** One of the drivers for that is to take account of the fact that there is a minority of the community who are still not connected to the internet, do not own a computer and are not computer literate.
2208. **The Chairperson:** Yes. You have to account for everyone in the public.
2209. **Mr Boylan:** It is all about rural broadband.
2210. **Mr Weir:** There is a pigeon going to west Tyrone as we speak.
2211. **The Chairperson:** OK, we will move on. Are members content?
- Members indicated assent.*
2212. **The Chairperson:** The next clause is 66, and there is no comment on that, so we will move on to clause 67, which is on the expenditure of the commissioner under this Act. This clause provides for the commissioner to apportion the estimated amount of the expenses of the commissioner's office in relation to the ethical standards framework between all the councils in Northern Ireland. Councils must pay the apportioned amount to the commissioner at such time and in such manner as the commissioner directs. A comment regarding subsection 3 is that there is a need to consider what method should be used to apportion the commissioner's fees. I think that that was answered by the commissioner,

- but can you refresh members on this, please?
2213. **Ms MacHugh:** The commissioner has an issue with billing councils directly and has asked the Department whether there is a way that we can look at top-slicing from a grant that we would normally give to councils. This happens already for certain specified bodies. There are a couple of issues here. First, if we determine a methodology for doing this, it will still be local government that is paying. It will not be central government, because this is local government's money anyway.
2214. **The Chairperson:** It is a service for local government.
2215. **Ms MacHugh:** Yes. We are deducting that before we send it out, and I think that it is important to stress that. The policy that was agreed was that this is a new service, it is for local government, and local government should pay for it. No matter how the money gets to the commissioner, it will be local government that is paying for it. We are looking at various options around doing this, and we need to put a proposal to the Minister, to the local government sector and to the commissioner, because they need to be in agreement with this. We will work through the methodologies and the technical issues around how we get the money to the commissioner and agree how we apportion the costs.
2216. **The Chairperson:** Administratively, it is probably more efficient to top-slice it and deduct it from the grant.
2217. **Ms MacHugh:** We may need to put forward an amendment to the Bill to make sure that that is doable and that we can accommodate that.
2218. **The Chairperson:** You are consulting with NILGA and others on this.
2219. **Ms Broadway:** The finance working group is working through the issues of how this should be apportioned.
2220. **The Chairperson:** There is still a lot of work to be done on various issues, isn't there?
2221. **Ms Broadway:** Yes.
2222. **The Chairperson:** Are members content with that explanation?
- Members indicated assent.*
2223. **The Chairperson:** We will obviously follow that up when you report back to us on progress.
2224. The next clause is clause 68, which deals with interpretation. This provides an interpretation of Part 9. One comment: clarification is required on the position of a councillor who is disqualified from the council and its committees and subcommittees, but who represents that council on outside bodies. Am I right? What is your response to that?
2225. **Ms Ferguson:** A councillor cannot act if they are disqualified. If a councillor is a representative of their council on an outside body, that councillor cannot represent their council, by the very fact that they are disqualified. Suspension is a different issue. If that councillor was suspended, the council that appointed the councillor to the outside body must consider whether that appointment should still stand, taking into account the details of the suspension and any effect that that decision may have on public confidence.
2226. **The Chairperson:** It would be very odd if someone was suspended or disqualified but continued to sit on a public body as a councillor.
2227. **Mr Weir:** Just to clarify, I can understand that there is a clear argument if you are appointed to a body by, say, Belfast City Council, in your role as a councillor, and subsequently removed as a councillor, you are automatically out of it. Does the same apply if someone had obtained that role, not by being appointed by a council, but through their capacity of being a councillor? I will give an example. I am not sure about the exact technical bit, but when the library authority was set up, it was on the

- basis that the Minister would appoint a certain number of councillors. Whoever is appointed to those positions is the Minister's choice. Those people are not representing their councils, but the only reason they are put on to that body is because they are councillors. Does this cover that situation, or does there need to be some tweaking to ensure that that is clarified?
2228. **Ms Ferguson:** If a councillor is covered by the councillor's code, then any sanction that has been warranted out — if he is on an outside body, he still must comply with the code. That is a distinction.
2229. **Mr Weir:** No, it is a separate point. It is whether that person can continue to serve if the reason why they are on a particular body is because they are a councillor. What is the impact on their membership? If you take the likes of the library authority — there are a few other examples as well —
2230. **Ms MacHugh:** The Local Government Staff Commission for example.
2231. **Mr Weir:** Yes; those types of things. The person is specifically appointed because they are a councillor, but they may not be appointed as a representative of their council.
2232. **Ms Broadway:** Even if they are not representing their council, they are still councillors. If they are disqualified from being a councillor —
2233. **Mr Weir:** I understand that. I just wonder whether it may be worth adding something to ensure that what is implicit is clear-cut. I can see a situation where, at some point in the future when something happens, you then get into some legal row — particularly as a number of those outside body posts are things that are remunerated, and consequently —
2234. **Mr Eastwood:** You would be dragging them off.
2235. **Mr Weir:** Yes, on that side of things.
2236. **Ms Broadway:** We will have a look at that.
2237. **The Chairperson:** Can that be clarified by guidance, or do you need to table an amendment?
2238. **Ms Broadway:** We will look at that to see whether we need to table an amendment or whether guidance would be —
2239. **Mr Weir:** There are four subsections in the clause now, and it might be that a fifth subsection could simply add that. An extra line could cover it.
2240. **The Chairperson:** OK. Clause 69 deals with community planning. This clause places a duty on councils to initiate, maintain, facilitate and participate in community planning for their area. It also places a duty on community planning partners to participate in community planning and assist the council in the discharge of its duty. Quite a lot of issues were raised. I will read them all out, and John is going to answer them. Is that right, John?
2241. **Mr Murphy:** Yes, Madam Chair.
2242. **The Chairperson:** OK. The first one is about the importance of guidance and the establishment of a regional support structure. The next one is that the clause should include references throughout to community and voluntary organisations' participation, and specify categories, names and, perhaps, section 75 groups. Specifically on subsection (2)(a), which is the need to link objectives with PFG targets, there is a need for a definition of "well-being". At 69(2)(a)(iii), "environmental" should include the creation of green spaces and wild spaces. At clause 69(2)(b), there is a need for a definition of "sustainable development", and that used by the Brundtland commission is suggested. We have all of this again from the Marine Bill. Clause 69(2)(c) should include a reference to children and young people's strategic partnership, and an amendment is needed to emphasise improvement in service provision, for example, with wording like:
- "Identify actions to be performed and functions to be exercised including those related to the planning, provision and improvement of public services by the council"*

and its community planning partners for the purpose of meeting the objectives identified under paragraphs (a) and (b)".

2243. I think that was put forward by Community Places. At clause 69(2)(c), insert "and agree" after "identify". The insertion of a new clause is suggested at clause 69(2)(d). The suggested wording is:
- "Positively plan for renewable and low carbon energy generation in order to improve the environmental, economic and social well-being of the district".*
- Under clause 69(2)(d), a new clause is suggested:
- "and in co-operation" —*
2244. **Lord Morrow:** Who suggested this?
2245. **The Chairperson:** I think that it was Community Places. It is the umbrella organisation for the voluntary and community sector, particularly on community planning. Its suggested new clause at clause 69(2)(d) is:
- "and in co-operation and conjunction with community and voluntary bodies from the outset of the process".*
2246. There is quite a lot, so I will stop there and let you respond to those.
2247. **Mr Murphy:** I will do my best, Madam Chair. here is the intent and provision in the Bill for the Department to issue guidance. In developing that, we will be looking at experience in the other regions — Scotland and Wales — but also using the foundation programme that was launched at the end of last year, which councils are working their way through, to make sure that the guidance on those issues is specific to Northern Ireland.
2248. **The Chairperson:** Are there many lessons that we can learn from Scotland and Wales?
2249. **Mr Murphy:** That is what we are doing. Scotland has been doing this since before 2003. Wales has been doing it for a number of years, but under a slightly different guise. It has been doing it since 2009, when it tried to change

the direction, as it were, and improve what it was doing. We need to be looking at that.

2250. A lot of the issues that people are raising in terms of community planning and what the duty on councillors should cover are issues where we need to provide flexibility for councils to address if the issues are relevant within their district. That is why the Bill is crafted as it is. It provides that high-level framework. A lot of those issues around sustainability, green spaces, etc are matters that can be taken forward in guidance, which is maybe the more appropriate place, rather than putting them into the Bill. It takes community planning away from being a flexible tool for a council and its partners to deliver on the economic, environmental and social well-being of the district. Well-being is always regarded as the quality of life, because it is beyond the health issue. It is the whole panoply.
2251. Another key one coming forward is community and voluntary sector involvement. The voluntary sector is mentioned later in this Part in respect of the council's engagement with the community. We have taken the view that it should be the community at large, rather than specific groups. It will be a matter for individual councils to decide how they want to engage with the community sector.
2252. In the early stages of developing a plan, the council needs to work with its partners who are actually providing services or delivering functions in that council area, to work up what they consider to be the targets and objectives that they want to deliver, link that to their own plans in the early stages, and then take that out to the public. The guidance will point to engagement with the community at large and representative bodies as being an ongoing process. In developing the vision that will underpin a lot of this work, the council needs to be talking to the community. In many ways, this is recognising the role of elected representatives and councils in taking that forward.

2253. **The Chairperson:** I take your point that you want flexibility and that you cannot have primary legislation naming every area or aspect. However, Community Places was quite strong in recommending that, at clause 69(2)(d), it should say on the face of the Bill that it has to be done in cooperative working with community and voluntary bodies, and without it they will be excluded.
2254. **Mr Murphy:** I am not saying that they council would be excluded, necessarily, because —
2255. **The Chairperson:** They might be.
2256. **Mr Murphy:** They would be named in the statutory guidance, and a council would have to have very good reasons not to engage. As I say, in the early stages of the process to develop the plan, it is really about the public sector organisations that deliver the services and functions in the council area sitting down and working out what they can do to meet the vision for the council area. That can provide the link to the Programme for Government. In the initial stages, there may not be the degree of connectivity that people want. However, I think that you will start to see that over time. It is a case of making sure that the right people, namely the people who are really delivering public services, are at the table in the early days.
2257. **The Chairperson:** The voluntary sector does provide services; that is the argument.
2258. **Ms MacHugh:** Absolutely. However, take it back to the reason why local government reform is happening. It is happening to create strong local government that is flexible to local need. If, in the Bill, we end up with a long list of people who have to be around the table, and then you ask local councils to determine who else they want around the table, you could end up with 50 or 60 people trying to come up with a community plan. They would get nowhere fast because, by the time everybody has introduced themselves, the meeting is over.
2259. **The Chairperson:** I have been there before. *[Laughter.]*
2260. **Ms MacHugh:** It is about trying to make sure that the people who really have to be at the table are brought there through statute. In that case, it can be only statutory bodies that we name in a statutory Bill. The people who will be in the statutory legislation will be service providers — the Housing Executive, for example, is a likely candidate. We will also need to consult on the list of people who are named in subordinate legislation, but it is those sort of people who we envisage there. There is a feeling that it should be for local government to determine what other partners they need around their table to produce a community plan that will suit their individual local needs. I can understand the concerns of the voluntary and community sector, and there is undoubtedly a clear and strong role, but we start to get into difficulties when specific groups want to be named and enjoined in the actual legislation because, first, it is not technically possible and, secondly, you then might exclude others that other councils might want round the table, because it is those others that are more appropriate to their local circumstance. Again, it is trying to strike a balance between providing an effective framework and giving enough flexibility. We are trying to drive more decision-making down to a local level.
2261. **Mr Eastwood:** Maybe I am missing it here, but I take your point; you do not want to be listening to everybody and trying to have a one size fits all. However, we went through a process with this in Derry where we had the One Plan; it took 18 months, and we had everybody involved. It is not easy, but it is important, because you need people in the room for them to be bought into a process. Maybe I have missed something else, but the suggested amendment is :
- “Insert new clause at 69 (2) (d) and in co-operation and conjunction with community and voluntary bodies from the outset of the process.”*

2262. That is hardly listing a lot of different bodies or groups. That is just saying community and voluntary bodies should be there. That is as broad as it is. That leaves it up to the individual council to decide which community and voluntary bodies suit their needs. I take your point that we do not want to be writing a long list, but I do not think that that is what this particular new clause would do. It just mentions the broad sectors.
2263. **Mr Murphy:** That is an issue that we certainly anticipate addressing in the guidance: who, beyond the clear statutory partners who are delivering services, a council should consider in terms of engagement in developing that. One could anticipate that there would be different layers with regard to community planning. There may be thematic plans within the main community plan, so you will be involving different groups, and there may be area aspects to it. We totally value and recognise the need for the community and voluntary sector to be involved in the process. However, our intention is to cover that in the legislation to provide that flexibility for the councils.
2264. **Mr Eastwood:** I still do not quite get what the problem would be. It is only saying "community and voluntary". It is not picking out names. I think that it would leave sufficient flexibility for councils to decide. It would write into the legislation that the community plan is not just going to be about statutory bodies, but that it is going to have a connection with the community organisations out there. There is something important about that.
2265. **Ms MacHugh:** One concern that has been expressed several times to the Minister and to us is that, at times, the voluntary and community sector can be seen as a proxy for the community. I am not saying that the voluntary and community sector does not represent community interests, but, at times, it does not represent all community interests. I think that there is a need for councils to think about how they engage with the full community and also to think about how their elected members, as representatives of the community, feed into the community planning process alongside the voluntary and community sector.
2266. **Mr Eastwood:** I agree with that. The representatives of the community are the councillors. That is my view. However, there are people who are working outside that who should be involved in some way. I do not really see the problem with saying that there should be a broad spectrum of community and voluntary.
2267. **Mr Weir:** I take on board what Linda said. There is a reasonable level of flexibility for councils to determine the way that they want to do things. To some extent, I suppose that the structure of the community as a whole will vary from town to town and from area to area. If you are in the centre of Belfast, it will be a different kettle of fish to that in a rural small village somewhere. Again, on the broader level, how you define community and voluntary in that sense is an argument. For example, there are major issues in a lot of areas around town centres, where the focus would be on retailers. Now, do they represent a community interest or a business interest? It is certainly not a voluntary interest in that sense. In some areas, you will maybe get a community group that is very representative of the people on the ground. Others can act as a gatekeeper. What about the member of the public who goes out to work in the morning, does their work, comes home to their family, sits in front of the television and all the rest of it, and is not involved in any other organisations? To what extent are they represented?
2268. I have no doubt that different councils and bodies may look at some of those issues in different ways. Arguably there is not an entirely right or wrong answer in connection with it. There has to be a degree of flexibility. Once you put particular things into legislation, you create certain levels of expectation, which may or may not be met in certain areas. I have a degree of faith in the general good common sense of people to provide their own solutions across

- different bits. What might work in Omagh will not necessarily work in Ballymena.
2269. **The Chairperson:** OK, Peter. I have to cut you short. Cathal wants to come in. I am just mindful of the time.
2270. **Mr Boylan:** I agree with Colum. The issue is that those groups are obviously concerned about [*Inaudible.*] They want to be part of the process. If you are saying that it does not need to go on the face of the Bill — that it goes in guidelines — to ensure that they are there, that is a different matter. We need certain clarification and a commitment to them being part of the process. That is how I see it.
2271. **Ms Broadway:** The guidance will be statutory guidance. They will be named in the statutory guidance.
2272. **The Chairperson:** That is just guidance, so it is voluntary.
2273. **Ms MacHugh:** We are providing support at the moment, through Community Places, to work with councils and with clusters to identify how they are going to look at proper community engagement, either directly with the community or through voluntary and community sector organisations. There is no intent to exclude the voluntary and community sector — far from it. It is just trying to provide something that does not straitjacket councils. Some of the comments are very specific; groups want to be named in the Bill. We have to look at drawing a line there.
2274. Mr Weir's comment about the business community is also valid. It is as much a part of the community planning process as the voluntary and community sector is.
2275. **The Chairperson:** There are two other issues with clause 69. I am going to be very quick. Clause 69(3)(b) should include a reference to making adequate resources available within partners' financial plans. Clarification is required and guidance is needed in clause 69(5) as to how councils are to develop a link between land use plans and community plans. What is the timescale for that?
2276. **Mr Murphy:** We are working with our colleagues in planning to develop how the two processes can be taken forward to ensure that there is the necessary alignment between land use planning and community planning. We have gone further than any other jurisdiction by providing a statutory link between community planning and land use planning. We are conscious of the need to ensure that there is connectivity.
2277. It is difficult for the Bill to place a duty on the statutory bodies in terms of the resources and the commitment that they give. Those statutory bodies have their own accountability mechanisms to boards of directors and Ministers. The duty on them to commit will deliver what is necessary.
2278. **The Chairperson:** OK. I think that we can understand that. I am afraid that we have to stop there to allow members to go to Question Time. Thank you very much.

6 February 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Barry McElduff
 Lord Morrow
 Mr Peter Weir

Witnesses:

Mr Durkan	<i>Minister of the Environment</i>
Mr Iain Greenway	<i>Department of the Environment</i>
Ms Linda MacHugh	<i>Department of the Environment</i>
Mr Paul Duffy	<i>Driver and Vehicle Agency</i>

2586. **The Chairperson:** We begin our session with the Minister. At page 5, there is a secretariat cover note on the issues that we will be talking to the Minister about. There are also papers for your background information. I will draw attention to them as we come to the items.

2587. We have sent to the Minister a list of the topics that we want to discuss with respect to the Local Government Bill, taxis legislation, the report on illegal waste activities in Northern Ireland and the single planning policy statement. When we sent the list to the Minister, we did not realise that he was going to make a written statement and an oral one this week. So, members, if you are content and if the Minister is content, maybe we can just skip this. It would give us a bit more time to spend on talking about other items or if the Minister wants to add anything else after the oral session. I think that nearly everyone on the Committee had an opportunity on Tuesday to ask the Minister a question following his

statement. So, if members are content, we could skip that item.

2588. **Mr Boylan:** Chair, I think that, if we have time, I would like to ask a few questions.

2589. **Mr Durkan (The Minister of the Environment):** I am happy to skip it. I do not want to restrict members in anything they want to ask about.

2590. **The Chairperson:** You want to ask the Minister questions, too?

2591. **Mr Boylan:** If we have time, Chair. That is not to say that we got the answer that we wanted in the Chamber. We will say that, if there is a bit of time, then there may be an odd question.

2592. **Mr Durkan:** I did not get the questions I wanted either.

2593. **The Chairperson:** Fair enough.

2594. **Mr Boylan:** We will stick to the clár that you have identified.

2595. **The Chairperson:** OK. Fair enough. You see the interest in it, Minister? The next item after the single planning policy statement (SPPS) is climate change, and then the Minister also wants to update us on the status of Exploris. Let me see — I will lead off on the first issue. We are going to talk about, not every clause that we want to ask the Minister about, but the ones which Linda said that she needed to go back and speak to the Minister on. I know that Linda had a long session with the Minister on Wednesday, so maybe we can have an update on the issue.

2596. I also welcome all the other officials. You have a big team with you today, Minister. You are all very welcome. Let us start with the Local Government Bill. We have been going through lots of issues from stakeholders, and Linda and her team have been working very hard

with us every week now over the past month or so.

2597. There are still some issues that we want to talk to you about, and the first is clause 4, “Disqualifications”, about the politically restricted posts and whether staff should be allowed to stand for election to their own council or others. Another issue is about staff on secondment from the Department to councils, and whether they should they be restricted too. Also, there are those working in councils but funded by other bodies: will they also be restricted in standing for local councils? Over to you, Minister.
2598. **Mr Durkan:** I would like to thank the Chair and the Committee for all the effort and attention that has been given to the Bill throughout, and particularly over the past number of weeks, over the Consideration Stage. I am aware of the work that you have been doing and that remains to be done, even today. I will try not to detain you too long this morning.
2599. As regards clause 4 and the disqualification of council employees — sorry, not the disqualification, the permitting of council employees to run for council — I was keen to hear the views of the Committee and to get some feedback on the Committee’s discussion the other evening. My view is that, obviously, it would be very restricting on an employee, as both an employee and a councillor, should they be a councillor on the council that employed them. There were also suggestions that it could be difficult for other councillors, as well as for other employees. We are looking at practice in other jurisdictions where this takes place. In some areas, council employees over a certain grade or position, if you like, are disqualified. In other areas, people are not allowed to be a councillor or run to be a councillor on the council that employs them. What were the views of the Committee, in conclusion?
2600. **The Chairperson:** I think that we understand the difficulties with legislation. We cannot just have a blanket ban. I think that members would

be happy to look at either way, whether it is grades or politically sensitive positions, when employees are working with other councillors. It is up to you, Minister, to decide which route you want to take.

2601. **Mr Weir:** I do not think that I was there when the discussion on this took place. It seems a little bit like a hand grenade getting thrown from side to side with the pin out, in that regard. The big problem I think people will see will be the issue — which has been rightly highlighted — for the employee and the council, of somebody who is employed by the council then being a councillor. Where there is a distinction, and maybe something better could be done around things, is that at the moment there is a blanket ban that prevents anybody who is a council employee anywhere from being on any council. Perhaps the restriction could be reduced. Rather than being a blanket ban, it could be reduced to somebody not being allowed to be a councillor on the council for which they worked.
2602. Realistically, with the best will in the world, I cannot imagine that you are going to get a chief executive on one council looking to be a councillor on another bit. What you might get is a council employee in Dungannon looking to be a councillor in Coleraine, or whatever it happens to be. I appreciate that my colleague to the right would not necessarily assume that anybody would want to go outside Dungannon in that regard. *[Laughter.]* Maybe it is the other way around; maybe it is an employee in Coleraine. I do not know something could be framed around that as being the thing. That seems to be the more sensible route. I appreciate that the problem is the concern and vulnerability over simply a blanket ban rather than something more nuanced. From a court’s point of view —
2603. **Mr Durkan:** Without a doubt, a blanket ban will not be in existence. Where we end up is key. Even if you are talking about an employee of one council sitting on another council, should there be a restriction or limit on the level of

- employee? It should not be the case, but the reality is that many councils see themselves as being in competition with one another. If someone sat on a council and had access to commercially sensitive information that might be of benefit to another council, that could be an issue that might arise as well.
2604. **Mr Weir:** Unless, to nuance that, the other route would be that you had a prohibition on anybody serving on the council they work for, and then a prohibition at a higher level — that two-tier prohibition type of thing. It strikes me that what has been done in the European imperative on the court side is not against a ban per se but potentially being able to show that it is not an unreasonable level of ban. Provided that you can show the rationale behind the levels of the ban and it is not a complete blanket ban, I do not see how there could be a successful case against that in those circumstances.
2605. **Lord Morrow:** Most of us make decisions in life, and we then have to stand by them. Some decide on a career in local government, which is fine. Some decide on a career on the other side of it on councils, although at times it is hard to see where the career bit is in that. I have a big problem with members of a council, at perhaps all levels, ending up on a neighbouring council as a councillor and going out working for them. It is a case here of where some will be more equal than others, and it will create problems. I am acutely aware of what legislation says around equality and all that; I am quite clear on that. Did you say, Minister, that there will not be a blanket ban?
2606. **Mr Durkan:** Yes.
2607. **Lord Morrow:** That is where some will then be more equal than others and that, too, creates a problem.
2608. **Mr Durkan:** That could be the challenge in itself.
2609. **Lord Morrow:** Yes, I do see a potential challenge there. Rightly or wrongly, I am of the view that if you decide that your career is in local government, you made that decision knowing what you were doing, and that is fine. Well, then stick by that and stay by that.
2610. **Mr Durkan:** I think that the issue is that the blanket ban has been challenged successfully in another jurisdiction.
2611. **Lord Morrow:** You cannot be a gamekeeper and a poacher at the same time. That is a real difficulty.
2612. **Mr Durkan:** Not on the same estate.
[Laughter.]
2613. **Lord Morrow:** No.
2614. **The Chairperson:** I think we have to go with preventing conflict of interest. That is the primary point to go on — whether the positions are going to be difficult for employer and employee, and whether we are going to bring in that line of confusion or conflict of interest. That is all we can go on.
2615. **Mr Durkan:** Of course, there is the work being done on the code of conduct as well, which will address and deal with issues around conflicts of interest, in this scenario and others that will arise. When I had a brief discussion on this with Linda and the team the other evening after the Committee had discussed it, I wondered what would qualify as a council employee. If someone is in a post funded by a council, for example, and if the council is going to be taking on the community development function from DSD, does that classify them as a council employee? I am assured that it does not but, again, this will be open to suggestions of potential conflicts of interest. It is in all our interests to ensure that the legislation that we end up with here reduces, if not eradicates, any potential for lack of transparency.
2616. **The Chairperson:** What is the legal advice to the Department on this, Minister?
2617. **Ms Linda MacHugh (Department of the Environment):** On the blanket ban, the legal advice is that it is against the European convention. I think it is article 10, which relates to free expression.

It is around elections and the ability to stand, so it is that part of the European convention. I suppose that is what has been driving the need to put a clause in that lifts the blanket ban, albeit, as the Minister said, there is a need to think both geographically and in terms of position as to how to limit that in such a way that it will minimise the real and very clear conflicts of interest. Should any conflict of interest arise — should a council employee become a councillor in another area — that would be dealt with through the code. That is maybe where we are going to end up in trying to get a balance on it.

2618. **The Chairperson:** If you are an employee of that council, you cannot stand for that council, but you can stand for a neighbouring one where you live.
2619. **Ms MacHugh:** The point is also well made about people who are contracted to the council or are working on secondment to the council. We will have to look at that, because, for all intents and purposes, if you are seconded to a council you are working for the council. When you look at funded posts, you see that that is where it might get a bit more difficult. We still have a bit of work to do to find the spread of who may or may not be impacted by it.
2620. **The Chairperson:** Would that need to come in through amendments or guidance?
2621. **Ms MacHugh:** It is likely, at this stage, that it would be through subordinate legislation, because the Bill states that the Department will determine those people who will be prevented from standing as councillors. The ban will be lifted, but restrictions will be put in. It is likely to be something that is brought through in subordinate legislation.
2622. **Mr Weir:** The only point on that is —
2623. **The Chairperson:** Sorry, Ian, would you like to come in?
2624. **Mr I McCrea:** I tend to agree with Lord Morrow. I have major concerns about this. I have spoken to chief executives of councils who have major concerns about it, regardless of whether it is their council or their councillors on another council, because of, to some extent, the political cover that that individual might have if the majority of members of the council were of that same councillor's party. Even though he is on another council, there is an element of cover there if any conflict comes up.
2625. I suppose we need to know what grade of person we are referring to. You are saying that it is not going to be a blanket disqualification, so we need to get to whatever that point is. I think I raised this in a previous meeting: if you have two members of staff who are basically doing a similar job and working in the same room, one is a councillor and one is not, and one is of one religion and the other is not, there is the potential for sickness absence of one because they have put a complaint in because of something that the other councillor has said in respect of something that he has been doing as a political representative on another council. There are so many difficulties. You have the whole complaints process, and Tom Frawley will be all over it. It is a whole lot of money.
2626. I just think it leaves it so open for challenge and leaves that individual open to complaints being made without foundation. That is one of many issues that I have. Political parties have to think about who they are selecting, but it is something that I know senior officers in councils are very concerned about. There is also the fact that councillors are currently given certain rights to attend meetings and stuff throughout their time of employment. That allows the other councillor to have rights to get out of his council employment to go to another council. It causes more problems than it does any good. I see where you are coming from on the legal side of things, but I think parties have to be mindful of all of that.
2627. **Mr Durkan:** I take your concerns on board and some of the potential pitfalls that you have highlighted, but, unfortunately, quite a lot, if not all, of those pitfalls will exist anyway. If a blanket ban remains, should that go

- further? Should there be a ban on local government employees being party members, for example? Would that not provide them with cover, as you put it, from political representatives on that council? Unfortunately, the potential already exists for people of different backgrounds or with different political views to fall out over such things.
2628. It is not just differences of political opinion that lead to people going off sick and what have you; far from it. People in public life have a right to time off to perform their duties as an elected representative, regardless of who their employer is. It is something that causes some employers, as well as some councillors, quite a lot of headaches and stress.
2629. One of the arguments or questions that was raised in the Assembly when this issue came up was that a blanket ban on council employees being on the council was seen as an infringement of their human rights. I think that it was Lord Morrow who asked, then, how MLAs were prohibited from being councillors as well. Does that mean that we do not have human rights as MLAs?
2630. **Lord Morrow:** We are getting into a some-are-more-equal-than-others syndrome.
2631. **Mr Weir:** Can I get some clarification from Linda? You talked about the subordinate legislation being the vehicle for the detail to be sketched in. The only potential complication with that is that, if it is not clear in the Bill what is independent, does that potentially leave us, as we are about to head into elections — I appreciate that a lot of the stuff may not be fully through by election day, but does that not create a slight degree of danger that individuals or parties with a grey area or uncertainty about their selections, if the position is not sketched out very clearly ahead of that process?
2632. **Ms MacHugh:** I can see the issue with that, because, clearly, this Bill will not be in place in time for selections, and I know that some parties are looking at selecting already.
2633. **Lord Morrow:** Some have already done so.
2634. **The Chairperson:** Some have done.
2635. **Mr Weir:** I think that the bulk of parties probably have done.
2636. **Ms MacHugh:** At the moment, because the law is that there is a blanket ban, there is an assumption that the blanket ban is in place for this forthcoming election. That will not change until there is a new law in place, and we have not got the law through yet.
2637. **The Chairperson:** Oh, right. OK.
2638. **Ms MacHugh:** That is the current state of play.
2639. **The Chairperson:** OK. But the law is going to be through by April, hopefully, ahead of the election in May.
2640. **Ms MacHugh:** Yes, but I think by that —
2641. **The Chairperson:** People can still change their selection.
2642. **Lord Morrow:** A lot of horses will have bolted. *[Laughter.]*
2643. **Mrs Cameron:** I tend to agree with my party colleagues down the line of it being more sensible to actually keep the blanket ban in place. It leaves you more open to challenge, actually, than bringing anything acceptable in in any way. Where do you stop? Where do you draw the line and say to this level or that level that you can be a councillor and then after that you cannot? That will lead to more issues in the workplace.
2644. **Mr Durkan:** I suppose that if someone was a councillor, they could not be considered for promotion in their other job.
2645. **Mrs Cameron:** Yes. I think that it would open a can of worms that might actually be —
2646. **Mr Durkan:** I have no doubt that it would be simpler to retain the blanket ban. However, the legal advice is pretty explicit. It is not explicit enough, maybe,

- but it is pretty clear, I should say, that the blanket ban is untenable.
2647. **The Chairperson:** And if you know it is illegal, you cannot put it into the Bill.
2648. **Mr Durkan:** Yes. That is out there now, and you would just be asking for challenge.
2649. **Ms MacHugh:** There are other instances. For example, civil servants at certain levels can be councillors.
2650. **A Member:** Oh, dear. *[Laughter.]*
2651. **Mr Boylan:** You do not have to respond to that. *[Laughter.]*
2652. **Ms MacHugh:** I accept that it is a different level of government, but you can imagine that, if you are a civil servant in one Department and your council has an argument with that Department, that is where, as the Minister said, the code of conduct and the potential for conflict of interest would need to be carefully monitored and managed, because of potential conflict in their dual role as an employee of one council and a member of another council.
2653. **The Chairperson:** We need to decide on that fairly soon. What is your decision, Minister?
2654. **Lord Morrow:** Before you respond, Minister, how did you square the circle for MLAs? I suspect that it was not you but your predecessor who did so. The legislation is there so that MLAs cannot stand for council. Will you adopt the same inequality?
2655. **Mr Boylan:** Surrender the seat and be done with it.
2656. **Lord Morrow:** It is easier to ask the question now that you are not double-jobbing.
2657. **Mr Durkan:** The blanket ban has to go and will go. The way I view it now, although this could change, is that employees up to a certain level will be able to run for election in another council area but not in their own. I do not know how likely or how regular an occurrence that will be, but it covers us legally and, I think, poses the least possible risk.
2658. **The Chairperson:** A reasonable compromise.
2659. **Mr Durkan:** Yes.
2660. **The Chairperson:** Will we move on to the next clause? Are there any questions?
2661. **Mrs Cameron:** I understand wanting to remove the blanket ban because of the legal opinion, but I think that it will make the situation worse and much more complicated. People will feel more aggrieved that person x in their council is allowed to run for council but, because they earn another £1,000 or are a grade higher, they are not allowed to. I think that it will leave you open to more challenge. At the same time, I understand where the Department is coming from.
2662. **The Chairperson:** Look at the positive side. Previously, there was a ban on any employees standing, but now at least some people can stand. In reality, staff understand. You do not want the hassle.
2663. **Mr Durkan:** The disqualification will be for those in politically sensitive positions. However, again, the phrase “politically sensitive” is very wide.
2664. **The Chairperson:** You will find that very few people want to take it on and stand. Others would be looking over their shoulder.
2665. We move to clause 10 — a hot potato — which deals with positions of responsibility. Minister, the Committee was unable to reach broad agreement on the clause and expressed concerns about the allocation of positions of responsibility in councils, whatever the method, be it d’Hondt or single transferable vote (STV). My party would certainly like STV to be the default position rather than d’Hondt, which we see as more favourable to the larger parties.
2666. **Mr Durkan:** Our view is that there is no need for a change. The policy on positions of responsibility was agreed

by the five main political parties through the work of the policy development panel (PDP) and the strategic leadership board. We do not see the need to deviate from that.

2667. **The Chairperson:** Are members content with the Minister's answer?

Members indicated assent.

2668. **The Chairperson:** The next clause that we want to talk to you about, Minister, is clause 23. Departmental officials agreed to report back to the Committee after discussions with you on proposals for regulations on the operation of executive arrangement; the allocation of functions between the councils and its executive; and the minimum number for an executive streamlined committee. There is some concern that the minimum number is too low and might need to be more than four. Is there any movement on that, Minister?

2669. **Mr Durkan:** These issues will be specified in subordinate legislation. I am not sure that the need exists to change it here. The Bill specifies a minimum of four.

2670. **The Chairperson:** This is wrong on my screen. I am sorry, I was talking about a different clause.

2671. Clause 23 concerns permitted forms of governance. We need clarification on whether committees outside the executive, particularly quasi-judicial committees, such as licensing or planning, would be subject to call-in or qualified majority vote (QMV).

2672. **Mr Durkan:** This is not my method of escape or evasion, but that will be sorted out in subordinate legislation. There is no need for a change in the Bill.

2673. **The Chairperson:** Sorry, will the outside committees also be subject to call-in and QMV?

2674. **Mr Durkan:** That does not need to be clarified in this legislation.

2675. **Mr Weir:** I did not express an opinion on this when it came up, but is there not a neater way? If it were accepted that a quasi-judicial decision, whether

a licensing or planning decision, should not be subject to a call-in, would the easiest way not be for the Bill to make that clear? Would that not be done relatively easily rather than simply leaving it to QMV? I cannot remember off the top of my head which clauses they are but some set up QMV and others the call-in mechanism. Is it not relatively straightforward simply to add a line saying that a decision of a quasi-judicial nature, such as licensing or planning, would be "excluded", or words to that effect?

2676. **Ms MacHugh:** You are right: there would be other mechanisms to safeguard any quasi-judicial licensing or planning issues. So those would not be subject to QMV. Our intention was to make that clear in the subordinate legislation as opposed to in the Bill.

2677. **Mr Weir:** Put it this way: unless there is some great technical reason why it cannot be done, why could that simply not be in the Bill? I think that everyone would accept that that is relatively uncontroversial.

2678. **Lord Morrow:** It could be very controversial.

2679. **Mr Weir:** No, what I meant was that I think that such issues not being subject to QMV would, broadly speaking, be agreed across the parties, because it would leave councils very vulnerable. A simple line or two in the legislation may abrogate the need for chunkier references in subordinate legislation.

2680. **Ms MacHugh:** If you are in agreement, we can look at trying to put that into the —

2681. **Mr Durkan:** I cannot think of any reason why not.

2682. **The Chairperson:** It would make the position clearer.

2683. Clause 25 concerns council executives. We need further information on which committees can be streamlined; on the role and voting rights of the mayor and deputy mayor; and on the minimum number of an executive committee.

- Minister, we really want to know which committees are to be streamlined. We are told that the mayor and lord mayor would have the right to sit in on the executive committee but that they would have no voting rights.
2684. **Mr Durkan:** Yes, ex officio.
2685. **Mr Weir:** Asking what can and cannot be streamlined strikes me as a little odd. I suspect that that will depend on where you are on the spectrum. Sometimes, people have mistakenly viewed the current committee system or cabinet system as either/or, whereas it is more of a spectrum, particularly in the way it develops. I am not sure that there can be a definitive answer to what can or cannot be streamlined.
2686. I understand the concern about the mayor and deputy mayor — in other councils, the chair and vice-chair — who, in many councils, sit ex officio on every committee. I appreciate, particularly in the cabinet style, the argument that, if you had the same mayor and deputy mayor sitting as of right in that cabinet and having a full role, that would potentially imbalance the cabinet. A possible way round that would be for the legislation to provide for the mayor and deputy mayor to have a right to be in the cabinet but as non-voting members. They would not have a vote as of right from being a mayor or deputy mayor.
2687. **Mr Durkan:** Maybe some concern then arises about the scrutiny of the executive and who would lead it from the wider council if the mayor and deputy mayor were sitting on it.
2688. **Mr Weir:** I understand that, although would it not look a little strange to have a cabinet-style situation with the cabinet taking decisions on behalf of the overall council —
2689. **Mr Durkan:** The mayor has to defend —
2690. **Mr Weir:** — and the person leading the charge against the council is the mayor of the council? That could be confusing for the public.
2691. **Mr Eastwood:** We would all have to go out and defend it in the media.
2692. **Mr Weir:** If there was a dispute in a council and the cabinet chair gave one view but was then wheeled out to give an opposite view, it would be a slightly odd situation. That would look very strange. However, I appreciate the argument that, because the mayor and deputy mayor roles will rotate and be taken up by members of different parties, having them as full members could threaten the balance of the cabinet. Permitting them to sit on the cabinet but without a vote could be a way round that.
2693. **Ms MacHugh:** In that scenario, who do you envisage chairing the council's scrutiny committee? Would that be —
2694. **Mr Weir:** The decision on who would chair a scrutiny committee would probably be taken when the selection was being made. If you divide up positions of responsibility at the start and have adopted a cabinet style, presumably the decision on who serves on the cabinet would be taken at that stage. Even with a cabinet style, there is some level of committee underneath that. Presumably, you would also choose, by whatever regulations pertained, the chair of the scrutiny committee at that stage. That may change from year to year in the same way as a chair of planning, policy or whatever would change.
2695. **Ms MacHugh:** So rather than the mayor automatically being the chair —
2696. **Mr Weir:** I have to say, to be honest —
2697. **Mr Eastwood:** The mayor would be the chair of the council rather than the —
2698. **Mr Weir:** The mayor would, effectively, be the civic face of the council. It is difficult for the mayor because the chair of the scrutiny committee could be the person who is in direct conflict or the one holding the greatest council accountability. That could put the mayor in an awkward position: on the one hand publicly defending the council; on the other being, potentially, its main internal

- critic. It would be very difficult for someone to ride those two horses.
2699. **The Chairperson:** What is the current practice, Peter?
2700. **Mr Weir:** We do not have cabinets. It varies from council to council, but most councils have in their standing orders that whoever is that year's chair may be an ex officio member of all committees and has at least the right to turn up to all of them. Some will extend that to the deputy. It varies a little from area to area, but, generally speaking, there is some sort of —
2701. **The Chairperson:** That is what is proposed.
2702. **Mr Boylan:** When assigning positions, Peter, that is what happens. Armagh is an executive-style council, but the mayor does not sit on the executive. The mayor and deputy mayor chair some of the meetings but do not sit on the executive.
2703. **Mr Weir:** Cathal, how can somebody chair executive meetings when not sitting on it?
2704. **Mr Boylan:** They chair the full meeting, but the executive council is made up of a member of each party. The mayor is not on the executive council.
2705. **Mr Durkan:** He cannot attend those meetings.
2706. **Mr Boylan:** They do not attend — that is the executive style. If assigning positions on a four-year basis —
2707. **Mr Weir:** I understand that, but I can see a situation —
2708. **Mr Boylan:** I am only trying to tease it out.
2709. **Mr Weir:** I understand that. However, I am not sure that it is an ideal situation for a mayor, the official face of the council, not even to be present when the most significant decisions are taken about the council.
2710. **Mr Boylan:** The recommendations come back to the full council, but that is the style used. You make a fair point, but
- we are talking about the scenarios that can arise, and that is what happens. I do see some problems given that the mayor is the civic face of the area. I am telling you what happens in the Armagh executive now, and the positions are assigned on a four-year basis.
2711. **Mr A Maginness:** Under the new dispensation, I see three discrete roles. One is the civic role of the mayor and deputy mayor, which is a very public role and involves chairing the plenary sessions of council. The second is the role of the cabinet, or executive, which is an executive function for the cabinet members and a collective one. The rest of the council involve themselves in scrutinising the decision-making process of the executive.
2712. I do not think that you can mix the three discrete roles, except when they come together in plenary. In the current situation, all councils have a general purposes committee or a policy and resources committee. There is a separate chair of the policy and resources committee, who has a very significant role on the council, but who is not the mayor or deputy mayor. That makes plain the differentiation between the discrete roles that councillors will have in a future arrangement of this type.
2713. **Mr Durkan:** Yes, but the mayor and deputy mayor can attend those meetings ex officio, as any councillor can.
2714. **Mr Weir:** Again, this is probably one of the myriad swings and roundabouts of flexibility, but different councils will take different views. I am not sure whether the mayor is excluded, but I know from my previous council that pretty much any councillor could go along to any meeting. I am aware of another council, relatively close to where I live, that took a view that the only people to be in attendance at any committee meeting were the councillors on that committee: if you were not on the committee, you did not have a right of attendance. There is slightly different practice in different councils.

2715. **The Chairperson:** At the moment, are the mayor and deputy mayor barred from voting in plenary session?
2716. **Mr A Maginness:** No.
2717. **Mr Durkan:** There is provision in the Bill to make all committee meetings open to all councillors.
2718. **Mr Eastwood:** That makes sense. I attended meetings of committees that I was not on if there was a specific issue relevant to my constituents. I understand the point about the separation of powers. It is a slightly different system here; we are not America yet. The First and deputy First Ministers vote in the Assembly, even though they chair the Executive meetings.
2719. **Lord Morrow:** A president?
2720. **Mr Eastwood:** We are not there yet either. We are working on that one.
2721. I think that the mayor should be able at least to attend meetings. I understand why they would not be able to vote. However, having been in the role, I know that the mayor has to go out and defend council decisions. It is difficult to do that when not involved in some of the decision-making. Some decisions may be taken without the council's involvement, so there needs to be at least a working knowledge of what is going on. I see no problem with their sitting at the meetings but not necessarily having a vote.
2722. **Mr Durkan:** There is provision in the Bill for that.
2723. **Ms MacHugh:** We are making all meetings open to everybody: councillors, public and press. The issue is whether you feel strongly enough that they need to be ex officio members. If they cannot vote, what is the fundamental difference between that and their attending meetings ?
2724. **Mr Boylan:** The Armagh executive model has one member from each party, and they bring a recommendation, which goes to the statutory council meeting, normally chaired by the mayor. Any councillor can sit in on any meeting.
2725. I am trying to figure out what the problem would be. The mayor is there to represent the whole area and has that right. That is a recommendation from the council and agreed by the corporate council. Are we saying that, because the mayor cannot vote, they have some special representative power? All they are doing is speaking on behalf of the council, so I am trying to figure out what the issues are.
2726. **Mr Weir:** If we are talking about everything being open to everybody, does that mean that we envisage a cabinet or executive meeting being fully open to the public unless there was a particularly sensitive matter?
2727. **Ms MacHugh:** That is the presumption in the Bill.
2728. **Mr Weir:** I am not saying that that is good or bad, but it is not normally how cabinets or executives operate.
2729. **Mr Durkan:** It depends on the business on the day, so you may find that such meetings are more often closed than open.
2730. **The Chairperson:** There are no further questions on this clause, so we will move on.
2731. Clause 45 details the criteria to be used to determine the validity of a call-in and the guidance to be provided for solicitors and barristers. One concern raised was that, if you ask different solicitors for an opinion they will, perhaps, give you different opinions. It has been suggested that a panel of solicitors might give a more consistent response than if individual solicitors were used by different councils. Also, the criteria for call-in are important, and more clarification of those is needed.
2732. **Ms MacHugh:** We discussed this with the Minister. The need for a barrister or solicitor was determined as a safeguard against call-in being misused for a political purpose. This would mean adding an additional safeguard to the

- original one. How would a panel be constructed and who would appoint it? Would the whole panel —
2733. **Mr Weir:** Sorry to interrupt, Linda, but I am not sure that that is 100% accurate. I was involved in the PDP discussions on this. At that stage, it was agreed that some form of outside referral would be necessary to determine its legitimacy, but there was no mechanism to determine that it simply be referred to a barrister or solicitor. There was no agreement on that, and it was one of the outstanding issues. It was a timing issue: it may well have been tackled by the panel had things moved on. However, it was among the issues still to be discussed and resolved, but it was put on ice. So there was no specific agreement or common understanding that the process would be that the chief executive would simply refer to barristers or solicitors. What was agreed was that there would have to be some form of mechanism to determine whether a call-in was legitimate.
2734. **Ms MacHugh:** When you look at seeking legal advice, some of the larger councils being created will have an in-house solicitor. If there were a need to go outside the council to seek legal advice from some sort of independently appointed panel, in what position would that put the council's legal adviser? Is there, then, an assumption that there is no trust in the professional input from that legal adviser in the council? There are other issues around how the panel would be constructed, how it would work and how the call-off would happen. Would it be the whole panel sitting? There is the feeling that it is —
2735. **Lord Morrow:** A minefield.
2736. **Ms MacHugh:** — a bit of a minefield. It could cause more problems than it is there to resolve.
2737. **The Chairperson:** It could bring in another layer of problems.
2738. **Mr Weir:** There are two issues. On the grounds on which the mechanism is done, to be fair, probably the biggest concern is that there was very clear-cut guidance on what counts as a legitimate call-in on the basis of how reference to the community side of things is determined. Some level of guidance on that would be helpful.
2739. With the exception of Belfast City Council, which has its own internal solicitor, most councils do not have — I suspect that, under a new system, they will not have either — an internal legal adviser. Perhaps other councils will waste ratepayers' money on that basis as well. Most councils, because of economies of scale, do not have an internal lawyer. They have a town's solicitors. My only concern is over what happens to something that keeps on being referred internally or quasi-internally. If a firm of solicitors were asked to rule on stuff that will affect the council, would there be a reticence for it to rule against what it would see as the majority position? Any call-in will come from a minority position. Are solicitors going to feel a degree of restriction? They might say, "If we're too awkward and block too many council decisions by way of agreeing that a call-in is legitimate, are we risking being appointed the next time that it comes to the appointment of solicitors?". As such, it probably has to be independently decided outside of the council. There is also a bit of a danger that, if a matter is simply referred to a solicitor or barrister, you do not have consistency. Perhaps the route around that is simply to ensure that whatever guidance that you have is very tight and clear-cut so that you are getting consistent decisions.
2740. **Mr Elliott:** There are two aspects to it, one of which is criteria. There needs to be clear criteria and guidance. There is then the issue of who interprets that. Is it the in-house solicitor, if the council has one, or is it some sort of panel? For consistency throughout Northern Ireland, it would be much better if there were a central panel or group.
2741. Linda, I totally take your point that it is about how you do that, but how do you do any of these things? You come up with a mechanism, formula and basis for doing so. That is how we do anything.

- I do not see that as a barrier in itself. If decisions are left to each council's legal advice, you will be into a nightmare situation in which you will have blocking mechanisms right throughout councils. It is absolutely necessary that there be clear, centralised criteria. You cannot leave the criteria up to each council.
2742. **Mr Weir:** One possible solution was suggested. We have in the legislation that if a complaint is made against a councillor, it will go to the local government complaints commissioner, or whatever the title is. Could whatever that office has responsibility for have operating under it a panel that could determine the legitimacy of call-ins? That, or something of that nature, is one possible solution to getting a Northern Ireland-wide interpretation.
2743. **Mr Elliott:** Chair, I do not think that there is a Department here that does not have some sort of appeal mechanism for something. DSD obviously has its appeal mechanisms, as does the Department of Agriculture. I am not saying it should be an appeal mechanism, but having a forum would give more consistency and result in less chance of blockages in individual councils. That is the key to it.
2744. **The Chairperson:** And take it outside the council as well and give it independence.
2745. **Mr Elliott:** Yes.
2746. **Mr Durkan:** I can see the rationale behind that, but it would throw up even more complications, such as how the panel would be paid for and by whom. By all councils? I am sure there are some councils that do not have the funds.
2747. **Mr Weir:** To take an example, and this is a little bit off the top of my head, my understanding is that what you are looking at by way of a mechanism for the complaints procedure and the code of conduct is a form of top-slicing that would pay for that. There could be a function within that that also determined the legitimacy of call-ins. If you are top-slicing for one thing, it is not a big leap to have some slight, additional level of top-slicing for another. I think that the mechanism —
2748. **Mr Durkan:** It may be a particularly big slice.
2749. **Mr Weir:** Depending on what is needed.
2750. **Mr Durkan:** It is the guidance, I suppose.
2751. **Mr Weir:** You going to need something for that.
2752. **The Chairperson:** You also have to ask whether you are sidestepping the council's own solicitor by duplicating the work.
2753. **Ms MacHugh:** If the decision were taken by that outside body and then legally challenged, where would it end up?
2754. **Lord Morrow:** It sounds like a lawyer's paradise.
2755. **Mr Elliott:** It is going to be a lawyer's paradise one way or the other. All that I am trying to find is a mechanism that will reduce the potential for blockages in councils. That is important.
2756. **The Chairperson:** Yes.
2757. **Ms MacHugh:** The debate also calls into question the independence of the legal profession if there is then an inference drawn when you are seeking legal advice that it depends on whom you go as to what the advice will be. *[Interruption.]*
2758. **The Chairperson:** Peter, can you please be quiet?
2759. **Mr Weir:** Chair, I was just going to say —
2760. **The Chairperson:** I cannot hear Linda.
2761. **Mr Weir:** Sorry.
2762. **The Chairperson:** Linda, please repeat.
2763. **Ms MacHugh:** The whole discussion is premised on the assumption that if you ask the legal profession for advice, you may not get the right advice, or it may be the wrong advice, and therefore you need some independent legal person. If I were a lawyer, I would be quite nervous at this point.
2764. **Mr Elliott:** We have to be clear about this: it is different legal advice that

- keeps solicitors in jobs. That is the reality.
2765. **Ms MacHugh:** That is true.
2766. **Mr Elliott:** If you go to different solicitors, you will get different advice. Let us not argue about that. That is a fact that nobody can —
2767. **Mr Weir:** The issue is at least to have something that is consistent. Lawyers would look at the thing dispassionately and independently, but they might well come to very different verdicts. There is the potential to bring call-in into a little bit of disrepute. For example, what is intended by the sale of a play park as it relates to the play park strategy? That can be interpreted in different ways.
2768. In one council, it could be ruled as a legitimate call-in, yet if the same thing were to happen a month down the road in a different council, it might not be regarded as a cross-community issue. The facts could be pretty much the same but people have interpreted them differently in each case. There is a danger that that could turn call-in into somewhat of a mess.
2769. **The Chairperson:** Yes, but not if you have a clear set of guidelines and criteria. It is also good to have an independent person with a legal mind — the solicitor — to look at the issue and interpret it. That would be better than having it debated among different party councillors. We should not be too insulting about or not trusting of our solicitors to do their job properly. If they are set out clearly, the guidance and criteria are easy to interpret. Perhaps we should leave it to our solicitors to do their job.
2770. **Mr Boylan:** I do not know about that, Chair. There are too many solicitors on this Committee. *[Laughter.]*
2771. **Mr Weir:** I think that you will find, Cathal, that there are two barristers but no solicitors. We do not want to have to sue you for libel.
2772. **The Chairperson:** We still have quite a few items to discuss, and I am aware of
- the time. I think that we will leave the matter there.
2773. **Mr Weir:** I have one other wee issue to raise on the local government stuff. When the Committee met on Tuesday — I think that Linda and others were going to see the Minister later on the broader issue — there were some concerns over the code of conduct appeals mechanism and a couple of other issues. Indications were given that you were going to seek the mind of the Minister that afternoon. Is there any update?
2774. **Mr Durkan:** The officials came to me on Tuesday afternoon with feedback from their session with the Committee. The appeals mechanism formed part of that feedback. My mind on that is that there should be one. It is important that we be as open and fair as possible. I think that you, Peter, advocated it at the session. I am certainly of a similar mind.
2775. **The Chairperson:** Would that be appealed to the High Court?
2776. **Mr Durkan:** Yes.
2777. **The Chairperson:** OK. You will put in an amendment to that effect. I think that a lot of stakeholders made comments about a lack of an appeals mechanism.
2778. **Mr Weir:** That would be a very positive development. It would be helpful if we can see a draft amendment as soon as is possible.
2779. **The Chairperson:** We will talk further with Linda later. Members, we are now moving on to the taxi legislation.
2780. There are a couple of papers for members to look at. There is a departmental reply on taxi meters; the SL1, which is another departmental reply; and another paper on taxi legislation. There is a very useful timetable that sets out how the Department is going to proceed with subordinate legislation.
2781. **Mr Boylan:** Clauses in the Local Government Bill are being raised with the Minister. We have done 50 clauses up until now. There may be other elements of the Bill to discuss. Is there

- another opportunity for the Minister to come back to the Committee?
2782. **Mr Durkan:** No problem.
2783. **Mr Boylan:** We have done the first 50 clauses, and issues were raised on the four clauses discussed today. There may be other issues that we can invite the Minister back to discuss.
2784. **The Chairperson:** If we have time. We are at clause 69.
2785. **Mr Boylan:** Clause 69 is a big issue, with its community planning element. I certainly would like time to discuss that element. When will we get an opportunity to go through that clause?
2786. **The Chairperson:** We have only two more weeks, and we are planning two additional meetings for the next two Tuesdays.
2787. **Mr Boylan:** OK. I will say this now, and then we will move on to the taxi stuff. Under community planning, I would like there to be an element on tackling deprivation and social exclusion. I know that we will get into the issues when the officials are here, but I am mentioning them now while the Minister is here. I am happy to move on to the taxi stuff.
2788. **The Chairperson:** OK. I remind members to switch off their phones. We are picking up a mobile signal from somewhere.
2789. Minister, I am sure that you are aware that a subcommittee of this Committee was at the meeting at which a model of a three-mile exclusion zone for Belfast public hire was discussed. We know that officials have talked to you about it. We certainly talked to them at great length at the meeting about the proposal. Is the subordinate legislation timetable on track? Is there any further engagement with Belfast public hire?
2790. **Mr Durkan:** First, it is important to reiterate that the purpose of the Taxis Act 2008 is to improve standards in the taxi industry for the benefit of consumers and the public. The issue around the proposal — if you can call it a proposal — for a three-mile exclusion zone is one that I am not overly warm on, to be honest. However, time and again, I get Assembly questions for written answer on the subject. The previous time that I was here, the issue of enforcement was raised. Some may say “lack of enforcement”, but enforcement activity has increased over the past few months.
2791. I think that the implementation of a three-mile zone — I know that there were talks around certain times, such as when you might have two-tier and single-tier times — will make things even more difficult to enforce, if not impossible, and more confusing for the public.
2792. **Mr Weir:** The Minister needs to be aware of the seriousness of this. There was that subcommittee meeting. Everybody is keen to crack the issue and get agreement. There are no specific regulations for some form of exclusion from Belfast city centre, which was floated as a possibility as the Taxis Bill was going through. There was a possibility of the single tier not excluding something separate happening in Belfast. We can quote Hansard on that. I read the paper that was produced by the Department, and it used nice words about implementation being done in a fashion that would have sympathetic timetables for Belfast public hire. That is the key element to cracking this and getting it over the line.
2793. Arising from that would be the need to create a Belfast taxi plate for the area. The other, non-legislative issue that you mentioned was enforcement. The other element to that is a key commitment to what is happening in Belfast, although there are big concerns over what is going on across Northern Ireland. If there is a specific commitment to there being a separate Belfast enforcement team as part of the overall plan, people across the board may be able to agree and live with it if those elements are put in place. We are not talking about big numbers — it may comprise half a dozen people. However, if we simply talk about a longer period of implementation or about being in some way vaguely sympathetic to Belfast public hire,

- without there being something that directly impacts on the city centre single-tier situation, there will not be agreement. I do not think that the legislation will go through on that basis. I am sorry to be blunt, but it is important that you know the lie of the land. A number of us are concerned about this; concerns are not coming from just one party or individual. It is a concern shared by at least three parties represented on the Committee. What I have said is key to providing that accommodation, Minister, and it is important that that be made absolutely clear.
2794. **Mr Durkan:** I appreciate your frankness. It is the key to cracking it. When I assumed the role, I also assumed that the issue had been cracked and had just been postponed until this September, before being implemented. The Committee and Assembly passed an SL1 for single tier in June. Lord Morrow said earlier, on another subject, that people sometimes make decisions in life that we must stand by. The SL1 to implement single tier has been passed, and the only way that it can be rescinded is to have it prayed against in —
2795. **Mr Weir:** On what has been passed and what can be prayed against, I will just say that we can push all of this into causing a degree of conflict, where we raise the stakes on things and create a situation in which the Committee or the Assembly is forced to pray against legislation, or, indeed, to enact legislation. It is fairly clear that those who have expressed concerns represent a pretty overwhelming majority of the Assembly. I do not think that people want to pray against the SL1. I think that they want to see a solution that accommodates the particular situation in Belfast, on which there can be a degree of agreement. That will mean that single tier will operate fully throughout the vast bulk of Northern Ireland. That seems to be a reasonable enough solution that can be put in place. If we are forced into a situation in which actions need to be taken to overturn things, so be it in those circumstances. However, it would be very wise for all of us to try to reach some wider agreement. I know that others may —
2796. **Mr Durkan:** I have previously in the Assembly, if not at my most recent meeting with the Committee, displayed a degree of flexibility and a willingness to look at things. Any solution along the lines that you mention is going to be extremely difficult to reach. I say again that I will continue to look at finding one, but I do not think that we are ever going to get something that will make or keep everyone happy.
2797. **Mr Weir:** Perhaps, at least, it will create an equal level of unhappiness around the place. At present, one section of the industry is deeply unhappy, and other parts are to a lesser extent. What is needed is something that people can buy into.
2798. **The Chairperson:** They are a small minority, however, Peter. You are talking about around 400 vehicles from Belfast public hire.
2799. **Mr Weir:** When figures were previously given, a mistake was made in providing information. I think that, off the top of my head, the figure should have been 439. That was misread as 349 and was then rounded down to 300.
2800. We are talking about several hundred jobs. As with a lot of these things, if the taxi industry were starting up tomorrow, you might look at a different solution. However, we have to deal with the situation as it is and make it workable.
2801. **The Chairperson:** The taxis legislation came on board in 2008. In fairness, the industry has been —
2802. **Mr Weir:** With respect —
2803. **The Chairperson:** — given a lot of time.
2804. **Mr Weir:** With respect —
2805. **The Chairperson:** It has been given many years—
2806. **Mr Weir:** With respect —
2807. **The Chairperson:** — to adjust —

2808. **Mr Weir:** With respect —
2809. **The Chairperson:** — to the situation.
2810. **Mr Weir:** With respect, Chair, I have two points to make about that. When the Taxis Act came into law — looking around the table, I think that Cathal and I are the only survivors of the First World War — it was not done with uniform agreement. People had different views. To be perfectly honest, we were tortured with the legislation for months. It was also the case — this is on public record — that, when mention was made of the single tier at that stage, the officials clearly said that it would not necessarily be something that would apply across Northern Ireland. They said that something could be looked at for Belfast. We read that into the public record on a previous occasion, so this is not novel. We have to deal with the situation as it is. Mine is a reasonably sensible suggestion. People could simply try to direct the single-tier system. That is not what is being said. It may well have been the position of some a while ago that they simply did not want single tier, full stop. There is acceptance that there will be single tier for the vast bulk. This is about trying to do something that caters for the specific circumstances of Belfast, particularly the centre of Belfast, where there is a particular set of circumstances. That is not unreasonable. It is a compromise. If there is a bit of give and take, people can agree on it.
2811. **Mr Durkan:** It is fair to say that the problems and confusion created by the two-tier system are nowhere more pronounced than in the centre of Belfast.
2812. **The Chairperson:** We have to think of the consumer, who is the primary concern for all of us. It is about the quality of taxis, consumer convenience and understanding. If you say that, within three miles, you can get only a black taxi, and nobody else —
2813. **Mr Weir:** Sorry, that is not accurate. If you phone looking for a taxi, you can get a taxi anywhere. What you cannot do is simply pick up a cab at random. That is where there is a distinction. There is nothing to preclude anybody from getting a taxi within the three miles, so let us not misrepresent the situation.
2814. **The Chairperson:** You then have the silly situation at Belfast City Airport now. Before you leave the airport, you have to ring a taxi. The taxis are outside in the taxi rank, but you are not allowed to jump into a taxi. There is a desk that you have to approach to ask for a taxi. That is a two-tier system.
2815. **Mr Weir:** With respect, previous systems operated in the airports. Nobody is suggesting that what is there is necessarily perfect, but sometimes changes made have not been beneficial. I may be hogging the issue, and perhaps other members are looking in.
2816. **Mr Boylan:** There is not much more to say now that Peter is done. We need a solution. I totally agree with what Peter said. I would not like to scupper all the good work that has been done in Committee. We have given the issue a fair hearing, and we can attach blame to everybody, because a total lack of enforcement has led to this situation.
2817. We built in a two-year review. Although people may argue that we have not implemented the Act in full, it is clearly seen not to be operating under a single-tier system, and it will not operate. Minister, I ask you to consider the issues seriously. If it is the case that, come September, when we have to look at it, I would certainly consider praying against the SL1. I hope that we do not have to go down that route.
2818. A group of people have come to us over the past six months with genuine concerns. To be fair, Chair, we agreed in principle to delay the rule until September on the premise that the issue would be looked at and talked through with DRD and everybody else to try to get a resolution for the centre of Belfast. We are not trying to create an issue. Different people whom I have met have asked, “Why are you doing this? You are not doing this for us”.

2819. If we had thought that we were bringing something through that would stop a group of people or create problems in one section of the industry, we would not have agreed the SL1 in the first place. However, there was facility to look at a two-tier system in Belfast. If anybody else wants to come to us and say, "It may be the case that this can operate in the likes of Derry", that is grand. Come and talk to us. However, the major issues thus far have been around Belfast. We have to get a solution, Minister, and I hope that you will take that on board and bring forward something, no matter how difficult it is to do.
2820. When the Committee went through its 17-week consultation period and took presentations, the issue of enforcement and all the associated matters should have been raised. It has taken this length of time for that to happen, so I ask you seriously to bring forward some solution. I support Peter's comments.
2821. I met both sides of the industry on the issue, and there are concerns on both sides. The information that I have gathered over the past six to eight months certainly does not stack up in favour of having a single-tier system in the city of Belfast. It is something that we seriously need to look at, because, come September, if I am still on the Committee, I will unfortunately be looking seriously at stopping the rule on single tier. I do not want to do that, because there has been good work done. Both sides of the industry have to clean up their act, and we have to recognise that. Therefore, hopefully, the Minister can bring something forward that will address the issue.
2822. **Mr Elliott:** I think that the Minister said at the start that the system was to come in to provide a better service for the public. Is it better for the public? Are the rules being obeyed or will this cost the public more? From what I have seen since I joined the Committee, the process will create more expense for the public. If you are getting a better service, perhaps you have to pay for it, but we need to look at that. There is an issue around whether it is a single- or a two-tier system. What is being suggested in Belfast is that there is a difficulty with enforcement. Enforcement has just not been taking place. Nothing has happened to those operating outside the law or the spirit of the law, and that has not been resolved. There is no indication that it will be resolved under this system. What I am hearing is that changes are being requested, especially in Belfast, because that is, I think, the only area it applies to. Perhaps others will keep me right as to whether, in different areas, there might be the public-hire system in the spaces, but I do not think so.
2823. **The Chairperson:** Just Belfast.
2824. **Mr Elliott:** I do not think that what is being asked for is outrageous or too difficult to change or implement. Perhaps the Minister and the officials could give us an indication of whether they see it as too big a job to change it or have a two-tier system in Belfast. Let us hear the argument for not having a two-tier system. From what I hear, I know that it would not be a huge operation to change it and put that in place.
2825. **Mr Durkan:** Who are you hearing that from?
2826. **Mr Elliott:** From the industry, from members of the public who have an interest and from some consumer groups.
2827. **Mr Durkan:** I have met Belfast Public Hire and am well aware of its concerns. I remain committed to helping Belfast Public Hire to engage with other Departments on the training and business support assistance that can be given to them, especially with DRD on issues of ranks and bus lanes, which will be very important, regardless of whether the Bill proceeds or not. I would certainly like it to proceed as planned for September.
2828. Peter was talking about equality. When I met representatives of Belfast Public Hire, they stressed to me their desire to see a level playing field. Does the

- creation of a single-tier system not create a level playing field?
2829. **Mr Elliott:** Nothing that you have told me, Minister, changes my view that it is not a level playing field, simply because the enforcement is not there to deal with it. The enforcement is not —
2830. **Mr Durkan:** Will a single-tier system not create —
2831. **Mr Elliott:** What I am not hearing is how the proposals for a single-tier system will change that or make it better. Why can a two-tier system not operate in Belfast with some simple changes to the proposals? I have not heard any of that. At this stage, my sympathy is still with the consumer groups and the industry, which are saying that a two-tier system would be better immediately in Belfast.
2832. **Mr Durkan:** I have had representation from the Consumer Council, which strongly advocates a move towards a single tier.
2833. **The Chairperson:** Most respondents throughout the consultation period support a single tier.
2834. **Mr Boylan:** With no disrespect, Minister, there is a consumer element and a provider element. We would not have heard so many complaints if enforcement had been properly enacted in Belfast, but it has not been, Minister. One good thing is that that has led to us knowing about the problems that we will face under the single-tier system. I am glad that we are seeing that up front. That is where a level playing field has not been created. Looking back, I am glad that we built in a two-year review and the opportunity for a two-tier system. I repeat what I said: I do not want to undo all the good work of the previous Committee, but, reading between the lines, Minister, it looks as though you are not even prepared to look seriously at addressing the three-mile issue. I agree that there might need to be assistance in clearing footfall at a certain period at the weekend and with trying to get both sides of the industry to look at that. However, we need to bring forward something concrete.
2835. **Mr Durkan:** I think that the Hansard report will show that I stated that I remained open to looking at this, and I do. However, looking at it or coming back with something biddable or acceptable to everyone are not the same things.
2836. **Mr Boylan:** That is a fair point, Minister. However, we had a meeting in December with officials when we went through this for about an hour and a half, and we still have not heard anything.
2837. **Mr Weir:** If you saying that there might need to be variation at particular times, that is not unique. You mentioned different levels of enforcement. If you go to Belfast or anywhere else, there is completely different enforcement of parking regulations depending on the time. A lot of parking zones are restricted between 9.00 am and 6.00 pm, with the regime changing the minute you go past 6.00 pm. So the idea that there cannot be something nuanced that takes account of the time is not a sustainable argument.
2838. **Mr Durkan:** As regards the consumer issue that we were discussing before Cathal asked his questions, the Consumer Council is strongly advocating the move towards a single-tier system. Other groups that I have received representations from are also in favour of that option. Most recently, Pubs of Ulster contacted me with a view, and I imagine that that organisation will contact the Committee as well.
2839. **Mr Weir:** Minister, that would be a very watertight position if the argument was that there should not be a single-tier system anywhere in Northern Ireland, but that is not what is being said. We are talking about geographic exclusion to deal with this particular problem. In effect, it will mean that a single-tier system will operate in the bulk of Northern Ireland. No one is arguing against that. We are simply trying to find a reasonable compromise.
2840. **Mr Durkan:** As I have said, the problem is most pronounced in Belfast city centre, where the two-tier system is operated. There are public and private

safety issues. We want the streets in the city centre to be cleared as quickly as possible at night. If someone is trying to flag down a taxi, they might fear for their safety. They might not be able to flag one down, but five taxis that someone down the street has phoned to book pass them by, with no taxi available to stop for them because no public-hire vehicles go past. It is difficult, and often the person trying to flag down a taxi does not know why the five vehicles have not stopped because they are not from Belfast and do not understand the system.

2841. **Mr Boylan:** To be fair, Minister, we hear different stories. I know people who have phoned to book taxis to come into the city and have stood around waiting for an hour to an hour and a half. So what I am saying —
2842. **Mr Durkan:** Well, they will not have to phone —
2843. **Mr Weir:** To be honest, a car simply pulling up to allow someone to get into the back of it does not strike me as being the safest or most watertight of situations at a time when people can be vulnerable. It cuts both ways.
2844. **Mr Durkan:** The displeasure with how enforcement has or has not been carried out has been expressed today and previously. We have seen much more enforcement activity over the past couple of months. The single-tier system will allow enforcement officers to concentrate on illegal taxis and rogue operators rather than trying to police which taxi picked up where and at what time.
2845. **Mr Boylan:** That is the point that I was coming to before I was interrupted by the phone issue. To relieve the stress and pressures of footfall at certain times, both sides of the industry need to come together, and we have asked for that to be taken on board. Both sides of the industry should work together to relieve the pressure. I still think that the three-mile suggestion is fairly good, and we should try to come up with a solution along those lines.
2846. **Mr Paul Duffy (Driver and Vehicle Agency):** Just to give some clarification on illegal picking up, which is the main offence that the public hire sector has raised with the agency. Over recent months, we have increased the number of enforcement operations to detect and deter illegal picking up. A three- or five-mile radius would not make much difference to enforcement activity.
2847. That is because the concentration of taxis illegally picking up is predominantly in the city centre. The difficulty that we have with detecting that type of offence is that although Mr Weir talked about having a Belfast team with six members of staff, it is resource-intensive to detect such an offence. As I described, an enforcement officer has to flag down a taxi successfully to start with; has to take a journey for which he or she is charged; and then issue a fixed-penalty notice. That can take quite some time. If six members of staff were policing that during the day, our evidence suggests that the number of fixed-penalty notices that you would issue would not deter or change behaviours. So if you were to have a three-mile radius and six members of staff, I am not convinced —
2848. **Mr Weir:** I am not going to be tied in with specific numbers, but there needs to be a dedicated commitment to Belfast. To be perfectly honest, a coach and horses are being driven through a range of things that happen illegally at present. You can go any night to check that out for yourself if you wish. That is part of the problem. The one advantage in having a narrowly defined area is that you at least allow a bit more concentration there. However, the Department must show at least some willingness to enforce and to show its commitment to a clear, specific and agreed problem. You have an overall enforcement team, but promising to dedicate some of them to dealing with the Belfast problem would at least go some way to start doing that.
2849. If it is an issue of having to go through so many hoops to get a conviction, we need to look at, and be honest about, whether we have a system that is

- unnecessarily bureaucratic and to see whether we need to change the law. We can perhaps cross that bridge when we come to it. I do not wish to tie that in directly with the current situation. However, it is clear that the law is being flouted day in and day out. Simply saying that it would be easier to have a single tier because a range of laws would not be flouted is not the way to deal with illegality.
2850. **The Chairperson:** Why not? That is the way to remove it. If you have a single-tier system, you do not need to have enforcement officers conducting checks. You are also maintaining the monopoly for one section of that issue in Belfast.
2851. **Mr Weir:** Sorry, I have to say that it is not a monopoly. If I am anywhere in Belfast, I can pick up a phone and get any taxi. It is not a monopoly. Indeed, the danger, and my concern, is that, on that basis, you will have a potential duopoly. Also, the argument that is made is that it will remove the problem by removing many of the offences. If I were Chief Constable or Minister of Justice and had the opportunity to do that, I could halve the crime rate in the morning by abolishing half the offences. That does not help and seems to be a fairly woolly idea.
2852. **The Chairperson:** The consumer who wants to go somewhere could just step out of their house or office and hail a taxi, as happens in other cities. At present, you must ring, ask for a taxi —
2853. **Mr Weir:** Some cities operate single tier and others double tier.
2854. **The Chairperson:** — and it may be five, 10 or 15 minutes before you can get a cab. I said previously to the Minister that visitors to Belfast were very puzzled by seeing taxis with signs flying past them and not picking them up. If we want to be a place for tourists, we must work in a way that is convenient to everyone seeking a taxi.
2855. **Mr Durkan:** You have to phone a taxi, but not only do you not have a taxi service number, you may not know what street you are on.
2856. **The Chairperson:** You do not know. The visitor simply sees an empty taxi and wants to get into it. That is how other cities work. If we want to have just black taxis for Belfast, we need many more of them. You seldom see a black taxi going down the street. You have to go to certain taxi ranks to get them, and, if you are between those taxi ranks, you will not be able to get a taxi by hailing the driver. We need to think about the public, the consumer and our image as a modern, progressive city that caters for everybody.
2857. Lord Morrow, you have been very patient.
2858. **Lord Morrow:** Chair, most of the things that I was going to say have been said. I want to be careful about going into vain repetition. Paul said that you had to commit six members of staff to police or monitor it. Did your Department not carry out some monitoring, for example, at the Ravenhill ground? Do you have that report available?
2859. **Mr Duffy:** There was a number of operations with regard to what was happening at Ravenhill. We took legal advice on observations. The Department then arrived at a position that was issued to the major operators on the legality of what was taking place at Ravenhill.
2860. **Lord Morrow:** What was that legal advice?
2861. **Mr Iain Greenway (Department of the Environment):** Legal advice was taken from the departmental solicitors —
2862. **Lord Morrow:** Which said?
2863. **Mr Greenway:** — which was reflected in the guidance note that was issued on —
2864. **Lord Morrow:** Which said? Sometimes, three words are used, and I do not know why those words are used particularly. Sometimes we get the word “information”, sometimes it is “observation” and sometimes it is “report”. I am not sure what I am going to get. Is this a report, an observation or information?

2865. **Mr Greenway:** This is the legal position regarding taxi provision at Ravenhill rugby ground dated 18 October 2013, which was passed by the Department to interested parties and, I believe, has been provided to the Committee previously. That was the outworkings of the legal advice that was based on the observations made on the ground at — in this case, using the example you cited — Ravenhill rugby ground.
2866. **Lord Morrow:** Will you refresh the Committee's thoughts regarding what it said? You need not read it all, but I am sure that there are salient points in it.
2867. **Mr Greenway:** The advice reflects the Public Service Vehicles Regulations (Northern Ireland) 1985, the Taxis Act (Northern Ireland) 2008 and the Taxi Operators Licensing Regulations (Northern Ireland) 2012. It reflects on the legality, or otherwise, of taxis proceeding to Ravenhill and it makes clear that there must be an explicit engagement made from Ravenhill. That requires a request, by someone other than an on-duty employee of the taxi operator, to the taxi operator to send a specified number of vehicles at specified times to a specified location. I think I said before in front of the Committee that it is the same as Anna holding a party and asking for some taxis to come to her house at midnight to take six guests. A record of the request must be maintained by the operator in accordance with the 2012 regulations. Therefore, there are certain records to be kept. That is under the Public Service Vehicles Regulations.
2868. Under the Taxis Act, there are certain requirements regarding the recording of the details of the customers being taken into the individual vehicles from Ravenhill to their chosen destination — dates, times, location of pick-up, location of drop-off, the number of passengers — and that must be recorded prior to or at the end of the journey and returned to the operating centre within five working days.
2869. The advice then goes on to cover the guiding of patrons to taxis. Given that they have not been party to the engagement, it is important that the process of guiding patrons to a taxi makes it clear to them that they are free to use other means of leaving the ground, including other taxi firms. Regulation 49 of the 1985 regulations outlaws touting: the activities of a person employed as a driver to tout, call out or otherwise importune any person to be carried for hire in a vehicle. Section 43 of the 2008 Act draws those taxi provisions wider but has not yet been commenced. These are the salient points.
2870. **Lord Morrow:** I am trying to make a point in response to what Paul said. With regard to the time involved and the difficulty in trying to detect, you feel that this is going to take a world of time and would be very difficult to enforce. The bottom line in all of this is lack of enforcement. I do not know how many prosecutions the Department has recommended over the past 12 or 24 months. Have you any figures for that?
2871. **Mr Duffy:** In the past financial year, we carried out almost 2,000 operations in which we issued 277 fixed penalty notices, referred 88 files to the Public Prosecution Service and had 150 successful prosecutions.
2872. **Lord Morrow:** What year was that?
2873. **Mr Duffy:** That was 2012-13. We have figures for the first half of this year: we have had almost 800 operations, 125 fixed penalty notices, 55 files referred to the Public Prosecution Service and 53 successful prosecutions.
2874. **Lord Morrow:** Have any operators been struck off as a result of their conduct and been told that they cannot operate any longer?
2875. **Mr Duffy:** Yes.
2876. **Lord Morrow:** Do you have the number?
2877. **Mr Duffy:** No, but we recently revoked the licence of a taxi operator.
2878. **Lord Morrow:** If the perception is that there is lack of enforcement, then I think that reduces confidence in the whole

thing. What I am getting is that there is a lack of enforcement. I want to make clear that am not making light of what you say; I take on board the number of staff, including senior staff, that you have to engage and all of that. However, if we are to drive this forward, I honestly think that we have to look again at this, because I do not see that enforcement. I agree with Peter Weir and Cathal Boylan; where they are, I am too.

2879. **The Chairperson:** I am aware of the time. One last question from Colum.
2880. **Mr Eastwood:** I will not take long. I think that if an enforcement body is set up to enforce things it should do so. However, as someone who gets quite a lot of taxis in a place where we are not allowed to hail them, it has never caused any trouble. I would far rather see the enforcement authorities, with their finite resources, ensuring that I get into a safe taxi and that the driver ticks all the boxes for health and safety and security and all of that. How much of your enforcement time is given to that aspect compared to figuring out who has picked up somebody here, there or wherever?
2881. **Mr Duffy:** As I said, over the past two to three months, because of representation, we have been directing more time towards the illegal pick-up of passengers. It is a difficult balance to strike. Previously, we channelled more of our resources towards the more serious offences, such as illegal taxis or the unroadworthiness of vehicles. However, with limited resources, it is about balancing serious offences and the representations on detecting illegal pick-ups, which are minor licensing offences and carry only a £30 fixed penalty notice.
2882. **Mr Eastwood:** So, is likely that, with increased focus on the picking-up issue, more serious offences will go without being enforced?
2883. **Mr Duffy:** That is the balance that we, as an agency, have to strike in managing our resources. We try to take a risk-based approach in that we respond to

intelligence. However, we also base our work on operators and drivers' profiles. As you focus your attention on illegal pick-ups, you cannot be doing targeted operations. You could be out for two or three nights on a targeted operation and not get the taxi that you have targeted. So, in themselves, they take a lot of time, but they are much more serious offences to detect.

2884. **The Chairperson:** The single-tier system would wipe away the need for checking illegal pick-ups. If everyone could pick up a passenger, according to the needs of customers, the consumer could request or demand a taxi.
2885. **Mr Duffy:** It would certainly remove an offence and would allow resources to be channelled to other areas. That would be a consequence of single tier.
2886. **Mrs Cameron:** To follow on from what Colum said: what role does the Department have in ensuring that taxis are roadworthy, safe and legal?
2887. **Mr Duffy:** We conduct operations throughout the week based either on intelligence that targets illegal taxis or by doing random roadside stops to check the roadworthiness of vehicles. In doing so, we will pull over a random sample of taxis no matter whether they are private, public hire or whatever. That is one of the detection methods for more serious offences that we try to dedicate time to.
2888. **Mrs Cameron:** Finally, do you have any figures for the results of such checks?
2889. **Mr Duffy:** Just the figures that I provided to Lord Morrow, which can be broken down into whether they were to do with having no licence, having an illegal taxi or roadworthiness. However, I do not have that detail.
2890. **Mrs Cameron:** Could we get it?
2891. **Mr Duffy:** Yes.
2892. **The Chairperson:** The Minister has to leave at about 12.00 pm. We have five minutes. We will move on to the report on illegal waste activities in Northern Ireland. It is a very long

- report but, on page 100, you can see the key recommendations. Minister, it is quite a damning report that says that the regulatory regime is weak and that sentencing is low. Page 22 says that lots of things are wrong. Will you implement all the recommendations in the report?
2893. **Mr Durkan:** The report is quite damning, as you rightly say, Chair. Unfortunately, I do not think it tells us and you, as a Committee, a lot that you might not have already suspected. I released the report promptly to ensure open debate and discussion on how we fix the huge waste problems that we have here, and my permanent secretary and the head of the Northern Ireland Environment Agency (NIEA) will soon complete their analysis of the Mills report recommendations and provide me with draft proposals on how we will action them. I will then review those proposals and publish a full response to the Mills report.
2894. **The Chairperson:** It is very costly to try to remedy the waste dumped in illegal sites.
2895. **Mr Durkan:** Absolutely. We are looking at that issue now. My predecessor managed to secure an additional £1.5 million from the Executive to deal with that issue in particular, and some of that involves getting someone to cost the damage done at the illegal dump. They will come back with not only a cost but recommendations or proposals for clean-up. It is in all our interests to ensure that the polluter pays. There is a criminal investigation ongoing, as well as our work through the Department, but the report underlines and emphasises the seriousness of the problem here with waste crime and the huge financial gain that can be made by people who are all too willing to exploit gaps in the system. It is up to us, therefore, to ensure that those gaps are closed, and the report highlights that clearly.
2896. **The Chairperson:** There is very little risk of being caught. Minister, we look forward to your follow-up on that.
2897. **Mr Eastwood:** I am reluctant to say too much when a criminal investigation is going on, but this was a bolt from the blue and people did not know it was happening. Maybe they should have known it was happening. It was a huge site on the outskirts of Derry with lots of illegal waste dumped in it. What kind of work is now being done with the police and other authorities to figure out if it is happening anywhere else? I am pretty sure that it probably is. If so, where?
2898. **Mr Durkan:** Some more of the £1.5 million that my predecessor managed to secure was used to employ 10 new waste enforcement experts in the NIEA's environmental crime unit. That has helped us to set up a major waste crackdown through what is known as Operation Toothfish. Operation Sycamore is the big one up in Derry, but Operation Toothfish is dealing with other issues. It is being led by the environmental crime unit with the PSNI and currently involves 25 investigations across 31 sites. So, it is a very widespread and worrying issue.
2899. **The Chairperson:** The report says that, in 2007 or 2008, people were already informing the NIEA about the illegal dumping and that, had there been proper investigation, the whole thing would have been stopped at that stage. Are you investigating that whole process?
2900. **Mr Durkan:** Yes, my permanent secretary will provide me with recommendations on the report, but I was particularly perturbed by some of the reading in the report.
2901. **Mr A Maginness:** It is very important to highlight that issue because it seems to be hugely lucrative for those who are carrying out that form of environmental crime. It is important that you, Minister, and the Executive make representations to the judiciary to bring that mischief to their attention and say to them that it is a very serious problem and that there needs to be exemplary sentences to highlight the pernicious nature of the issue. It encourages criminal activity and damages the economy and the

- environment. It has to be repeatedly emphasised.
2902. **The Chairperson:** It is a serious crime.
2903. **Mr Durkan:** The issue is that, so far, the profits outweigh the potential penalties to offenders, and I have discussed that issue with the Minister of Justice.
2904. **The Chairperson:** It could also lead to us breaching directives and targets for landfill. We need to bear that in mind. We could be facing millions of pounds of infraction fines from the EU.
2905. **Mr Durkan:** It is important that we get the message out as often as possible that it is far from a victimless crime.
2906. **The Chairperson:** Absolutely. It affects all of us. Thank you, Minister. There are no more questions.
2907. I want to touch quickly on the climate change Bill. What stage are we at now with that? I know that you put out a consultation.
2908. **Mr Durkan:** Yes. My predecessor provided you with the synopsis of responses to the pre-consultation last June and you considered it last July, if I am not mistaken. It is my personal belief that we should ultimately aim to achieve a Northern Ireland climate change Bill. However, I am not convinced that I have the necessary political support to do so. In fact, I am fairly convinced that I do not. *[Laughter.]*
2909. **The Chairperson:** You have the support of the Alliance Party.
2910. **Mr I McCrea:** That will get it over the line. *[Laughter.]*
2911. **Mr Durkan:** If we are to agree successful approaches to reducing greenhouse gas emissions and growing a sustainable, productive, low-carbon economy here, it must be based on partnership working across the public and private sectors and the voluntary and community sector as well.
2912. As a follow-up to the pre-consultation, I met stakeholders from the business, energy, environmental and agrifood sectors in the past couple of weeks to take on board their views on tackling climate change and how government can assist in providing them with the appropriate framework to encourage the development of a low-carbon economy. There was a lot of forthright discussion during those stakeholder meetings but also a lot of helpful discussion. Various ideas and views have been put forward, and I believe that it is possible to build upon them.
2913. For me, the main conclusions to be drawn from those meetings are that some people are still sceptical about the value of legislation at this time. All sectors would welcome working in partnership with the Department and government generally on the climate change agenda. It was interesting to note that all the sectors that I met are interested in working with one other on the agenda as well. They all support improved Northern Ireland data and research to inform measurement that is recognised and accepted across all sectors. As I said, there is, without doubt, need for a joined-up approach for the success of the green agenda across all government.
2914. **The Chairperson:** Sorry, Peter, can you stop talking, please? I would like to listen to the Minister.
2915. **Mr Durkan:** The Government need to be supportive of green business.
2916. **Mr Weir:** We will be glad when you are an MER. *[Laughter.]*
2917. **The Chairperson:** Just show some respect to the Minister, please. Do not talk among yourselves.
2918. **Mr Durkan:** It is about the development of technologies, including the facilitation of access to EU and other funding streams. I am very encouraged by the meetings I had last week, and I hope that this update is helpful to you.
2919. **The Chairperson:** Thank you.
2920. On Exploris, I know that —
2921. **Mr Boylan:** I am sorry, Chair; I will be quick. I welcome some elements of

- this, but I think that there is a unique opportunity for the new formation of councils to draw down European funding and to adapt. I would like to see the Department working on that, because it is a very good opportunity.
2922. **Mr Durkan:** That is fair enough. What came out of the discussions too was that we, not just in the Department of the Environment but across government, should do a lot more about greening up our act.
2923. **Mr Boylan:** I agree with you. Green up the island. *[Laughter.]* I totally agree.
2924. **The Chairperson:** Those who think that protecting the environment will damage their businesses are basing that view on a false premise. It very much a two-way process; it is interrelated. If we do not have the proper environment, the economy will not go upwards.
2925. **Mr Durkan:** Of course, in many ways the market itself is dictating environmental improvement for industry.
2926. **The Chairperson:** It is not either/or. It is really about working together.
2927. Are members OK to move on?
2928. There is one last thing. Can I get an update on Exploris? I know that the council has approved a reprieve for, I think, one year. Is that right?
2929. **Mr Weir:** My understanding is that it said that it would produce a business case.
2930. **The Chairperson:** Yes. A business case has been given to the development committee. What is your take on that?
2931. **Mr Durkan:** I have made no secret of my commitment to Exploris, and I reiterate that. It is a very valuable facility, and we should all aim to keep it open. However, I do not necessarily agree with everything in the business case. There are some figures that I query, if not dispute.
2932. The council is seeking £120,000 per annum from the DOE for the seal sanctuary. Regardless of the outcome,
- I am committed to the seal sanctuary. I am not sure where the council got its figures from. It wants a capital grant of £45,000 for signage for the seal sanctuary. I do not know how signage ties in with the conservation element that my Department remains willing to fund.
2933. Furthermore, the council is seeking a further £900,000 capital grant to upgrade Exploris as a visitor attraction. Through my Department, I am prepared to look at what we can do. However, I am unaware of any other Ministers or Departments having indicated what financial support they might be able to provide to make up that capital grant.
2934. **The Chairperson:** If Exploris has to close, what will happen to the seal sanctuary? Are you willing to keep that part open?
2935. **Mr Durkan:** I have committed to doing so, and I reaffirm that commitment today. However, I am not sure that it would cost £120,000.
2936. **The Chairperson:** The Committee went down to see it. The seals are just lovely. They were in the pond and in the cubicle-type thing.
2937. **Mr Durkan:** Did you find it OK? There was no problem with signage. *[Laughter.]*
2938. **The Chairperson:** Minister, I had a problem with my satnav. I put it in my satnav, and it took me to Strangford, so I had to take the ferry across. It was not just me; apparently if you are in Belfast and you put the directions into your satnav, it will bring you there too. The people in the car in front of me on the ferry were from the city council, and they did the same thing.
2939. **Mr Durkan:** I am going down there tonight for the statutory transition committee (STC), so thanks for the warning.
2940. **The Chairperson:** Just key in “Newtownards” and go from there.
2941. **Mr Boylan:** Bring the signage along with you.

2942. **Mr Weir:** It would be better to look at where somewhere is on a map and then drive in that direction as opposed to relying on a satnav.
2943. Whatever happens, the seal sanctuary will be pardoned. Leaving aside the rights and wrongs of other decisions and who has responsibility for what, this clearly falls within the DOE's ambit. From a conservation point of view, it is vital and could only really happen there.
2944. **Mr Durkan:** I remain completely committed to it.
2945. **The Chairperson:** We have covered all the items that are of concern to members. Thank you very much for your generosity, Minister, in giving us so much of your time.
2946. **Mr Durkan:** Not at all.
2947. **The Chairperson:** We look forward to seeing you again. Thanks to all your staff too.

6 February 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Barry McElduff
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Julie Broadway *Department of the*
 Ms Mylene Ferguson *Environment*
 Ms Linda MacHugh
 Mr John Murphy

2279. **The Chairperson:** We were at clause 69.
2280. **Mr John Murphy (Department of the Environment):** The legislation is an overarching, high-level framework. At the same time, we can do the guidance, which will put flesh on the bones of the legislation and start to identify some of the issues that councils will want to think about. Respondents identified specific issues about clause 69 around sustainability, green spaces, the environment, and so on. We can deal with those issues and talk about them in the guidance.
2281. There are two sides to the regional support structure. The partnership panel will provide the forum for political debate between councillors and Executive Ministers to address issues that may come up. However, one can imagine that local government itself may want to see what lessons it can learn from neighbouring councils. There is almost a duality in supporting the advancement of community planning across the region.
2282. **The Chairperson:** That structure is already there.
2283. **Mr Murphy:** Yes.
2284. **The Chairperson:** Are members content?
Members indicated assent.
2285. **The Chairperson:** The second comment is that the clause should include references throughout to community and voluntary organisations or even to categories.
2286. **Mr Murphy:** We will certainly address that in the guidance because, in the main provisions, there are key players on two sides. There are the statutory bodies and Departments that provide services or deliver functions in a council area, and there is the community in its entirety. Certainly, when it comes to the community, we talk about voluntary groups. There is the community sector and also the business sector, which will have something to add. Perhaps there are also faith groups. A whole range of bodies could have a role to play. It is probably better to ensure that we provide the appropriate coverage in the guidance. The guidance can be looked at and reviewed on an ongoing basis to ensure that we are providing the appropriate steps.
2287. The Department is working with our departmental colleagues to alert them to their role in community planning. We are starting to engage with the statutory bodies that we are likely to name in the subordinate legislation to alert them to their role in community planning. We are trying to put that entire supporting structure into place without the need to name the community and voluntary sector in the Bill. It can be done through other approaches.
2288. **Ms Julie Broadway (Department of the Environment):** That engagement with Departments and potential statutory partners will take place over the next six months to explain the expectation of community planning, the part that those statutory partners play and the duties that would be placed on them.

2289. **Ms Linda MacHugh (Department of the Environment):** That engagement starts formally this afternoon with the first interdepartmental meeting on community planning, which Leo O'Reilly is chairing. It will be important to make sure that all Departments, not just those transferring functions, understand the changing relationship between central and local government and how community planning will help Departments to deliver against their Programme for Government targets through the top-down, bottom-up approach. That will take time to develop, but it should be the ultimate outcome of what community planning is there to achieve.
2290. **The Chairperson:** I think that the voluntary and community sector's concern is that, if it is not named in the Bill, it could be easily forgotten about and not engaged with. How do we assure the sector that your guidance will be very clear?
2291. **Mr Murphy:** The guidance will be very clear. It will be statutory guidance, which provides additional weight. There will be a duty on councils to have regard to the guidance, so safeguards are being built in for the community and voluntary sector so that it will be engaged.
2292. **Mr Weir:** I know that it is never as satisfactory as legislation, but one route that has been used in the past — the Department's intention is very clear on that — is an agreed intervention at Consideration Stage and even for you to raise the issue when you are dealing with other matters. The Minister could give a clear and firm commitment on that.
2293. **The Chairperson:** At Consideration Stage, the Minister could give an assurance that the sector will be mentioned in the guidance. It has an important role in rolling out or establishing the community plan as well as its implementation.
2294. **Mr Murphy:** Certainly. We would never have envisaged community planning going ahead without that sort of engagement.
2295. **Ms MacHugh:** Councils taking over urban regeneration and community development responsibilities will have a vested interest in making sure that the voluntary and community sector is active in helping councils to achieve a set of common goals. There will be a natural fit with all that. Over and above that, there is a statutory link between the community plan and the local development plan, and, in the local development planning process, there is a requirement for community consultation. Taken as a whole, and whether or not the Department produces guidance, which it will do, it would be difficult to envisage how councils would be in a position to ignore the voluntary and community sector or the communities that they represent. The Bill states that local government will have to take into account the views of communities and their representatives. In the round, there will be a clear and distinct role for the voluntary and community sector.
2296. **The Chairperson:** Are members content with that explanation?
2297. **Mr Elliott:** That is fair enough, but it will be quite a difficult balance. What community groups say will have to be taken into account, but not everything they propose can be implemented because there are such diverse opinions. It is important to get their views, but I assume that it will then be up to councillors to decide.
2298. **Ms MacHugh:** Yes.
2299. **Mr Murphy:** Very much so, Mr Elliott. The guidance will point to the need for effective engagement with the community. I take your point that there can be expectations that things can be done, but councils will have to look at the resources that they and their community planning partners have available. You hear people say that, if you give them feedback on why a certain thing cannot be done, that can help to ameliorate the fact that you are not doing it. Again, we envisage addressing those issues in the guidance or perhaps through additional advice notes. We

- have to view community planning as a “living process” — a terrible term. We will not get it right first time, but we need a framework to be in place to allow it to develop. Scotland is where it is now after over 10 years. We cannot simply jump straight in halfway through the race.
2300. **The Chairperson:** Councils have to prioritise according to their resources and work plans.
2301. **Ms MacHugh:** To finalise: that is another reason why we are not including long lists of organisations, Departments or agencies that absolutely must be involved in every area in all community planning processes. It is about flexibility at a local level. Local democracy needs to step in, and there must be a decision-making process at local level as to where the priorities for the community plan will lie, albeit within the parameters set out in the Bill, subordinate legislation and the guidance. There is no doubt that it is a balancing act.
2302. **The Chairperson:** You will get wish lists from the community, which sees its own needs. There are so many different needs, and you have to prioritise.
2303. Are members content?
- Members indicated assent.*
2304. **The Chairperson:** The next issue is clause 69(2)(a) and the need to link objectives with Programme for Government targets. I am sure that that will be done.
2305. **Mr Murphy:** That will come through the operation of community planning. I do not think that the Bill can place that direct duty on Departments or statutory bodies. That has to be developed through the operation of community planning and the partnership panel.
2306. **The Chairperson:** Quite a bit has been said about the realignment of departmental policies and resources through community action plans.
2307. Are members content?
- Members indicated assent.*
2308. **The Chairperson:** Another issue with clause 69(2)(a) is the need for a definition of “well-being”.
2309. **Mr Murphy:** Again, Madam Chair, we will address that very clearly in the guidance; we need that. Sometimes, people read the word “well-being” and think purely of health. However, as you can see, it is a much broader issue about quality of life. We will look at ensuring that there is as fulsome and comprehensive a definition as possible of what we mean by social, economic and environmental well-being. We will be developing the guidance in partnership with local government. It will then go out to consultation, so that gives us several opportunities to make sure that the definition is as holistic as possible.
2310. **The Chairperson:** Can you look elsewhere and borrow a definition of “well-being”?
2311. **Mr Murphy:** In developing the guidance, we will look at the guidance issued in Scotland, which has been updated over the years, and the guidance in Wales. We will look at other guidance and definitions so that we get as comprehensive and effective a definition as possible of what we mean by “well-being” and what we expect community planning to deliver.
2312. **The Chairperson:** We have talked about guidance, guidance, guidance. When will the guidance come out?
2313. **Ms MacHugh:** Initial guidance in the form of the foundation programme is out. That is the starting point, and it is more of a step-by-step guide for local government to consider what it needs to do between now and 2015. Going through that process, we are looking to the experience of local government. We will do that in the coming months and then develop the final guidance, probably towards the end of the autumn of this year. We want it to be in place as soon as possible once the new duties are taken over, but we want to leave enough time to learn from the experience of local government in starting to get its head around it. We

are trying to strike a balance between allowing that experience to happen but not leaving it so late that it becomes too tight. The guidance will be developed sometime in the late autumn.

2314. **The Chairperson:** From May, with the shadow councils, people should be starting to think about this.

2315. **Ms MacHugh:** That is why it was important to get the foundation programme, as the initial guidance, out. We cannot issue statutory guidance until the councils take over the statutory duties, which will be 1 April 2015. In the meantime, we have the foundation programme, and we want to learn from that. I now have an operational community planning team, which will work closely with each of the new clusters and, in time, all new councils when they are elected to start to look on the ground at how it is rolling out and what lessons we can learn so that we can make the guidance as practical as possible.

2316. **The Chairperson:** Guidance can be revised.

2317. **Ms MacHugh:** Absolutely.

2318. **The Chairperson:** Do you intend to revise it — say, after a few years?

2319. **Ms MacHugh:** Yes. As Julie and John said, this will be a living, breathing process. I do not think that it will ever just stand still, and we can say, “That’s it. We have done community planning”.

2320. **Ms Broadway:** As John said, the opportunity is not only to revisit the guidance but to issue advice notes if specific issues come up.

2321. **Mr Boylan:** As long as the guidance is in statute, I do not mind. We have seen guidance that was about only interpretation. With regard to social well-being, when tackling deprivation, poverty and social inclusion, is that what we are looking at here?

2322. There are three wards in the small town where I live. Some of the estates are deemed to be affluent because they are connected to a rural ward. In effect, that stops some people from getting onto

programmes such as Sure Start, which would support those things. I am using that only as an example. I tried to look at the wards issue in the past, but there may be an opportunity here.

2323. **Ms MacHugh:** In my experience, some Departments saw neighbourhood renewal as too small a geography, but, for many people in pockets of deprivation, it was too big a geography. So the Department for Social Development (DSD) looked at pockets of deprivation and areas at risk and tried to expand on a defined geographical area. Those very defined geographies will not be in community planning, apart from council boundaries. Even then, there are opportunities for councils to work in clusters on issues that might go across council borders and, indeed, the border. With capacity building, we are working with Co-operation Ireland to see what opportunities there are to consider community planning on a cross-border basis for councils at the border. Issues do not stop because there is a geographical boundary.

2324. **Mr Boylan:** That is my point. Even though we are getting urban regeneration, which will replace neighbourhood renewal, there are pockets of deprivation in some of the areas that I know. I am sure that, under the general power of competence, you could look at addressing some issues.

2325. **Ms MacHugh:** Absolutely.

2326. **Mr Boylan:** I was looking at putting that in the Bill, but if you are saying that the social well-being element will address those three issues and will be clearly defined in statute as well as guidance, I would be content. Perhaps you think that that is strong enough. I will be asking the Committee to support me in bringing those three elements. If you are saying that tackling deprivation, poverty and social inclusion, and so on, is incorporated, I would —

2327. **Mr Murphy:** It is very much incorporated, Mr Boylan. Community planning in councils will also be, to an extent, overlaid by the strategies and policies

- being taken forward at a regional level. Although the community plan will be for a council district, it could be made up of a number of thematic plans, or it could look at area plans. It can start to address very specific areas that may not be, as Linda said, picked up in general statistical analysis. A key issue for community planning is starting to get that evidence base, which has been clearly identified in the foundation programme. There is also a link to an area that we will come to later: performance improvement. Issues are starting to be identified through the community plan being factored into a council's improvement plan. There is an issue around fairness, which starts to look at social obligations dealing with deprivation, and so on. Those issues will be covered very clearly in the guidance. We will look to see how community planning can address those.
2328. **Mr Boylan:** Guidance as in statute?
2329. **Mr Murphy:** Yes.
2330. **Mr Boylan:** That is important. It gives you the tool to engage with other statutory agencies to address those issues.
2331. **Mr Murphy:** I have looked at what is in place in Scotland and Wales. It is not just statutory guidance for a council. We have developed the provision in the Bill. The statutory guidance will also cover the community planning obligations of the statutory bodies.
2332. **The Chairperson:** I guess that the community plan would have to be thematic. You cannot simply have one large document. You need headings and themes that reflect regional policies and actions.
2333. **Mr Eastwood:** Clause 69(2)(a) refers to social, economic and environmental well-being. Is that the place to put in equality and good relations in a district? It could say, "Community planning will be an opportunity to promote equality and good relations". I do not mind where it goes.
2334. **Mr Murphy:** Community planning is a statutory council function. As a public body, a council has to observe its section 75 duties.
2335. **Mr Eastwood:** There is a difference between observing your section 75 duties and promoting equality and good relations.
2336. **Mr Murphy:** In some respects, I would again give the answer that I gave to Mr Boylan: the statutory guidance will certainly highlight all the key factors that need to be considered by a council in taking forward community planning.
2337. **Mr Eastwood:** It is difficult to agree to that until we see the statutory guidance. This is an opportunity to put something in the Bill that talks about equality and good relations. A large part of what we are doing is about trying to foster those principles and ideals. There may be an opportunity to do that in this part of the Bill.
2338. **Ms Broadway:** Yesterday, we met the Equality Commission. We discussed the issue of promoting equality and good relations and how we could work with the Equality Commission to do that.
2339. **Mr Eastwood:** Did you come up with anything?
2340. **The Chairperson:** Is this going to be an amendment or will it be in guidance?
2341. **Ms Broadway:** It could possibly be in capacity building. That was mentioned.
2342. **Ms MacHugh:** The Equality Commission said that the new councils would have to be reminded of their equality and good-relations duties and their section 75 duties. This would have to be enshrined in all of the new councils' policies. The commission is now working with the change managers and equality managers in each council and cluster to start their thinking on how they are going to amalgamate policies. If you have two, three or four councils coming together with slightly different policies on a specific issue, they are going to have to not only amalgamate the policies to create one but then equality-proof and screen it. There is quite a big job of work to be done

- in local government on equality and good relations. The commission was also particularly interested in ensuring that this was enshrined in the code of conduct for councillors.
2343. **Mr Eastwood:** It goes without saying that people should act in accordance with the law in this stuff. There is a slight difference in saying that a council, as a corporate body, should promote equality and good relations. There is an opportunity to put that in the Bill. This may not be the exact place in which to put it, but I ask you to consider whether we could put it somewhere in the Bill.
2344. **Ms MacHugh:** It is probably part of the social well-being part of the —
2345. **Mr Boylan:** The next question is going to be about whether we can see the guidelines to see exactly what is coming down the tracks. If not, I would certainly support what Colum said. I touched on some stuff about trying to get it in the Bill.
2346. **The Chairperson:** As I said to Colum, we have been lobbied about good relations. Maybe this is the time to put something in about equality and fairness to strengthen the Bill. It could include a definition of good community relations and information on what is expected of councils. It is stated in a few places in legislation that they have to promote good community relations, but what does that mean? Maybe we need to put in law or guidance to say what constitutes good community relations. It could clearly say, “This is what they have to observe in order to promote good relations”.
2347. **Ms Broadway:** If we were to take the matter back to the Minister to see whether he, after considering it, could possibly give an assurance that that will be in the guidance, is that —
2348. **The Chairperson:** OK.
2349. **Mr Eastwood:** Consider putting it in the Bill first. After you have ruled that out completely, you can then talk about the guidance.
2350. **Ms Broadway:** Right.
2351. **Mr Eastwood:** After consideration, we will talk about the guidance.
2352. **Mr Boylan:** The key word is “statute”.
2353. **Ms MacHugh:** The guidance will be statutory.
2354. **The Chairperson:** OK. Obviously, there is still a lot to come on stream.
2355. The next issue concerns clause 69, subsection (2)(a)(iii). Should that include the creation of green spaces and wide places? You cannot really name everything.
2356. **Ms Broadway:** That is more appropriate for guidance.
2357. **Ms MacHugh:** It strikes me as being something that might be considered in the local development plan. In many respects, that will be the physical manifestation of the community plan. As you are aware, there is a statutory link between the two. The creation or maintenance of green space is something that you will want to look at in an area-based physical planning environment, but it should be linked to the community plan.
2358. **The Chairperson:** OK. Link the land-use plan with the community plan?
2359. **Ms MacHugh:** Yes.
2360. **The Chairperson:** Are members content?
- Members indicated assent.*
2361. **The Chairperson:** We will move on. There is a need in subsection (2)(b) for a definition of sustainable development such as that used by the Brundtland commission.
2362. **Mr Murphy:** As I said earlier, a number of the specific issues raised by respondents will be addressed in the guidance. It is not appropriate to address them in the Bill.
2363. **The Chairperson:** OK. We will move on. There is a suggestion that subsection (2)(c) should include a reference to the

- Children and Young People's Strategic Partnership.
2364. **Mr Murphy:** It is the same again.
2365. **The Chairperson:** OK.
2366. The next one is also on subsection (2) (c). There is a proposed amendment to emphasise improvement in service provision. The amended clause would read:
- “identify actions to be performed and functions to be exercised including those related to the planning, provision and improvement of public services by the council and its community planning partners for the purpose of meeting the objectives identified under paragraphs (a) and (b).”*
2367. I think that Community Places suggested that.
2368. **Mr Murphy:** The legislation already provides that the partners have to take various actions. There is also a link through to a council's performance improvement. So, you have that link between issues identified through the community plan to its performance improvement. It is not appropriate for us to specify that for the other statutory bodies. They have their own accountability mechanisms, and we need to build through that.
2369. The other aspect that we need to consider with that suggestion is that, although service delivery may be an important aspect of community planning, community planning is not just about service delivery. Other actions can be taken that could improve the well-being of an area. If you start to build in those specifications, you can start constraining, rather than assisting, what you want community planning to deliver.
2370. **The Chairperson:** OK. There are so many; I am just looking at the wording.
2371. There is a suggestion to insert in subsection (2)(c) the words “and agree” after the word “identify”. Subsection (2)(c) states: “identify actions to be performed”. So, the suggestion is to add those two words so that it reads: “identify and agree actions”.
2372. **Mr Murphy:** I think that agreement on the functions and actions to be taken is implicit in the totality of the later provisions where the Bill talks about consensus.
2373. **The Chairperson:** OK. Are members content with that?
- Members indicated assent.*
2374. **The Chairperson:** The next one is a suggested new paragraph, (2)(d). The suggestion is that it should say:
- “Positively plan for renewable and low carbon energy generation in order to improve the environmental, economic and social well-being of the district”.*
2375. **Ms Broadway:** Again, I think that that is more appropriate for the guidance. It is another issue that would be —
2376. **Ms MacHugh:** Again, that is a decision for the council. It will link into, for example, its planning function, and the renewable energy function is related to that as well. The council will have to agree on a common policy on energy, renewable energy, wind farms — all that. That is for the council to determine.
2377. **The Chairperson:** OK. Are members content?
- Members indicated assent.*
2378. **The Chairperson:** The next one is also a suggestion to insert new paragraph, (2) (d), and the wording:
- “in co-operation and conjunction with community and voluntary bodies from the outset of the process.”*
2379. **Mr Murphy:** As I explained earlier; with the community and voluntary sector, the statutory guidance will provide for that. You need to have space in community planning for the elected members on the council, the statutory bodies and the Departments to be able to look at the issues beforehand and determine at what stage they want to bring in the community and voluntary bodies and representatives of the community because, after all, the elected members of the council are representatives of the community. They have to be given space

to take that forward and get it to a stage where they feel comfortable in engaging outside that framework.

2380. **The Chairperson:** In his deliberations during Consideration Stage, the Minister can emphasise that the community and voluntary sector will have a major role in the establishment of the community plan and its implementation.
2381. Another comment on subsection (3) (b) is that it should include reference to making adequate resources available in partners' financial plans.
2382. **Mr Murphy:** That comes back to the issue of accountability and the arrangements already in place for the statutory bodies who are responsible to their boards and, ultimately, to Ministers. It is not appropriate for us to specify that. Community planning will see the alignment of the various activities, and the partnership panel provides that political forum to discuss any issues that arise with, perhaps, a particular statutory body's lack of engagement. We are putting the framework there to try to support the delivery of community planning without it being overly prescriptive.
2383. **The Chairperson:** That could relate to the next clause, which is about community planning partners. Are members content with that?

Members indicated assent.

2384. **The Chairperson:** One last comment on subsection (5) is that clarification is required and guidance is needed on how councils are to develop a link between land use plans and community plans. Linda mentioned a bit about that. What is the timescale for that?
2385. **Mr Murphy:** We are starting to engage with our colleagues in planning to see how that can best be taken forward, and parts of it could also be taken forward during the foundation programme. You start to address the same issues. One thing that was identified in the working group that was looking at planning and community planning was that, in many ways, the area plan and the community

plan will be informed by the council's vision for its district. Because of that, you can then have that sort of twin track with the two plans when trying to get that alignment.

2386. **The Chairperson:** It is very much interrelated.
2387. **Ms MacHugh:** The Department has now committed resources to working with each statutory transition committee on the land use planning issue because, clearly, there are many local development plans. Some are old and some are new, and maybe a council did not necessarily agree with everything in some of the new ones. So, a lot of work will have to be done to develop a new local development plan for the new council areas, and six senior staff have been identified in the Department to work with the statutory transition committees to start that process at the same time as looking at the foundation programme.
2388. The first stage of community planning and land use planning is to gather evidence and decide your priorities and your vision. Those early stages are so aligned that we see a lot of synergy. I am also aware that DSD has committed resources to work with each transition committee on what an urban regeneration plan might look like. It all has to link in and be aligned because it is like a continuum between the three of them. An awful lot of work will be done in the next 15 or 16 months before community planning fully takes over.
2389. **The Chairperson:** There will probably be a raft of different plans for the areas that are combined.
2390. **Ms MacHugh:** The first challenge for everybody will be to look at existing strategies, plans, initiatives and programmes. Belfast council mapped them and there were hundreds for Belfast alone. How do you make sense of that, try to take out the duplication and enhance them rather than add yet another layer? We are all trying to avoid that.

2391. **The Chairperson:** How many of them have been on the shelves for many years and not touched?
2392. **Mr I McCrea:** A lot of councils have been doing community planning, whether it was called that or not, for years, and the main difference was that there was no statutory requirement for partners to be involved in it. I am not so sure that it will take 15 or 16 months. Previously, it was difficult to get councils to agree to community plans. For example, Cookstown's priorities will obviously be different to those in Magherafelt and Dungannon, and it is about trying to incorporate that difference. The time will probably be spent on trying to get agreement among councils. Maybe it will not be as difficult as I think. I am wee bit concerned that we do things for the medium term. You said that it will take 15 or 16 months, and that is fine, but a lot of the work is already done. It is just about bringing it together and getting the involvement of partners who, at times, came along because they had an interest and wanted to be there. However, there was no statutory responsibility. Statutory responsibility means that it is not just about a low-level member of staff. That is one of the key things that have to be sorted.
2393. **Ms MacHugh:** You are quite right: an awful lot of good work has been done in many councils. When we mapped out what was already there, or initiatives that were being undertaken, we found some really good examples of where certain councils had taken a theme — for example, crime or health — and worked with the PSNI, DHSSPS, Investing for Health or the local health trusts. Those were starting to show real outcomes and improvements. The community plan will clearly have to expand that very good work, and, as you said, you start to align the approach in one area and turn that into an approach for the whole area and take into account issues that were maybe not tackled fully and properly or are not currently being tackled. However, councils will now have the ability to do that, take it all into account and address issues such as smaller pockets of deprivation. As we said, it will be an iterative process, and I do not think that the first community plan for any council will, by any means, be its last community plan. I take on board that a lot of work is being done.
2394. **Mr Murphy:** The foundation programme, when it was being developed, tried to make sure that, if possible, we got the 11 councils up to the same level while, as you say, Mr McCrea, recognising the work that had been done in the various councils under various guises which was really community planning because they had worked in partnership with various bodies.
2395. **Mr Boylan:** It is a brilliant opportunity to link community plans and area plans. I have some concerns. The vision should be long term, because some area plans are just not fit for purpose at the minute. However, we now have an opportunity for people to get that together. I agree that there is lot of community planning. There has been good work, but it is a very good opportunity for us to start that process now.
2396. **The Chairperson:** Community Places suggested that the community plan should be published within three years of the start of the new councils. Is there a timescale for the two to be published together?
2397. **Mr Murphy:** We discussed that with the Minister on Tuesday afternoon. The difficulty is that, if you put a time frame on it, where do you set the time frame? The problem is that, if you set it too tight, you end up with a community plan that is published simply to meet that timetable; whereas, if you provide flexibility — again, I am claiming a lot for the guidance — you can put pointers down as to the movement we expect.
2398. As Mr McCrea said, a lot of councils have already done a lot of good work on this and will be able to build on that work. I do not imagine that the work we are doing with other Departments, and then through engaging with the statutory bodies to start to tie them in, will take significant time. Councillors will want

to show that they are using the new partners. From my engagement with the policy development panels and others in local government, I know that they want this. It provides them with a great opportunity to deliver for their local community. So, they are not going to sit back and wait.

2399. **Mr Boylan:** At different levels.
2400. **Ms MacHugh:** The other issue is that, if you set a time frame of, say, three years, how often in life do you find that the task in front of you expands to suit the time frame in which you have to do it? It could then be perceived that we have a three-year process ahead of us, but in some areas it could take a lot less time. On balance, it is the Minister's view that it would put a false constraint on councils and that councils will understand that it is in their interests to do it as speedily as possible.
2401. **Mr Boylan:** I think that clause 69 got a fair hearing. *[Laughter.]*
2402. **The Chairperson:** The view is that you could have a time frame of no later than three years, and councils could, if they wanted, publish it in the first year. However, the concern is that they could put it on the long finger and delay it. The Minister is not keen to set a time frame.
2403. Are members OK with that?

Members indicated assent.

2404. **The Chairperson:** We move on to clause 70, which deals with community planning partners. As members know, this clause provides a power for the Department by order to specify the bodies or persons to be the community planning partners of a council. There are quite a number of comments and I will start with the first one, which is on subsection (1). The suggestion is that community planning partners should be listed in the Bill to oblige them to participate.
2405. **Mr Murphy:** We would be faced with a dilemma if they were named in the Bill. We could probably identify a number of the required community planning

partners now, but what happens if a new body were set up that we wanted to involve in community planning? We would have to change the primary legislation. That is why we went down the road of subordinate legislation, which gives flexibility to add or remove bodies. For example, you would anticipate including the education and library boards, but if we then move to ESA —

2406. **The Chairperson:** You will still have to use subordinate legislation. Even now, your thinking must be around DE and others.
2407. **Mr Murphy:** As I say, using subordinate legislation provides us with greater flexibility to list the bodies and then modify that list as time goes on, either to add or remove bodies or, if a body changes its name, to deal with that rather than changing the primary legislation.
2408. **The Chairperson:** When are you going to issue the subordinate legislation to name them?
2409. **Ms Broadway:** That is being worked on at the minute. I think it will be issued around the same time as the guidance.
2410. **The Chairperson:** In the autumn?
2411. **Ms MacHugh:** Again, this is an area where we want to listen to local government and hear who it feels it needs at the table. We will also talk to Departments and their agencies. It is not likely to be the Departments that are named; it may be their agencies and bodies. It is really the delivery arms that we want. So, it might not be the Department of Health, but it would be the health trusts. That is the level that we want to work at.
2412. **Ms Broadway:** Over the next few months the Department will engage with potential statutory partners to explain what all of this will mean and the duty placed on them when they are named in the legislation.
2413. **The Chairperson:** Will you be asking people from the community and

- voluntary sector who they believe should be on it? They would be the users or receivers of services.
2414. **Ms MacHugh:** We would certainly ask them for their views.
2415. **The Chairperson:** I mean the public.
2416. **Ms MacHugh:** We will consult widely on all of this, but to come to a position where we have a document that we want to consult on we would clearly have to talk to all stakeholders, including the voluntary and community sector. We have also, as a Department, contracted with Community Places. One of its prime roles is to look at assisting local government with developing its links to communities and the voluntary and community sector, and defining the role of that sector in all of this. Through that mechanism we will also be looking for views.
2417. **The Chairperson:** OK. I think they certainly have been working on it for some time.
2418. **Mr Elliott:** On that point, is that not getting back to what I asked earlier about the groups? Surely, it would be very difficult, even in subordinate legislation, to name a number of groups.
2419. **Ms MacHugh:** We will not name voluntary and community groups. We will seek their views about which statutory agencies —
2420. **Mr Elliott:** Who are you actually going to name under it?
2421. **Mr Murphy:** It will be the statutory bodies that are delivering services or taking actions.
2422. **Mr Elliott:** That is fine.
2423. **Ms MacHugh:** We will just seek views from the voluntary and community sector about what the bodies should be.
2424. **The Chairperson:** It will be the arm's-length bodies like the Arts Council or the Sports Council, rather than the Department.
2425. **Ms MacHugh:** The Housing Executive, for example, or its successor.
2426. **Mr Boylan:** Do not put it down just yet. *[Laughter.]*
2427. **The Chairperson:** Ian has to leave in 10 minutes, and it is near to 2.00 pm anyway, so we will finish when Ian goes, I am afraid. See how important you are, Ian.
2428. **The Committee Clerk:** Are there any other members who are not at Committee meetings and could come back for 10 or 15 minutes?
2429. **Mr Weir:** I could stay a little bit longer than 10 minutes, but I would need to be away and then I will be tied up for the rest of the afternoon.
2430. **Mr Elliott:** If it is only an informal session, can we not operate with four? We do not have decisions to make.
2431. **Mr Weir:** My understanding is that a quorum is four where there is no decision. The only issue, from my point of view, is that I need to go at 2.00 pm.
2432. **Mr Elliott:** I need to do so as well.
2433. **The Chairperson:** A majority of people will have to go at 2.00 pm. So, will we just go on until 2.00 pm?
2434. **The Committee Clerk:** No, we cannot go on until 2.00 pm. We have to stop when Ian leaves.
2435. **The Chairperson:** If we are not making decisions —
2436. **The Committee Clerk:** We are sort of saying that we are broadly content with clauses. Is that a decision or not?
2437. **Mr Weir:** My understanding is that we are talking through the issues, but no decision is being taken at all.
2438. **The Committee Clerk:** That is OK then.
2439. **The Chairperson:** There you are, Ian. You are relieved.
2440. **Mr I McCrea:** You are more relieved than I am.
2441. **The Chairperson:** OK, we will move on. The next suggestion is that it should be compulsory for senior representatives

- to attend meetings. That is Ian's point, really. Is that not right? Where is that? It is clause 70(1). I do not quite understand. Do they mean that we have to keep it on the face of the Bill to say that they must be senior representatives?
2442. **Mr Murphy:** Again, Madam Chair, you are back to accountability. It is up to the statutory body to ensure that it has appropriate representation. It may not always be necessary for the chief executive to be there. Once bodies have signed up to particular actions, they can delegate that activity to some of their directors. We have to bear it in mind that we are talking about 11 councils, and expecting chief executives or senior officials from the various bodies to be there. Those are things that we can start to address in the guidance and in our engagement with statutory bodies to emphasise the need for appropriate representation at those community planning partnership meetings.
2443. **Ms Broadway:** It could also be dealt with at the partnership panel, with the parent Departments of those arm's-length bodies able to discuss the importance of ensuring that suitable people are appointed.
2444. **The Chairperson:** Various groups have reiterated that the people selected must have clout. They must be senior enough to be able to make decisions and have the influence to get things done and not be people who just sit there and say nothing.
2445. **Ms MacHugh:** The fact that the community plan will include targets and outputs that are expected from all partners, not just the councils, is one way to ensure that, when an agency or statutory body commits to the plan, a genuine commitment is made. If that commitment is not met effectively, that needs to be highlighted, and, should that be the case, I think that that will be discussed at the partnership panel.
2446. **The Chairperson:** I think that a word of assurance from the Minister would be useful.
2447. **Mr Weir:** The Minister is going to have to give a very long speech. *[Laughter.]*
2448. **Mr I McCrea:** I think that it is one of those things. With the PSNI, for example, I do not think that anybody expects the Chief Constable to come to certain meetings, but the other side of that is that there is no point sending a police constable — and no disrespect to any police constable — if an inspector or chief inspector is the person who, as the district commander, would make the decisions. Therefore, the appointments need to be senior people who are able to ensure that things that are agreed and targets that are set are achieved. It should not just be someone who nods as though everything is OK —
2449. **Mr Boylan:** It has to be someone suitably qualified.
2450. **Mr I McCrea:** — and they go back.
2451. **Ms Broadway:** A suitable person who is able to make a decision and implement that decision.
2452. **Mr Boylan:** Then the agency will come back and say no. *[Laughter.]*
2453. **The Chairperson:** The next comment is that Departments should be included. I think that this is the same issue, so we can leave it for the guidance. Are members content?
- Members indicated assent.*
2454. **Mr Boylan:** I have a quick question just on that point: people are obviously getting a feel for the statutory agencies that we are talking about; have any responses come from those agencies — say the Housing Executive — on this?
2455. **Mr Murphy:** I met some Housing Executive staff recently to update them, and, from that conversation, I learned that the individuals, without committing their organisation to anything, clearly see themselves having a role in the process.
2456. **Ms MacHugh:** Other Departments, such as DARD, Justice and Health have been talking to us proactively about links to community planning. Justice

- has identified the need to align what happens in the policing and community safety partnerships with the community planning partnerships and to find a way to ensure that they do not overlap.
2457. **Mr Boylan:** I asked, because I can only see a list of the people who have responded, and they are key people who will play a big role, but it is grand.
2458. **Mr I McCrea:** Maybe you can find out what happens in community safety partnerships and tell the rest of us. *[Laughter.]*
2459. **The Chairperson:** The thing is that community planning is good for Departments as well.
2460. **Ms MacHugh:** Exactly.
2461. **The Chairperson:** Community planning can help Departments to deliver their remit.
2462. **Ms MacHugh:** The people in the Health Department who deal with investing in health and health promotion have seen the health benefits that have come from mini-community planning-type projects with local councils. I keep saying that, if we are saying that the only way this will work is by absolutely pinning everything tightly into legislation, then it will not work. This has to be a coalition of the willing, and I think it will really start to get teeth when agencies see that this is an effective way for them to deliver on their commitments.
2463. **The Chairperson:** Talking of consultation fatigue, the public, and things just going round in circles and going to different departmental consultations; with this, you can concentrate things in one place and get them done.
2464. We will move to the next comment, which says that there are no sanctions for non-participation by statutory bodies. It is very difficult to place a sanction in legislation. Again, as John said, there is the issue of accountability.
2465. The next comment relates to clause 70, subsection (3)(c), and the need for clarification of who the Department may consider appropriate. Again, I think that guidance would cover that.
2466. **Ms Broadway:** That is just to cover all. It means that it covers us for naming anyone in the subordinate legislation.
2467. **The Chairperson:** The next recommendation suggests adding the words, “including community and voluntary bodies”. The guidance will cover that.
2468. There is a suggestion to insert new subsection (5) which would state:
“The Department may by order modify subsection (1) above by adding a reference to any eligible body.”
2469. **Ms Broadway:** I think that it is the link to the suggestion that we name the bodies in the legislation, and then you have a provision to allow you to amend it. I think that it is appropriate for us to name them in the subordinate legislation rather than in the legislation. Therefore, we would not need that. The RSPB requested that.
2470. **Ms MacHugh:** All of that apart, we have subsection (3)(c), which allows the Department to specify:
“such other bodies and persons as the Department considers appropriate”.
2471. I am sorry, that is in the consultation.
2472. Julie is right. It is only because they want us to name everybody in the Bill and then also provide ourselves with the ability to change or add to that list.
2473. **The Chairperson:** OK. This is just to widen it out a bit. Do they want it to say, “any eligible group”? The word “eligible” is then going to be argued about. What do you mean by “eligible”?
2474. **Ms Broadway:** Exactly.
2475. **The Chairperson:** Who determines eligibility?
2476. Are members content with that?
Members indicated assent.
2477. **The Chairperson:** We will move on to clause 71, which specifies that once

- a council and its community planning partners have reached consensus on the community plan objectives and actions, the council must produce a document, known as the community plan, capturing that consensus.
2478. The first recommendation relates to subsection (4)(a) suggesting that it should read, “a specific time frame” — we talked about that — instead of “as soon as is reasonably practicable” by the council. One organisation said three months. Do you think that that is good enough?
2479. **Ms Broadway:** Yes.
2480. **The Chairperson:** OK. Are members content with that?
- Members indicated assent.*
2481. **The Chairperson:** With regard to subsection 4(c), there should be a specific timetable for engagement, say one year and, for agreeing plans, say a further two years. Again, is that being too rigid?
2482. Are members content with that?
- Members indicated assent.*
2483. **The Chairperson:** We have a suggestion to amend subsection (4)(a) to read:
- “must be produced as soon as is reasonably practicable after community planning for the district has reached the stage described in subsection (2) and no later than within three years of the formation of the new councils”.*
2484. **Mr Boylan:** Chair, to save us a wee bit of time, and if you don’t mind; is it possible for you to just read out the clause and reference point as opposed to reading out all of the description, because we all have it here? If you say 71 —
2485. **The Chairperson:** Yes, sure. OK, quite right. I am happy with that, rather than me droning on.
2486. **Mr Boylan:** No, no. It is grand.
2487. **The Chairperson:** We move on to clause 72. There were no comments on that clause.
2488. We move to clause 73. We all have the table. I will ask Linda to respond to the first comment regarding a new clause.
2489. **The Committee Clerk:** They do not have the table.
2490. **The Chairperson:** I am sorry. They do not have our table. We have our table.
2491. **Mr Murphy:** We have a table, which is similar to your table, Madam Chair.
2492. **The Chairperson:** The suggestion is to insert a new paragraph, 2(a)(iii) which would state:
- “report on means of consultation with the persons listed in 76(2) including a summary of the outcomes of consultation”.*
2493. **Mr Murphy:** Again, we are back to starting to straitjacket councils into having to report on how they consulted. The guidance will point to the need for engagement. Why do you then put that additional burden on them to report back on how they conducted that consultation? There are various means of engaging that we will point to in the guidance.
2494. **The Chairperson:** OK, fair enough. Are members content?
- Members indicated assent.*
2495. **The Chairperson:** The next comment is on subsection (5) stating that clarification is needed on the phrase “a degree of consensus”.
2496. **Mr Murphy:** You are never going to get total agreement. You have to put a point where the majority of the bodies around the community planning partnership table say, “Yes, we are content that we move forward with this”, rather than trying be overly prescriptive.
2497. **The Chairperson:** Majority vote; is that right, Peter?
2498. **Mr Boylan:** To be fair, that was part of the process from the start.
2499. **The Chairperson:** Yes. The next recommendation is to amend subsection (6) to read:

“The council must, as soon as is reasonably practicable after becoming subject to the duty under subsection (4) and within six months, publish an amended community plan.”

2500. **Ms MacHugh:** It is back to timescales for complaints.
2501. **Mr Murphy:** It is back to timescales, Madam Chair.
2502. **The Chairperson:** Yes, within six months, which, again, is really too rigid. Are we happy to move on?

Members indicated assent.

2503. **The Chairperson:** OK. We are on to clause 74, subsections (1) and (3). The comment is that there is a need to include the monitoring of outcomes and how community planning performance will be assessed without that. Then again, Belfast City Council said that there is great difficulty in assessing long-term outcomes in particular.
2504. **Mr Murphy:** Exactly. You will have the link to a council's performance improvement plan but you will monitor the outcomes. This aspect of monitoring will be covered in the guidance to provide that additional framework.
2505. **The Chairperson:** OK, are members happy with that?

Members indicated assent.

2506. **The Chairperson:** The next recommendation states:
- “Amend clause 74(3)(a) to read progress towards meeting the community plan objectives and outcomes for its district.”*
2507. I think that is the same thing on outcomes.
2508. OK, we move to clause 75. The suggestion is that it should be amended to include Departments. That will be in the guidance and subordinate legislation.
2509. **Mr Murphy:** Yes, that is right.
2510. **The Chairperson:** OK, we then move to clause 76, subsection (1). The suggested amendment is that it should read:

“councils and its community planning partners MUST SEEK the participation of and encourage people (including children and young people) to express their views and ensure that their views are taken into account.”

2511. I think that the concern is that the wording is a bit too woolly and too vague as it stands.
2512. **Mr Murphy:** The difficulty is that you cannot always force people to engage. We are trying to say that councils must arrange to engage with the community, but it is difficult to go beyond that. There will be individuals or sections of the community who may not want to be involved in the process. If you bring this amendment forward, it will start to straitjacket the council's flexibility to move on, having attempted and put in place arrangements to try to engage. If a council does not get a response, it must be able to move on with the process.
2513. **Ms Broadway:** It also means that you are naming particular groups when you might miss important ones, so it may be better to do this in guidance and by encouraging how and with whom engagement should take place. I would put it in the guidance rather than specifically name people in the Bill.
2514. **The Chairperson:** It is not saying that they should be named; it is just stating that the wording should be made stronger. The concern, I think from Community Places, is that the Bill should simply ensure that “arrangements are made” so that the persons mentioned in subsection (2) have the opportunity to express an interest. They are concerned that just having it on the website is not proactive enough in seeking participation.
2515. **Mr Murphy:** To come back to that issue, though: how far do you go in trying to seek participation of groups?
2516. **The Chairperson:** OK.
2517. **Mr Murphy:** Some groups will want to get involved and will come forward, but others may be more reticent. To say to a council that it has to seek engagement

- may act as a barrier, perhaps, to developing that engagement.
2518. **Mr Elliott:** What is the mechanism if some group does not believe that it has had a reasonable opportunity to respond or be consulted? Is there a complaints' mechanism for them?
2519. **The Chairperson:** Sometimes, groups do not even know when consultation takes place. Say, you have a website that states that consultation is taking place but people do not have access to that website or their first language may not be English or they are in disability groups.
2520. **Mr Murphy:** What we would be looking at, to deal with this point and then come back to Mr Elliott's point, is that Scotland issued advice notes on engagement with the community. So, it is not just an advert in the paper or a notice in the council's website; you start to get into local meetings and using social media. A whole range of approaches can be developed. The issue of groups who feel they have not been consulted should, I suppose, be taken up by their elected representatives on the council, the Assembly or the various representative bodies out there.
2521. **Mr Weir:** I take on board what has been said about how far you can go in seeking people's views, and I appreciate that the wording is not far off what is needed. However, is any tweaking needed so that this is not seen as an absolute process of box-ticking? Should it show that something is being done to show that, legally, reasonable arrangements are being made to avoid a judicial review-type implication?
2522. **Ms Broadway:** We can certainly take that suggested amendment to the Minister and come back next time.
2523. **The Chairperson:** We need stronger wording.
2524. **Mr Weir:** I think that it is a question of finding a bit of a tweak that could cover that.
2525. **Ms Broadway:** We will look at that.
2526. **The Chairperson:** OK. Thank you. The next comment raised was that subsection 1 should be stronger and should be amended to read:
"councils and its community planning partners MUST SEEK ... participation".
2527. That is the same thing. If you are going to look at an amendment, I think that we can move on.
2528. The next comment relates to subsection 2 and it was that trade unions should be included.
2529. **Mr Murphy:** Again, the guidance will identify the groups; that will include the trade unions.
2530. **The Chairperson:** OK. The next comment is on subsection 2 again. It is that it should include low-income children, their parents and carers.
2531. **Ms MacHugh:** It is going to be a very long list.
2532. **The Chairperson:** There are pages of it.
2533. **Ms MacHugh:** The difficulty when you try to pinpoint and highlight one particular part of the community is where you stop. The whole purpose of community planning is that all elements of the community should be included, considered and involved. I know that particular interest groups will want their particular interests specified, but where do you stop? You will end up with a list as long as your arm.
2534. **The Chairperson:** Could you just refer to the section 75 groups?
2535. **Mr Murphy:** The guidance will point to the broad groups, but I think that we have to put faith in the elected representatives on a council to ensure that groups in the community that they represent are engaged with.
2536. **The Chairperson:** OK.
2537. **Ms MacHugh:** What about business groups, faith-based groups and other minority parts of the community? What about old people, women or men?

2538. **The Chairperson:** If it was section 75-type categories it might be easier to catch them all. That will be for your guidance.
2539. **Ms MacHugh:** Again, the equality ethos needs to be enshrined in the process from the outset. As I said, we have been working with the Equality Commission to see how that could best be done.
2540. **The Chairperson:** Councils need to take responsibility and be inclusive of all sections of society.
2541. **Ms MacHugh:** Yes. They have a duty now and they will certainly have a duty come 2015.
2542. **The Chairperson:** OK. The next comment was on subsection (2)(e). It was that the words:
“in the opinion of the council”
should be removed, and the phrase:
“including NGOs and local action groups”
be inserted. That is going to be difficult, is it not?
2543. **Ms MacHugh:** Yes.
2544. **The Chairperson:** OK. Will we move on?
Members indicated assent.
2545. **The Chairperson:** We have moved on to clause 77. The first suggestion is to change the word “may” to “must”.
2546. **Mr Murphy:** We are back to the same argument that we had earlier.
2547. **The Chairperson:** Yes. We discussed that before.
2548. The next comment relates to subsection 2(c). It is that there is a need for guidance to be developed in cooperation with councils and other public sector and community bodies. I am sure that you will do that.
2549. **Ms MacHugh:** Yes; absolutely.
2550. **The Chairperson:** The next comment also relates to subsection 2(c). It is that it should include the community and voluntary sector. I am sure that that will also be included in the guidance.
2551. The next comment relates to subsection 3. It is that the wording must be stronger than “must have regard to”, but there is no suggestion of what should replace it. I think that that is pretty strong.
2552. **Mr Boylan:** There may be a misreading there.
2553. **The Chairperson:** Yes, how much stronger can you get?
2554. We will move on to clause 78. There are four comments on this clause. The first one is to add the Minister of every Northern Ireland Department. You have explained that you cannot do that. Will we move on?
2555. **Ms Broadway:** We are waiting for legal advice.
2556. **The Chairperson:** Right, we are waiting for legal advice.
2557. **Mr Boylan:** Can we change that to the North of Ireland?
2558. **Mr Weir:** Put that amendment down and see how far you get, Cathal.
2559. **The Chairperson:** Who is getting the legal advice? Is it the Department or us?
2560. **The Committee Clerk:** The Committee. We agreed to ask for legal advice.
2561. **The Chairperson:** When will we get that?
2562. **The Committee Clerk:** We should have it by the end of this week. Tomorrow.
2563. **The Chairperson:** OK. The next comment relates to clause 78(a) and it is that the words “aim to” should be removed.
2564. **Ms Broadway:** The Minister has agreed that. We will table that amendment.
2565. **The Chairperson:** So, that will read:
“in exercising any function which might affect community planning and encourage community planning”.
2566. That will remove the words “aim to”.
2567. **Ms Broadway:** Yes.

2568. **The Chairperson:** OK. That is good. Well done, Minister. *[Laughter.]* A man to my heart.
2569. **Mr Boylan:** Somebody must have been very tired when they were writing the Bill.
2570. **The Chairperson:** The next comment relates to clause 78(b). It is that the clause should be amended to read:
“must have regard to the content of a community plan in relation to the exercise of that department’s functions and agree with councils and their community planning partners how the Department can assist in the implementation of the Community Plan.”
2571. That would remove the whole subsection. How could we do that? At the moment, it reads:
“have regard to any implications of a community plan for the exercise of that department’s functions”.
2572. What is your comment on that?
2573. I think that that comment came from Community Places. I think that the idea is to make it stronger.
2574. **Mr Murphy:** That is the same issue that we had with the statutory powers; even more so. Departments are accountable to their Ministers, who are in turn accountable to the Assembly. We could not start to put constraints on them meeting the Executive’s and the Assembly’s priorities to promote community planning. We have to try to strike a balance. We have gone further than the corresponding provisions in Scotland and Wales. They only aim to promote and encourage community planning while we have included that very specific provision.
2575. **The Chairperson:** OK.
2576. **Ms Broadway:** As Linda said, our permanent secretary has set up meetings with permanent secretaries of other Departments to explain and discuss the importance and the change that the community planning duty will place on them and to stress that they must take account of the community plan for the 11 councils.
2577. **The Chairperson:** To convince them of the benefits of it.
2578. **Ms Broadway:** Yes.
2579. **The Chairperson:** And the potential for benefits.
2580. **Ms Broadway:** Yes.
2581. **The Chairperson:** It is 1.58 pm, so we will finish with clause 79. Only one comment was made about clause 79, and it was that there is a need for negotiation with trade unions in relation to staff impacted on by a transfer of functions. I am sure that that is being done anyway.
2582. **Ms MacHugh:** Yes, in any body set up to operate community planning.
2583. **The Chairperson:** Do you want me to finish with clause 80?
2584. **Mr Boylan:** Yes, round numbers.
2585. **The Chairperson:** No comments were made on clause 80. On Tuesday, we will start with clause 81. Thank you very much.

11 February 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Barry McElduff
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Julie Broadway *Department of the*
 Ms Mylene Ferguson *Environment*
 Ms Linda MacHugh
 Mr John Murphy

2948. **The Chairperson:** I welcome Linda, John, Mylene and Julie. We finished last time at clause 80, so we will start again at clause 81. We will try to get through this ASAP. It is fairly clear. Members, if you do not need any further information from the officials, we will move on. Clause 81 —
2949. **Mr Boylan:** Chair, just before we start, I asked questions last week about some suggestions. Will the departmental officials comment on when we will see some of that? It was on clause 69 in particular.
2950. **Ms Linda MacHugh (Department of the Environment):** It depends on how long this session goes on for, but, certainly by tomorrow we hope to get you as many of the Minister's proposed amendments as we have to date. There may be one or two that he is still considering, and there could be others that emerge as a result of this session. We will get as many as we have to you tomorrow. That will be the majority of them, unless members want us to put other suggestions or proposals to the Minister as a result of this session.
2951. **The Chairperson:** So we will get them before our next meeting.
2952. **Mr Boylan:** That is fine. Thank you.
2953. **The Chairperson:** Do members have any issues with clause 81? No. We move on to clause 82. There are no issues. Am I moving too fast?
2954. **Mr Boylan:** No. It is grand, Chair.
2955. **The Chairperson:** We are on clause 85. Is everyone OK with it?
- Members indicated assent.*
2956. **Mr Elliott:** Chair, sorry to bring you back just a wee bit, but I have one query on clause 82(1), which states:
- "A council has power to do anything that individuals generally may do."*
2957. I would like an explanation from the officials of what that means.
2958. **Ms Julie Broadway (Department of the Environment):** In general, corporate bodies have powers only that they are provided with in legislation. In general, a person has the power to do anything he or she wants unless there is legislation to prevent him or her from doing it. There is that difference between bodies corporate and individuals. This power will place councils on the same footing as an individual. It would mean that they can do anything they want unless there is a power to prevent them from doing it. It is simply to specify that it is the same sort of power that would apply to an individual.
2959. **Ms MacHugh:** The Department of the Environment (DOE), for example, can do something as a Department only if it has a positive vires to allow it to do so. This will allow councils to do anything they want, provided there is not legislation to stop them. It is quite a wide power.
2960. **Mr Elliott:** Do you see any potential for that being abused? Sorry for labouring

- this a wee bit, but it is an issue, and I had it marked. How do you see that operating with the call-in mechanism? Do you see a potential for some of the decisions in that power to be called in under your 15%?
2961. **Mr John Murphy (Department of the Environment):** It would depend on what a council is proposing to use the general power of competence for. One of the issues that have come through in the discussions that I have been having with senior officials, which we will put to the Minister, is that a qualified majority vote would apply to the use of the general power because it is such a wide-ranging power for a council. Other than existing legislation that prevents councils from doing something, if they want to use the power, there are no financial restrictions built in. The view is that perhaps it should be subject to the qualified majority vote.
2962. **Mr Elliott:** So there could be issues that would be subject to a qualified majority vote.
2963. **Mr Murphy:** Yes.
2964. **Mr Elliott:** Do you see any issues around the flying of flags from council buildings?
2965. **Mr Eastwood:** I cannot imagine that there would ever be an issue around that.
2966. **Ms MacHugh:** At the moment, councils are able to fly flags. I am not sure that they would need to invoke the general power of competence to allow them to fly flags.
2967. It will be interesting to see what councils use this power for. We have looked at other examples in England and Wales, where it was introduced a couple of years ago, and it has been used to support apprenticeships and further training when councils felt that that was needed or required and the statutory provision was not adequate in their areas.
2968. **Ms Broadway:** Prize schemes for innovation in an area is another example of when it has been used.
2969. **Mr Elliott:** Does that not come into conflict with the relevant Departments?
2970. **Ms MacHugh:** No, unless a Department has something in its legislation that says, "Only we can do this", it will not be an issue. It depends on what councils want to do with it. If a council wants to build a school, it will have to think very long and hard about whether it wants to do that outside the education system — for example, how teachers are appointed and how exams are dealt with. There are all sorts of issues in and around that. It will work best if whatever the council wants to do is done in conjunction with, and with the blessing of, the Department that would normally do that type of thing.
2971. **Mr Boylan:** If a council undertook to do something that should be the responsibility of a Department, is there a mechanism for joint funding or capital works? In the case of gritting, if a council wants to do that under the general power, there are two ways to finance it: through the rates or by working with a Department to share the burden. Is there a mechanism whereby there is an opportunity for councils to do that?
2972. **Ms MacHugh:** It would need to be by agreement. You could not legislate that a Department would have to co-fund something that a council decided to do. You might see the power being used in conjunction with community planning, whereby something was identified that was not the direct responsibility of anybody, meaning that a council could step in and do it. If there were something that a council would ideally like more of but, because of budgetary constraints, the Department could not fund it all, they could agree a joint approach.
2973. **Mr Murphy:** The partnership panel would provide the mechanism for those discussions.
2974. **The Chairperson:** We have heard of examples in other jurisdictions involving bank loans and mortgage loans. So you can be quite imaginative.

2975. **Ms Broadway:** We have researched examples of where it has been used in other jurisdictions. If the Committee would like, we can send you a short paper briefly giving those examples. We have that paper already drafted.
2976. **The Chairperson:** Are members content?
Members indicated assent.
2977. **The Chairperson:** We move to clause 85, which deals with powers to make supplemental provision. The Department has agreed to consider how this might best be drafted for inclusion in the Bill.
2978. **Ms Broadway:** Yes.
2979. **The Chairperson:** That is using the super affirmative not negative procedure?
2980. **Ms Broadway:** That is right.
2981. **The Chairperson:** Are members content?
Members indicated assent.
2982. **The Chairperson:** We will move on to clause 87(2). We have a paper on the super affirmative procedure.
2983. **Ms Broadway:** It is about how the super affirmative procedure will work in practice.
2984. **The Chairperson:** Clause 87(2): members commented on the need to include “the economy”, as stipulated by the Local Government (Best Value) Act (Northern Ireland) 2002. There is a comment that there is no consideration of cost or value for money. The departmental response is:
“These provisions replace the Local Government (Best Value) Act (NI) 2002 and place the focus on improving performance”.
2985. Are members content with that? Belfast City Council stressed very strongly that it worked to the Best Value Act all the time on many issues. Are members content with that explanation?
Members indicated assent.
2986. **The Chairperson:** Under the same clause, Linda, I would like you to explain a bit more about performance indicators. The Equality Commission said:
“performance indicators should encourage councils to have measures relating to equality and good relations”.
2987. The Department states that this will be considered in guidance. Would it not be better to put it in the Bill, or would that be difficult?
2988. **Ms MacHugh:** There are a few issues about putting it in the Bill. Given that equality and good relations are the responsibility of the Office of the First Minister and deputy First Minister (OFMDFM), at minimum, we would need to consult with that Department. I suppose also, with respect to putting it into guidance, it gives more flexibility and allows councils to articulate how they are going to do that much more flexibly.
2989. **Mr Murphy:** *[Inaudible.]*
2990. **The Chairperson:** Speak up a bit, John.
2991. **Mr Murphy:** It is about equity and fairness. It starts to look at the equality duties and social need obligations of councils. To start getting into trying to specify indicators for those issues is very problematic. What do you set them at? Given that councils are already under a statutory duty provided by section 75 of the Northern Ireland Act 1998, we need to be very careful about how far we can go in specifying that in precise terms.
2992. **The Chairperson:** Are members content? Cathal, you are looking —
2993. **Mr Boylan:** It is grand saying that, and I understand. However, it still comes back to the point I made about tackling poverty and deprivation last week. I used the examples of small pockets of deprivation. As long as there is a responsibility on councils to address such issues, they should do so. That is outside the neighbourhood renewal areas and its new form, urban regeneration. There may be a gap there, and I think that we need to consider that.

2994. **Mr Murphy:** That can be addressed in this fashion. In the community planning guidance, there is a clear link between community planning and performance improvement, and we have put a statutory link in here, whereby a council, in developing its strategic objectives, should take them from the community plan. If a council identifies issues of deprivation in the community plan, it can feed through this. However, this is about how a council delivers its services: performance improvement in the delivery of services. You then start to get into the additional issue of what services should be delivered. I know the area that you are pointing to: the functions that are transferring from the Department for Social Development (DSD). However, that will be built into a council's improvement plan, which will link in to their community plan.

2995. **Ms MacHugh:** It will also link to targets that DSD may set for how councils deliver against the urban regeneration and community development framework. That will include tackling social need, which councils will now be expected to deal with rather than DSD.

2996. **Lord Morrow:** Performance indicators are fine, but where do you draw the line on them? If you are going to put in a performance indicator in one discipline, it follows that you put in a performance indicator in them all. Councils should have performance indicators. However, I have a difficulty when it comes to which ones you put in. I agree with what John has said generally. Chair, you talked about putting them in the Bill. Which ones do you put in, and which ones do you leave off?

2997. **The Chairperson:** That was suggested by a stakeholder.

2998. **Lord Morrow:** I find it hard to follow how we would put that in the Bill and not put at least 20 or 30 others in also.

2999. **Ms MacHugh:** We are trying to avoid what happened in Scotland. At one point, when community planning and the performance indicators were first launched there, councils had 600

indicators that they had to track and meet. We really want to avoid that. We are starting to talk to our colleagues in other Departments to determine what level of targets and performance indicators they want. However, we do not see it being a very long list. It will focus on two or three things that each Department really wants to happen now that functions are transferring.

3000. Equally, a lot of the performance framework is about councils setting performance indicators and targets for themselves and nothing to do with performance measurements that might be set by central government. As this is about local flexibility, there needs to be an ability for each council to say, "Here are our priorities, and here is what we are going to do". Ultimately, they are accountable to ratepayers.

3001. **Lord Morrow:** That is a good performance indicator.

3002. **Ms MacHugh:** Every four years or so, yes.

3003. **The Chairperson:** Yes, when you get your results. You may get a slap on the face. *[Laughter.]* Are members happy with clause 87(2)(e)? A suggestion has been made that words such as "sustainability" may be current buzzwords.

Members indicated assent.

3004. **The Chairperson:** Clause 88(1) states:

"For each financial year, a council must set itself objectives for improving the exercise of its functions during that year".

3005. It was suggested that objectives should be set for a longer period — say, three years. The departmental response is that a council's corporate plan may cover a longer time frame, with the improvement plan representing actions to be taken over a single year. It was also asked whether a council's setting itself objectives should be independently verified. Are members content with the explanations?

Members indicated assent.

3006. **The Chairperson:** Clauses 88(3)(a) to 88(3)(g): I will let members read the explanations themselves. Does anybody have any issues with the explanations, or are you happy?

Members indicated assent.

3007. **The Chairperson:** Clause 89(1)(d): are members content?

Members indicated assent.

3008. **The Chairperson:** Clause 89(2): are members content?

Members indicated assent.

3009. **The Chairperson:** Good. Clause 90: are members content?

Members indicated assent.

3010. **The Chairperson:** Clause 90(b): are members happy with the explanation?

Members indicated assent.

3011. **The Chairperson:** Clause 90(c) is the same thing really.

Members indicated assent.

3012. **The Chairperson:** On clause 90(2), the suggestion is the insertion of a new clause. Are members content with the explanation?

Members indicated assent.

3013. **The Chairperson:** On clause 92(1), a suggestion is the need for sanctions for underperformance.

3014. **Lord Morrow:** We talked earlier about the best sanction: the four-year rule.

3015. **The Chairperson:** Are members content and happy with all the responses from the Department?

Members indicated assent.

3016. **The Chairperson:** Are members content with clause 92(2)?

Members indicated assent.

3017. **The Chairperson:** OK. An amendment has been suggested to clause 92(2)(c):

“such other persons or bodies, including community and voluntary bodies”.

3018. Do we need to put that in the Bill to specify that we want community and voluntary bodies to be named?

3019. **Mr Elliott:** Once you put that in the Bill, it will more restrictive. I think that the way it is worded now is better.

3020. **The Chairperson:** Bodies could include community and voluntary bodies.

3021. **Mr Elliott:** It would be a bad council if it did not consult with them.

3022. **The Chairperson:** You said, Linda, that consultees will be chosen in accordance with the Northern Ireland Civil Service guidance. What guidance is that?

3023. **Mr Murphy:** Guidance is issued by OFMDFM on all the bodies that Departments should consult as a minimum. Departments will also then have regard to the equality schemes of the other bodies because each Department will have its own stakeholders. OFMDFM guidance is issued on a regular basis and updated, and that will specify the individuals who must receive copies.

3024. **The Chairperson:** Are members content with that?

Members indicated assent.

3025. **The Chairperson:** We will move on to clause 92(3). I would maybe support the suggested amendment to omit “at least one” and make the clause read:

“In deciding whether to specify performance indicators and standards, and in deciding them, the Department must aim to promote improvement of the exercise of the functions of councils generally and in particular”.

3026. We could just put in “in particular” rather than saying “at least one” and then naming all seven categories. It seems a bit minimal to say “at least one”.

3027. **Mr Murphy:** The difficulty is that you are providing the flexibility and wanting a council to look at at least one, but you are providing it with flexibility, and

it may want to look at all seven on a particular issue. However, councils may look at some issues whereby only service quality needs to be looked at with improvement or fairness. If a clause names all seven, it can be very restrictive to the way in which a council approaches its improvement duty.

3028. **The Chairperson:** It does not say that we should include all of them. It says:

“in particular in terms of the following”

3029. The Bill says “at least one”, so councils can just do one.

3030. **Ms MacHugh:** It depends because some of the functions that councils deliver might not be relevant. With registering your dog, for example, there are maybe not so many sustainability issues. If you were tying them into improving the service of dog licensing but you had to meet all those conditions, your strategic effectiveness would maybe not be an issue, but service quality and service availability clearly is. You could consider fairness in looking at, for example, reduced fees for certain categories of citizen, but not all those would apply to the licensing of dogs. That may be where we need the flexibility. In some things, all of these will apply, but for some services, they will not.

3031. **Lord Morrow:** Chair, I think that the way it is — “at least one” — is fine and is actually more encouraging. It prompts that whole discussion and debate around that. I am quite content with the way it is. I think that it gets the message over admirably.

3032. **The Chairperson:** It does seem to be quite a small number, one out of seven.

3033. **Lord Morrow:** It does not say that.

3034. **Mr Weir:** I think that it would be a stronger case if it said “one of the following”, but it is saying “at least one”.

3035. **The Chairperson:** OK. Are members content with that?

Members indicated assent.

3036. **The Chairperson:** Clause 93: are there any issues there?

Members indicated dissent.

3037. **The Chairperson:** OK. Moving on to clause 95. There are quite a number of comments from the local government auditor, John and Linda, particularly a suggestion that we amend 31 October to 30 November in clause 95 (3) (a) to facilitate the local government auditor in the preparation of financial accounts for councils. Your explanation is that it is important that performance improvement information is published as early as possible and that delay will weaken the accountability aspect. She is saying that it is very tight for them.

3038. **Mr Murphy:** I think that the issue there is that, although it looks as if the auditor has a month to prepare for the report, certain aspects that will be going into the report can be looked at at an earlier stage in the year. Her role is to ensure that councils are following the process, and some of the process happens at the start of the year. In other words, the setting of targets for the council etc is done earlier, so the auditor can be looking at that stage. I do not see that as being a particular issue for the auditor.

3039. **Mr Weir:** Does that mean that the local government auditor is suggesting that change in the dates?

3040. **The Chairperson:** I think that that suggestion was from the local government auditor.

3041. **Mr Weir:** It strikes me that a month is not an enormous amount of difference. I know that these are almost consequential amendments for the next stage as well, but, if we are getting professional expert advice saying that it would be difficult to meet 31 October but that 30 November would be doable, she is the expert on this. It would seem to be a reasonably sensible amendment. I think that it would be a different kettle of fish if she was saying that instead of 31 October, it should be 28 February or something, but if the auditor feels that

- a delay of a month is needed, then I am inclined to lean towards that advice.
3042. **The Chairperson:** Yes, Louise Mason was saying that it was really tight for them.
3043. **Mr Murphy:** In terms of clause 35, that is actually the date for the council to publish its improvement plan for setting its targets. It is suggesting a date for it, and we are saying that it should be as early as possible prior to the start of the financial year. The auditor is talking about moving the date for the report, which is in a later clause, from November through to January, so that would mean moving it quite a bit.
3044. **The Chairperson:** Yes. The auditor has made a few suggestions. At clause 95(5)(a), she says that it would be preferable if a specific date was stipulated, preferably a date that is early in the financial year, such as 30 April or 31 May. I think that 30 April may be a bit too soon, but 31 May would give them two months.
3045. **Mr Murphy:** That is it: there is an element of trying to balance this to allow the council the time it needs to gather information and decide on the targets etc that it wishes to set itself.
3046. **Ms MacHugh:** The other factor that we are trying to look at as well is to plan it all so that they are not getting their financial audit and their performance audit at exactly the same time. That is for both councils and the auditor, although, in the auditor's case, it is likely to be a different team of people. There are issues around the timing of audits in local government and overlaying this, which is a new thing.
3047. **The Chairperson:** What about amending, as suggested, from 31 October to 30 November? Is it going to cause problems? It is under clause 95(3)(a).
3048. **Mr Murphy:** Under clause 95(3)(a), they are looking to bring the date for the publication of a report by the council forward from 31 October to 31 May. It becomes very tight for a council at the end of the financial year to start gathering the information and then produce a report on how well it has performed against its targets in that preceding year. That is why we set the date of 31 October: to allow the council the time to gather the information, assess how it has performed against the targets it has set itself and the Department has set, and then to produce a report. Doing it by 31 May really only gives you two months into the financial year to produce that. Among the other issues that a council faces at that time of the year, that would put an additional burden on the councils.
3049. **The Chairperson:** Are members content with that?
3050. **Mr Weir:** I am still inclined to go with the dates that the auditor suggested. Obviously, from that point of view, we can consider it when we go through the final clause-by-clause.
3051. **The Chairperson:** Does the Committee want the Department to consider an amendment?
3052. **Ms MacHugh:** We can have another look at the dates, and maybe go back to the local government auditor as well.
3053. **Mr Boylan:** I would support that.
3054. **Ms MacHugh:** We can see whether we can make some sort of compromise that is workable for councils and the local government auditor.
3055. **The Chairperson:** OK? We move on to clause 96. I think one thing I may want to pursue is the NIAO concerns that, once the new arrangements are embedded, it will be unnecessary for the auditor to report in full separately on each council each year. Exception reporting may become more appropriate. Risk management is better.
3056. **Ms MacHugh:** This is something that we have discussed with the Minister. We accept this risk-based approach. However, to effectively manage a risk-based approach, you need to get baselines. So, certainly for the first few years, the Department and the Minister will want to see these being done in

every council every year. However, he has agreed to an amendment that will allow us to vary the regularity of the performance audits by subordinate legislation at some point in the future. We can review it after maybe two or three years in conjunction with the auditor. That would give us the ability to relax that at that point if it were felt that that was appropriate at that point.

3057. **The Chairperson:** So, there will be a review in two or three years?

3058. **Ms MacHugh:** Yes.

3059. **The Chairperson:** Where is that set? Where do you specify that the review will take place?

3060. **Ms Broadway:** The Minister can give an undertaking that he will carry out that review. He has said that, if we put in that enabling power, he, at some date in the future, will consider when we should make the necessary subordinate legislation.

3061. **The Chairperson:** So, we need the Minister to say that during Consideration Stage?

3062. **Mr Murphy:** Yes.

3063. **The Chairperson:** OK. Are members content with that?

Members indicated assent.

3064. **The Chairperson:** We move on to clause 98(3).

3065. **Ms MacHugh:** That is back to the dates.

3066. **Ms Broadway:** We will look at all the dates throughout that.

3067. **The Chairperson:** Are members happy with that?

Members indicated assent.

3068. **The Chairperson:** We move on to clause 100(1) and clause 100(3)(a). The comment was made that there is need for flexibility in the audit reporting mechanism and that “must” should be amended to “may” for a more proportionate approach.

3069. **Ms MacHugh:** That was a request from the local government auditor because the auditor wanted to stipulate when she would perform those. Our proposal is that we will look at it through an enabling power, so that the Minister will determine, at a future date, in conjunction with the auditor and after consultation with local government, when those improvement reports will be performed.

3070. **The Chairperson:** Are members content with that?

Members indicated assent.

3071. **The Chairperson:** I think that the NIAO is quite concerned about all the new functions that it will have to perform.

3072. We move on to clause 101(4): amend “may direct” to “may request”. Are members content with that?

Members indicated assent.

3073. **The Chairperson:** Next, clause 103(3). The comment was that it is a bit top-down.

3074. **Ms MacHugh:** It is intended that the provision would be used only in extremis, if a council was fundamentally failing to perform the function for which that Department had both policy and legislative responsibility.

3075. **The Chairperson:** Are members content with that?

Members indicated assent.

3076. **The Chairperson:** Clause 106: the partnership panel. Is this the one where we have the legal advice? No? It is not? OK.

3077. **Ms Broadway:** The Minister has agreed to bring forward an amendment to clause 106 to make it clear that each of the 11 new councils will nominate to the partnership panel. There were concerns that, because of the way it is worded, the Department would appoint. In practice, that is not exactly how it would happen. We would appoint, but based on the nominations that councils put forward.

3078. **The Chairperson:** Are members content with that?

Members indicated assent.

3079. **The Chairperson:** Clause 106(3)(a) — are there any issues there?

3080. **Ms MacHugh:** That is where the amendment would come in. It would then read: “councillors nominated by their councils”.

3081. **The Chairperson:** Content with that?

3082. **Mr Boylan:** That covers the points in clause 106.

Members indicated assent.

3083. **The Chairperson:** We move on to clause 106(4). That is covered by the same thing.

3084. Part 14 is the control of councils by Northern Ireland Departments. The word “control” should be changed in the title; NILGA was not too happy about that word.

3085. **Ms Broadway:** Yes, well, we can look to change that. Those are exactly the same provisions as currently exist in the 1972 Act. The only difference is that they are now able to be applied by all Departments rather than just DOE, but essentially they are exactly the same provisions. In the 1972 Act it is called supervision of councils rather than control of councils.

3086. **The Chairperson:** Are members content with that? A bit of give and take.

Members indicated assent.

3087. **The Chairperson:** Clause 107, members?

Members indicated assent.

3088. **The Chairperson:** Clause 108 is on inquiries and investigations. Consideration by a partnership panel in terms of appeal against a finding of failure. Are members content with that?

3089. **Lord Morrow:** So, if a council feels hard done by, it has no means of redressing that.

3090. **The Chairperson:** Yes.

3091. **Lord Morrow:** Is that fair in this modern society in which we live, where everybody is equal — some more equal than others?

3092. **The Chairperson:** What mechanism would there be to deal with that, if there is an appeal mechanism on that?

3093. **Ms Broadway:** Again, those are provisions of last resort. It is only where a Department feels that it needs to carry out an inquiry because a council is maybe not carrying out a statutory duty that it has.

3094. **Ms MacHugh:** There would be a number of stages before you reach that point. To start at the very beginning, councils will be provided with money and targets. Departments will have to monitor that. If they feel that councils are not performing their function and are failing the ratepayer — the taxpayer as well, in this case — then there would be various interventions, including instructing and directing. It is only as a matter of last resort that they would ask for a full inquiry.

3095. **The Chairperson:** I think that is only fair. As you said, that is really the last step — the last resort.

3096. **Lord Morrow:** Yes, Chair, I hear that, and I think I understand it when it is said, but, when I read it, it says that councils will have no form of appeal. Just suppose you put a dot after “appeal”. How does it read?

3097. **The Chairperson:** Yes, but it has been through a whole process.

3098. **Lord Morrow:** Yes, I understand that.

3099. **The Chairperson:** Ultimately, they have to be accountable for what they do for the ratepayer.

3100. **Lord Morrow:** They might want to appeal it on behalf of the ratepayer. After all, they are custodians of their money, but they are now being told that they have no form of appeal.

3101. **Mr Boylan:** Are we then saying that there will be a series of interventions that will give the council enough to rectify the situation? Is that what we are saying? Are we then saying that that is clearly outlined?
3102. **Ms Broadway:** That is something that can be worked through with the partnership panel.
3103. **Mr Boylan:** Obviously there is going to be one councillor member on the partnership panel.
3104. **Ms Broadway:** OK. Is guidance needed for Departments in relation to that?
3105. **The Chairperson:** It is important that there is that power for the Department to call in an inquiry or investigation for a failing council if there have been ongoing interventions to no good. If not, how do you hold the council to account?
3106. **Mr Boylan:** May I ask a question? Obviously there could be a challenge in relation to the interventions if the council thought that it was actually —
3107. **Mr Murphy:** Yes.
3108. **Mr Boylan:** Put that in. Is that in, or is that an opportunity?
3109. **Ms Broadway:** It is not there at the minute.
3110. **Mr Boylan:** Not just to go back to them, but them having the opportunity to respond.
3111. **Ms MacHugh:** As it stands, the legislation does not actually state that councils will have no right of appeal. I think that is the inference that North Down Borough Council has taken from it.
3112. So, we are not saying that they have no right of appeal, but neither are we positively putting a right of appeal in. It is maybe something that we could give some thought to and discuss with the Minister.
3113. **Mr Boylan:** At least there is a level of challenge at some point, even if it is through the intervention.
3114. **The Chairperson:** Lord Morrow, you are saying really that, if the council is not content with the findings of the investigation, there should be an appeal against the findings of such an investigation. Is that what you are saying?
3115. **Lord Morrow:** Yes, and I am happy with what Linda has said here, if they take it away and have another look at it. Maybe it is the wording. It is the wording that caught my eye, and it struck a chord, a negative one, with me.
3116. **Ms MacHugh:** That is fine.
3117. **The Chairperson:** Content?
- Members indicated assent.*
3118. **The Chairperson:** We move to the next one, clause 110(1).
3119. **Lord Morrow:** We are getting the hang of it now.
3120. **The Chairperson:** You have the table in front of you, so I do not need to read it out. Are members content with this one?
- Members indicated assent.*
3121. **The Chairperson:** OK. We move to clause 114, which deals with transitional rate relief in consequence of changes in local government districts. Is there a departmental amendment to come? DFP officials advised that this is the case in their briefing of the Finance and Personnel Committee.
3122. **Ms MacHugh:** Yes, and that is one of the amendments that we will provide you with tomorrow. Really, it is to allow DFP to vary rates bills to take account of the relief that will be applied at bill level for any ratepayer who experiences excessive increases as a result of the rates convergence issue, which I am sure that you are aware of. It is an enabling mechanism. The scheme is being jointly developed by DFP and DOE, and it will not be able to be finalised until we know exactly what the scale of the convergence issues is, once all the rates are struck for 2015-16. We will be doing some modelling once all the rates are struck for this coming year, because

that is the nearest baseline that we will have. So, there is quite a bit of work to do to decide how best to use what is a commitment of up to £30 million from the Executive. This is the enabling provision for that.

3123. **The Chairperson:** Members, I remind you that we got the Hansard report from when the DFP officials talked to the Committee for Finance and Personnel. Over three or four years, a discount will be given to ratepayers who may see a drastic increase. There will be a graduated system. Are members content with that?

Members indicated assent.

3124. **The Chairperson:** The next one is 120(1), which deals with insurance against accidents to councillors. Are members content?

Members indicated assent.

3125. **The Chairperson:** Clause 121 is on schemes for transfer of assets and liabilities. Content?

Members indicated assent.

3126. **Ms Broadway:** We will table an amendment to clause 121, because, as the Bill stands, it does not cover the transfer of Armagh County Museum.
3127. **Mr Boylan:** Luckily, I did not say anything on that clause. I was just reading through it.
3128. **The Chairperson:** Do you want to buy it?
3129. **Ms Broadway:** There will be an amendment to clarify that that museum will transfer to the new Armagh, Banbridge and Craigavon —
3130. **Mr Weir:** Is it the only gap? Is everything else covered?
3131. **Ms Broadway:** Yes.
3132. **The Chairperson:** Why has it been left out?
3133. **Ms MacHugh:** Its status was unclear. DCAL finally confirmed that it is not part of the Department; it is a subsidiary of an arm's-length body. Therefore, because of the distance from the

Department, the clauses drafted did not cover the museum. That is why it will be stipulated. We got very clear instructions from DSD about the need to include the Housing Executive because it is also an arm's-length body of a Department; it is not a Department in and of itself. Having clarified the museum's status with DCAL, we had to make provision for it.

3134. **Mr Boylan:** Armagh was only discovered in 1973.
3135. **The Chairperson:** We will move on to clause 122, which relates to compensation for loss of office or diminution of emoluments. What does that mean?
3136. **Ms MacHugh:** Basically, anybody who is detrimentally affected. If, for example, a member of staff currently works five miles from home but, because of the reorganisation, will work 10 miles from home, they will get a mileage allowance for a period.
3137. **The Chairperson:** What about travelling time?
3138. **Mr Weir:** Is that not a bit 'Dr Who'?
3139. **Ms MacHugh:** It is so that terms and conditions are protected as far as possible when people move from one council or one employer to another. It is a legal term, and that is what it involves.
3140. **The Chairperson:** Would they be given only mileage? Would they not be given travelling time?
3141. **Ms MacHugh:** To be honest, I am not entirely sure, but I can find out.
3142. **The Chairperson:** Five miles is neither here nor there, but it could be 10 or 15 miles.
3143. **Ms MacHugh:** Those issues will need to be consulted on through the local government reform joint forum. It is doing work on location and relocation and how that will all work out. Therefore, the exact terms and conditions of what might happen will be agreed through that forum.

3144. **Mr Weir:** I can understand how mileage would be specially catered for by a TUPE-type situation. However, from a practical point of view, I do not think that there could be travelling time. People are not paid on the basis of distance from their place of work. They may get mileage to cover it, but, ultimately, people have the opportunity to choose where they live and, to some extent, where they work.
3145. **The Chairperson:** They may have been in a job for years and have to move house to be closer to work.
3146. **Mr Weir:** I appreciate that. However, there is a distinction between distance and mileage. Nobody gets paid for simply coming into work and their journey time.
3147. **The Chairperson:** We do.
3148. **Mr Weir:** The distinction there is getting paid for the mileage that you cover. As far as I am aware, nobody is paid for the time that it takes them to get into work. That is a different issue.
3149. **The Chairperson:** What if they are forced to move office?
3150. **Mr Weir:** I am not sure how that works. However, I think that it is catered for reasonably by saying that, if they have to travel additional miles, they can get paid for the additional miles.
3151. **The Chairperson:** OK. If we are happy with that, we will move on.
3152. **Ms MacHugh:** Sorry, just before you move on, this is another clause to which we will put forward an amendment, and we have discussed this with the Minister. Again, it is because of the slightly different approaches that some Departments are taking to what they are passing to councils. DSD, for example, initially, and as agreed by the Executive, was transferring functions. Now, it is conferring powers, and it is taking through its own legislation to do so. Therefore, we have had to expand on this clause to ensure that any statutory provision for local government reform is covered. Anybody affected by any statutory provision, not just the provisions of this Bill, will be covered by this clause. So there will be a slightly technical amendment, which will come to you tomorrow.
3153. **The Chairperson:** Are members content with that?
- Members indicated assent.*
3154. **The Chairperson:** We will move on to clause 123.
3155. **Ms Broadway:** Clause 123 creates a new clause to tidy up the issue that Linda just mentioned, namely to cover all the statutory provisions that will transfer functions or convey powers to councils. It is a redraft to ensure that everything that the Executive agreed would be transferred is covered by the transfer schemes and the transitional provisions.
3156. **The Chairperson:** We will move on to 124, which is on interpretation. That will be defined in the standing order specifying the criteria for call-in. Are members content with that?
3157. **Mr Boylan:** Chair, I have a point on the interpretation. As new amendments are being put forward, they will have to be tagged and covered under interpretation.
3158. **Ms Broadway:** We will look at all the amendments and check the interpretation. With the last couple that we talked about — 121 and 123 — there will be consequential amendments to the interpretation section to cover what is being taken forward there.
3159. **The Chairperson:** We move on to clause 125(4), which is about a change to affirmative procedure. You will prepare an amendment for that, is that right?
3160. **Ms Broadway:** Yes.
3161. **The Chairperson:** The next issue is super-affirmative procedure, which you also agreed to amend. Are members content with that?
- Members indicated assent.*
3162. **The Chairperson:** We move on to clause 125(6). Are members content with that?

Members indicated assent.

3163. **The Chairperson:** Clause 126 is on minor and consequential amendments and repeals. Provision is in the usual form according to the Department. Are members happy?

Members indicated assent.

3164. **The Chairperson:** Clause 127 is commencement. Are members happy with that?

Members indicated assent.

3165. **The Chairperson:** We still have 12 schedules to come, folks. I must say that I have not paid a lot of attention to the schedules, though I do not think that there are many issues with them. Schedule 1 is on qualifications. Are members content?

Members indicated assent.

3166. **The Chairperson:** Schedule 3 is on positions of responsibility. Are members content?

Members indicated assent.

3167. **The Chairperson:** Do members have issues with any of the 12 schedules?

3168. **Mr Weir:** I have just noticed the wording in schedule 3:

“absent from the district of the council”.

3169. Obviously, this is a replication of the original wording. However, how would it be interpreted? Presumably, it is meant to mean “absent from meetings”. This wording seems slightly archaic, which could be slightly confusing.

3170. **Ms Broadway:** We will look at whether we can modify the wording.

3171. **Mr Boylan:** I do not see any other issues. I am content.

3172. **The Chairperson:** Peter, are you content?

3173. **Mr Weir:** I am.

3174. **The Chairperson:** So this is a re-enactment of the 1972 Act.

3175. **Mr Weir:** The notes on schedule 4 refer to the political balance of individual committees. Is there a danger in not looking at the whole council? Most committees will be of a certain size, so does that mean that some parties or individuals may simply be excluded from all of them? What happens in the Assembly, for example, is that representation is worked out across the full range of the 12 departmental Committees by reference to representation in the whole Assembly. I do not have the wording of the schedule before me, but, if you are talking about the quota greatest remainder process for each individual committee, does that mean that independent members pretty much would not get on to any committees?

3176. **Mr Murphy:** There is that potential, yes, unless some of the parties did not take their seats. However, the other side of the coin is that, if you did it from the full council pool, which would create opportunities for independents, how would you then share seats out across the committees? A particular party might hold a certain number of positions across all the committees, so how would you work out the next tier? We might look at that.

3177. **Mr Weir:** There may need to be an adjustment. In the Assembly, there is a reasonable formula. People cannot insist on being a member of a particular Committee, but it means that there is a reasonably fair shake for everybody across the board. I do not have the schedule with me. I may be provided with it, but sometimes there is a danger of having too much information.

3178. Should we not re-examine this, just to make sure that there will not be an unfair consequence? The point is that it may mean that you leave certain committees unbalanced. Presumably, by the same token, if you apply it right across the board, it has a swings-and-roundabouts quality. What you unbalance at one level is probably balanced out in another committee in a similar vein. If there is too much skewing on one Committee, it then

- balances out on another. I do not have a particular suggestion; I just wonder whether the exact form of words could be looked at again.
3179. **Ms Broadway:** Yes, we could have another look at that.
3180. **Mr Weir:** If it is purely applied to each committee, you are essentially filling the main positions according to the quota. So, if you had relatively uniform committees, such as the Assembly Committees of 11, and eight places on each were filled by the quota system, would the other three places not always be filled by the same parties? It might mean that, if you simply had one committee, it would be proportionate, but, across the board, it would give a big advantage to particular parties.
3181. **Ms Broadway:** We can look at that before Thursday.
3182. **Mr Weir:** I am just trying to look after the Alliance Party.
3183. **The Chairperson:** Peter, I do not understand that at all. I am lost.
3184. Schedule 7 is on meetings and proceedings. There is a need for continuity in committees, with nominated councillors to serve for more than one year. So you are saying is that it will be up to councils to determine that.
3185. Are members happy with that?
- Members indicated assent.*
3186. **The Chairperson:** Schedule 10 is on transfer schemes. Some expressed disappointment that chief executive posts were not viewed internally in line with previous RPA principles. Are members happy with that?
3187. **Mr Weir:** It depends on who you are talking to whether they are content.
3188. **Ms MacHugh:** The Minister wishes to put forward a proposed amendment on the transfer of staff.
3189. **Ms Broadway:** That is to schedule 10, paragraph 2(3)(d).
3190. **Ms MacHugh:** As it stands, if there is a severance scheme in local government and somebody is paid a severance, the Department pays, whereas it is for local government to pay it. So the transferee as opposed to the Department would pay.
3191. **The Chairperson:** Sorry, Linda, will you say that again?
3192. **Ms MacHugh:** It will read, “include provision for the payment of compensation by the transferee”. Say, for example, three councils came together, and each had a finance director but there was only one finance director post. The other two may or may not get other positions on the new council. They may end up taking a severance package. In that case, it is for the new council to pay that severance. We are glad that we picked that one up.
3193. **Ms Broadway:** It changes “Northern Ireland department concerned” to “transferee”.
3194. **The Chairperson:** Fair enough.
3195. Congratulations, members. We have done this in very good time. It is only 1.55 pm.
3196. **Ms Broadway:** We will put forward two additional clauses: one to put in an enabling power to wind up the staff commission; the other on the transfer of functions grant, an additional grant that we have been working on with DFP.
3197. **Ms MacHugh:** That is the funding mechanism whereby everything that is moving from central government to local government will come with its own budget. That budget will be factored up into a lump sum calculated for each council. An adjustment will then be made in the rating system to allow for that money. It will not be collected, but it is money that DFP will put in and councils will then get that grant. It is a way of embedding it in the rating system as a payment mechanism. It will mean that local government will not have to go to different Departments every year looking for grants. It is an enabling mechanism for that.

3198. **Mr Weir:** Notional buildings.

3199. **Ms MacHugh:** Yes, that is exactly what it will be. It sounds a bit bizarre, but it is just the technical mechanism in the rating system to allow that payment to be made. We are working with DFP on that, and you will get the details.

3200. **The Chairperson:** OK, that is fair enough. Under matters arising, members have a paper on amendments under consideration to be tabled by the Department. The Department is telling us today that there are new ones, so they will all be tabled again on Thursday.

3201. The next item is the departmental reply to Committee queries under the Local Government Bill. Members have papers on a 1998 European Court judgement on council employees being elected or being a councillor and a note on how council staff becoming councillors is dealt with in other European countries. Are members content to note?

Members indicated assent.

3202. **The Chairperson:** Are members content that super-affirmative procedure be used for clause 85?

Members indicated assent.

3203. **The Chairperson:** Are members content to note the model constitution?

Members indicated assent.

3204. **The Chairperson:** Next is the use of co-option to councils. Members have legislation specifying the details of vacation of office in the event of non-attendance. Are members content to note?

Members indicated assent.

3205. **The Chairperson:** The summary of the latest draft of the subordinate legislation is tabled. Any comments, members? I do not think that you have had time to read that.

3206. **Mr Boylan:** I have to go, Chair. We are down to our quorum now.

3207. **The Chairperson:** The last one is a research paper on call-in. Are members content to note and put it in our report?

Members indicated assent.

13 February 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Ian Milne
 Lord Morrow
 Mr Peter Weir

Witnesses:

Ms Julie Broadway *Department of the*
 Ms Mylene Ferguson *Environment*
 Ms Linda MacHugh
 Mr John Murphy

3208. **The Chairperson:** I welcome “The A-Team”: Julie, John, Linda and Mylene. You have been working very hard, and so have we. We read the amendments last night, and Sheila has been working very hard on all of that too.
3209. For this session, we only need to consider the clauses where further information or amendments were requested by us or suggested by the Department. We will start with clause 2, which deals with constitutions of councils. Following the meeting on 30 January, the departmental officials agreed to provide the wording of a technical amendment to clause 2(1) (b) to clarify that the code of conduct referred to is the one in the Bill. That amendment has been tabled.
3210. Are members content with that, or do you need any further information from the officials? Content?
- Members indicated assent.*
3211. **The Chairperson:** The officials also agreed to consider an amendment to specify a date by which the first draft of a constitution would be published, but we have not heard anything from you on that yet.
3212. **Ms Julie Broadway (Department of the Environment):** We discussed that with the Minister, and he is not minded to table an amendment to specify a date. I think that the councils will be very keen to get that information out, anyway. To put the constraint of a date down might not be the best thing. There will be no departmental amendment on that.
3213. **The Chairperson:** Really, an organisation should not start operating without a constitution. That is the first thing that you need to work with.
3214. **The Chairperson:** Are members content with that?
3215. **Lord Morrow:** Is the date a constraint? Is it not an incentive? I suppose that it is like beauty: it is in the eye of the beholder.
3216. **Ms Broadway:** We could quickly go back to the Minister on that again to see whether —
3217. **Lord Morrow:** I am not totally against what you are saying, but I am not just convinced, if you know what I mean.
3218. **Ms Linda MacHugh (Department of the Environment):** Setting a date would need to be considered in terms of both what an appropriate date is and the fact that, if you set a date, it could be a rushed job or the task could expand into the date by which it is required. If you set it too far in advance it could delay it, as councils will think that they have until x date. Conversely, if a new council is having issues that it is still trying to figure out, having a date might force it into producing a constitution that it is not wholly happy with. We need to consider all those issues.
3219. **The Chairperson:** What do you think would be a reasonable time, Lord Morrow?

3220. **Lord Morrow:** First of all, I think that dates exercise the mind and are good for targets. I also believe that a date that is totally unreasonable is out of the question altogether. I am not talking about needing to have it done in three months or something like that. However, if you leave it totally open-ended, with no target date, it will be one of those things that continually fall to the bottom of the pile and might never get done. You could be running to two council terms or something like that before it gets done.
3221. **Mr John Murphy (Department of the Environment):** To support the Minister's position, the Department will be issuing a model constitution that it has developed, with the issues that need to be in it. I think that we provided the Committee with a copy. The Bill also provides us with the ability to issue direction on what needs to be contained. You start to have a framework that will support councils moving to very quickly put that in place.
3222. **Lord Morrow:** Do you see the first term of the new councils as an unreasonable time to expect that to be done? Is it four- or five-year terms?
3223. **Ms Broadway:** It will be five.
3224. **Lord Morrow:** Would it be unreasonable to expect the new councils to deal with that in their first five-year term? I do not think that that is unreasonable, but maybe others do.
3225. **Mr Weir:** Would you not expect the constitution to be dealt with during the shadow year?
3226. **Lord Morrow:** I was going to say two years, but I thought that, by the way the officials were coming here, they felt there was something that they were going to throw something out on the table that would surprise us as to why it could not be done.
3227. **Mr Murphy:** We would envisage the councils looking at that during the shadow year so that they have it in place when they take on their full executive responsibilities.
3228. **Lord Morrow:** I think that it would be excellent if it was done within the shadow period.
3229. **The Chairperson:** So, by April 2015?
3230. **Mr Weir:** Chair, there could be one or two ways to do this, either of which is slightly in advance of what is there: either put the date in the legislation or insert a subsection or whatever that would give the Department an enabling power to give a direction in terms of the date, in case it was felt that a particular council was pushing things down the pipeline unduly.
3231. **Ms Broadway:** We can consider that and take it back to the Minister. That would be a solution.
3232. **The Chairperson:** Yes, it would be a compromise.
3233. **Ms MacHugh:** At the moment, the Bill says that you need a constitution and that you need to supply a copy of that constitution should anybody request it. If you do not have a constitution you will not be able to supply a copy. We can take the issue of an amendment that would allow us to implement a date, should there be a problem, back to the Minister. However, at the moment, we do not know whether there will be a problem or not.
3234. **The Chairperson:** It is quite clear-cut, as Lord Morrow said, to say whatever time, or no later than April 2015. That is fair enough. The shadow council could work on that as their first piece of work. What do you think, members?
3235. **Mr Weir:** With the best will in the world, a lot of constitutions can be quite bland in their nature. It should not be that difficult to crack. Some of the nuances around standing orders may need a bit more work but, in the wider context of a constitution, I do not see where the difficulties are.
3236. **The Chairperson:** And there is a template for them to work on.
3237. **Ms Broadway:** We are working with a model constitution.

3238. **Ms MacHugh:** We will take that back to the Minister and let you know as soon as he makes a decision as to whether it is an amendment that he wishes to bring forward.

3239. **The Chairperson:** Yes. And the date is in April 2015. Are members content with that?

Members indicated assent.

3240. **The Chairperson:** We move on. The next one is clause 4 and schedule 1. The Minister was also asked to confirm, in writing, that subordinate legislation will be in place by the May 2014 elections, specifying the posts or grades of staff that will continue to be disqualified from being elected as a councillor, but we have not got any confirmation of this policy yet, Linda.

3241. **Ms MacHugh:** The Minister has confirmed that, in subordinate legislation, we will name positions of political sensitivity, and we have had lengthy discussions about that. We will consult on the exact level that that will be pitched at, bearing in mind the strong views that the Committee expressed around the potential issues. Also, we will be putting a geographic restriction on it, so that any council employee cannot be a member of his or her council. We have taken that on board as well, and the Minister is prepared to put that into subordinate legislation.

3242. **The Chairperson:** OK. So an employee can seek a position on other councils?

3243. **Ms MacHugh:** Yes, in other councils. However, it will be restricted to only certain levels of employee in certain positions. We will want to take further soundings from local government on those positions as well, and then it will be going out for consultation.

3244. **Mr Weir:** I presume, therefore, that what may be described as “the blanket ban” will be in force for the 22 May elections?

3245. **Ms MacHugh:** Yes.

3246. **Mr Weir:** What we are really talking about is the long-term position. I presume that, at least from the point

at which regulations come in, they will be open, either by way of co-option or indeed the 2019 elections, if it is four years.

3247. **Ms MacHugh:** Exactly.

3248. **The Chairperson:** Are members content with that? Cathal, are you OK?

3249. **Mr Boylan:** Yes.

Members indicated assent.

3250. **The Chairperson:** We move to clause 10, “Positions of responsibility”. This clause sets out the positions of responsibility within a council and the allocation process to be used. Departmental officials proposed a technical amendment to clause 10(4) to remove the word “prescribed” — to be replaced, I think, Linda, you said previously, by the word “statutory”. Two amendments have been tabled to accomplish that. So, instead of “statutory”, we take away the word “prescribed” and leave “public body” in there. Why?

3251. **Mr Murphy:** A “public body” is a defined in the interpretation clause as “a body established by statute”. So it achieves the same policy aim, but we are clearly saying that it relates to external appointments to public bodies that are established in statute.

3252. **The Chairperson:** So what are the implications when you take out “or other association”?

3253. **Mr Murphy:** We are not aware of any statutory associations. So this is just to provide clarity for a council with respect to positions that are caught by schedule 3.

3254. **The Chairperson:** Are members content with that?

Members indicated assent.

3255. **The Chairperson:** There is also the mechanism. We talked about STV/d’Hondt being the default position. Is there going to be any change in that?

3256. **Ms MacHugh:** No.

3257. **The Chairperson:** So the Minister is OK? You are keeping that.

3258. **Mr Weir:** Chair, just to clarify about the positions of responsibility, is it prescribed later on, or will it be left to the standing orders and the constitution? Obviously we have a list of positions. We do not clarify whether they are annual positions or positions for the full period. I appreciate that the external representatives may be something that is like a block bit. I am just wondering, because the point was made. I appreciate that, in terms of the likes of chairs and deputy chairs, they are more or less annual in relation to that. It is unlikely that any council will go directly down this route, at least in the short term, but if you are having a cabinet-style executive, it will probably make sense for those positions, at least within a party, to be effectively ring-fenced for each block period, which would be different from where the chairs and vice-chairs would be. If you were having a cabinet, a degree of continuity would be needed, and more so than if you were simply swapping about the chair or the vice-chair of a committee.

3259. **Mr Eastwood:** Do you mean in terms of the party or the person?

3260. **Mr Weir:** In terms of the party, because you could elect someone and then they could fall under a bus tomorrow. A dead person in a cabinet position might sometimes be an improvement on whoever is there, but, in general, in any of these things it would be on the basis of a party position. Even if, for the sake of argument, say because of the way d'Hondt fell, you might want to have a situation where a party might want to have the chair of the council, effectively two years in a row. It may be that, because of the way d'Hondt falls, it may be in a position to pick that. However, there has to be a bit of variation or flexibility, so that it could be Joe Bloggs one year and Josephine Bloggs the next — whatever way it happens to be — rather than necessarily ring-fenced. It strikes me that it probably makes sense if it is at least allowable, from the point of view of a cabinet position, that it is something that can actually roll forward for the full term on that side of things.

I suspect that no council, certainly in the first term, will go for a strict cabinet; they maybe will go for a streamlined system of some description.

3261. **Ms Broadway:** I think that that had not been the original intention, but we can look at it.

3262. **Ms MacHugh:** Is that something that the Committee wants us to take back to the Minister?

3263. **Mr Weir:** That flexibility of that may be something that can be dealt with purely in guidance, so I am not necessarily saying that there needs to be an amendment. However, there may just need to be a wee bit of clarity so that people understand how the system will work in terms of those different representations. Even for the external representatives of the council, I suspect that some external representatives are elected on an annual basis. There are quite often particular external bodies where they are looking for someone to sit for the full term of the council, so it would be a four- or five-year appointment.

3264. **The Chairperson:** So is there going to be an amendment on that?

3265. **Mr Weir:** What I am saying is we should maybe ask for clarification, but it may then be mentioned that there will be something in guidance. Maybe we need to check that there is no legislative tweaking required in relation to it. It may well be settled in guidance. For (a) to (f), or some of them, it may be. Positions (e) and (f) may operate completely differently from (a) and (b), but we may just need that bit of clarification on it.

3266. **Mr Boylan:** Are you leaving it to choice? Or are you asking specifically for a certain position? Are you leaving it up to the council to decide what way it wants it? What way do you want to do it?

3267. **Mr Weir:** So long as we can be clear that there is that opportunity. It may be that at least an opportunity is given in the cabinet style to allow it to be an appointment for the full term of office, if that was agreed as part of the overall

mechanisms. So long as that same opportunity is not given for positions (a) to (d). Those are things which clearly should rotate annually.

3268. **The Chairperson:** OK. Let us move to clause 11, “Arrangements for discharge of functions of council”. The departmental officials agreed to consider amending the wording of this clause on borrowing money to address a possible conflict with the Local Government Finance Act (Northern Ireland) 2011. So the proposed amendment has been tabled, members; do you want to ask the officials for any further clarification on this? Are you happy with the amendment? It seems straightforward to me.

Members indicated assent.

3269. **The Chairperson:** We move on to clause 23, “Permitted forms of governance”. The Committee asked the Minister to consider whether committees outside the executive, exercising quasi-judicial functions such as licensing or planning, would be subject to call-in or qualified majority vote, and we have no response as yet.
3270. **Mr Murphy:** No. The operation of the call-in and QMV will be covered in guidance, as the Minister said in the Chamber. Those will be specified as mandatory elements of standing orders, which, again, will be made under regulations. They are subject to the draft affirmative.
3271. **The Chairperson:** OK. Are members content with that?

Members indicated assent.

3272. **The Chairperson:** We move on to clause 25, “Council executives”. The Committee asked the Minister to clarify the role of mayors and deputy mayors in a council executive, and whether they would have voting rights. What about this? No decision has been made.
3273. **Ms Broadway:** The Minister is not minded to make an amendment in relation to that.

3274. **The Chairperson:** Are we going to have guidance?

3275. **Ms Broadway:** Yes.

3276. **Mr Murphy:** The provisions for access to meetings and information of an executive will allow members of the council, including the major and deputy mayor and the chair and vice-chair of the council, to attend, unless the executive is discussing something commercial in confidence or personnel issues. They will have that free access so that they are aware of what is happening in the council. As well as that, the regulations will specify that the decisions of an executive should be published within two days of the decision being taken, and that will be published and circulated to all members of the council. The regulations will provide for that information to be available across the council.

3277. **Mr Weir:** I appreciate what has been said. It may not necessarily be through the Committee, but, on the basis of the position of mayors and deputy mayors, I may seek an amendment on that. I appreciate what is being said about openness. I suppose the only issue, then, is that quite a number of decisions may be commercially sensitive and are then purely kept to the cabinet style, and because of their nature, people may have to be excluded. The problem is that if you are talking about a mayor or a council chairperson of a particular borough, there may well be sensitive bits of information that they may not necessarily have a vote on, but they may have a strong need to know what is being said, because it could very easily impact on the borough as a whole. I am not sure that not at least having them as a member of an executive, albeit there is a reasonable enough reason for them to be non-voting members, is particularly good enough in that regard. I may not necessarily put forward an amendment to the Committee today, but I may look at amending clause 25.

3278. **The Chairperson:** Thank you.

3279. Are members content that the Minister is not going to table an amendment on this? Does the Committee want to push for one? We can talk about that later. However, we are clear that the Minister is not going to amend the Bill on this point.

3280. We move on to clause 34, "Reference of matters to overview and scrutiny committee etc.". There are two tabled amendments to this clause to replace "excluded" with "prescribed". Linda, can you explain a bit about that, please?

3281. **Mr Murphy:** Originally, we were providing that excluded matters would be specified in an order, whereas all the other aspects about the operation of the executive would be in regulations. We wanted to be in a position where you had one piece of subordinate legislation dealing with all aspects of executive arrangements. The draftsman has taken the view that it is easier to say "prescribed", so it still allows us to do it in regulations. The draftsman has done it in a technical way that he felt delivered what we required.

3282. **Ms Broadway:** Instead of referring to an "excluded" matter, it is a "prescribed" matter. Under the interpretations, "prescribed" means "prescribed by regulations". It means that we can include in the regulations on executive arrangements anything on overview and scrutiny.

3283. **The Chairperson:** OK. It is really a technical amendment. Are members content?

Members indicated assent.

3284. **The Chairperson:** Tom, are you OK? You look puzzled.

3285. **Mr Elliott:** No, I am OK.

3286. **The Chairperson:** We move on to clause 45, "Power to require decisions to be reconsidered". The departmental officials agreed to report back to us after discussions with the Minister on the criteria for a call-in and guidance on the use of a solicitor or barrister in the procedure for the reconsideration of a

decision. We have not got any written response from you yet.

3287. **Ms Broadway:** The Minister is not minded to bring forward an amendment on that issue.

3288. **The Chairperson:** So, the Minister is not going to put in an amendment. Suzie has tabled a paper on a study in England of local councils about the call-in system, but it is only a fictional model; there is not really a working model as such. It has findings and opinions from different councils.

3289. OK, members. There will certainly be guidance, but there will not be an amendment.

3290. **Mr Murphy:** There will certainly be guidance. As I said earlier, the call-in procedure will be a mandatory element of a council's standing orders. It will be specified in regulations.

3291. **The Chairperson:** We have discussed before whether there should be a panel of solicitors or one designated solicitor outside the council. That is not going to be amended; the Minister is not minded. Members, maybe we can discuss that in closed session.

3292. The next one is clause 50, "Application to committees and sub-committees". The Department has tabled an amendment to the clause to remove the word "be".

3293. **Ms Broadway:** That is a mistake that was not caught in a proofread.

3294. **The Chairperson:** That is fine.

3295. Clause 58 concerns investigations. Departmental officials agreed to report back to us on discussions with the Minister on the possibility of an amendment to the clause to deal with minor complaints. We also asked the Minister to reiterate his intention for the role of the Commissioner for Complaints to be reviewed after three or four years. There is one tabled amendment. Maybe the officials can clarify it.

3296. **Ms Broadway:** The amendment allows the commissioner, if he considers that

a matter should be referred back to the council for local resolution or some form of mediation, to take that action rather than carrying out an investigation.

3297. **The Chairperson:** Are members content with that?

Members indicated assent.

3298. **The Chairperson:** What about the review?

3299. **Ms Broadway:** The Minister is happy to give an undertaking that that will be reviewed.

3300. **The Chairperson:** So, he will mention that in Consideration Stage. Are members content with the answers?

Members indicated assent.

3301. **The Chairperson:** Clause 60 concerns reports. The departmental officials agreed to report to us on discussions with the Minister and the Commissioner for Complaints on the possibility of a moratorium on complaints two or three months in advance of an election. We have not seen any amendment on that.

3302. **Ms Broadway:** We have discussed it with the Minister. He is not minded to bring forward an amendment.

3303. **Ms MacHugh:** One of his concerns is that, whilst he understands the concerns of the Committee about spurious or malicious complaints against councillors, that has to be balanced against the possibility of actual and real complaints being barred from being investigated during that time. His concern was that, in trying to defend the honour of councillors who might face a bogus accusation, you might also, conversely, prevent real misdoing being brought into the public domain prior to the election.

3304. **The Chairperson:** I understand that. Are members content with that?

3305. **Mr Weir:** Not really. I appreciate the point being made. If it were the case that a complaint could be made and nothing would ever happen, that is a different kettle of fish. However, it could

be used in a malicious way — in a way that, with the best will in the world, the councillor would have no opportunity to clear his or her name prior to an election. What had been talked about was, essentially, a delay. That issue may be considered for an amendment. I appreciate why it is being said, but I think that there are pitfalls.

3306. **The Chairperson:** Is a moratorium before elections the practice in other jurisdictions?

3307. **Ms Broadway:** Not that we are aware of.

3308. **Mr Weir:** One of the problems is that it is difficult to judge how people will use or abuse the system until it is in place. My concern is that, in Northern Ireland, there might be motivations that do not exist elsewhere. People with visceral attitudes might come to the fore, which would not necessarily be the case in, for example, Wales or England.

3309. **The Chairperson:** Do you mean a person bringing a vexatious complaint?

3310. **Mr Weir:** The problem is that, if somebody brought a completely spurious, vexatious and malicious complaint a month before the election, it would take a while for it to be shown as such, and the mud may well stick. The person may be cleared on 5 June, which is two weeks after the election. That is grand, but, because their name has been dragged through the mud, they may have lost their seat and had their career wrecked in the meantime.

3311. **The Chairperson:** I go along with the explanation of the officials and the Minister. If a genuine complaint happened just before an election, that would mean that you would be gagging someone, and that is against natural justice.

3312. **Mr Boylan:** It could be one tweet.

3313. **The Chairperson:** How can you stop people tweeting?

3314. **Mr Boylan:** No. That is not the point. That is not what I am saying.

3315. **Mr Weir:** There is nothing to stop anybody tweeting and doing pretty much anything they want. The issue is whether anything they do is given substance in the form of a complaint at a time when a councillor does not have an opportunity to clear their name or have that level of justice.
3316. **Mr A Maginness:** Even if you had a moratorium on the substance of the complaint, you could not have a moratorium on the actual complaint. In other words, if Joe Bloggs put in a complaint against councillor so-and-so, you could not stop that being publicised.
3317. **Mr Weir:** No, but the point is that there would be a moratorium on somebody lodging a complaint during that period.
3318. **Mr A Maginness:** I do not think that you could do that. I think that a complaint has to be lodged within a certain time. All that you could prevent by way of moratorium is the substance of the complaint.
3319. **The Chairperson:** You could also face a legal challenge if you suddenly said that people were not allowed to lodge a complaint within a certain period. If I suddenly had a very serious complaint and felt that I had been gagged —
3320. **Mr A Maginness:** I am saying that I do not think that you can stop a complaint being lodged. That would be against all the laws on fair play, equity and so forth. However, there might be some room to restrict the disclosure of the substance of the complaint.
3321. **Lord Morrow:** What about the timelines, Alban?
3322. **Mr A Maginness:** That is what I mean. You could possibly have a moratorium on the substance of a complaint.
3323. **Lord Morrow:** What about the lodging of a complaint?
3324. **Mr A Maginness:** No.
3325. **Lord Morrow:** So, if an issue were to arise now, you could complain about it in 10 years' time?
3326. **Mr A Maginness:** No, I am not saying that. The important thing is that a person should always have the ability to lodge a complaint. All that we can do as a legislature is say that there is a moratorium on the disclosure of the substance of that complaint. I do not think that you could suppress, as it were, or prevent someone lodging such a complaint, because that would be inequitable.
3327. **The Chairperson:** There is always difficulty in suppressing the content of the complaint. Quite often, complainants go to the press or make it known to people by other means.
3328. **Mr A Maginness:** The point is that they might be forbidden in law to do so.
3329. **Ms MacHugh:** When the commissioner gave evidence to you, he gave his undertaking that the nature of a complaint and, indeed, whether or not a complaint had been made, would be kept confidential unless and until, of course, it came into the public domain in another way.
3330. **Mr Weir:** The one complication of that is that a complaint made by someone who has genuine concerns is kept confidential. However, someone who puts in a malicious complaint simply to try to destroy the character of a particular councillor, or even a council candidate, will have a big incentive to publicise that. To some extent, you might end up protecting someone against whom a genuine complaint has been made but also making it open season for people making complaints for malicious purposes.
3331. **Ms MacHugh:** I do not think that the Bill has the ability to place a moratorium on anybody disclosing the substance of a complaint if the complainant was outside the council structure, for example.
3332. **The Chairperson:** Are members content with the explanation, or do you want to have a further discussion in closed session?

3333. **Ms Broadway:** The commissioner is aware that this is an issue. He has been discussing it with colleagues in Wales because there is evidence that, just before an election, the number of complaints increases. He has been discussing how that is dealt with.
3334. **Mr Weir:** Perhaps we could get a wee bit more information on how that it is dealt with. I appreciate that it is one of those issues about which there will always be criticism, no matter what is done. Some will argue that we are trying to gag people if we go down a particular route. On the other hand, I can envisage a real-life example happening just ahead of an election in which a person's role as a councillor will be completely wrecked because of a malicious complaint made against them. That person will not have time to clear their name. Quite often, when there is a complaint, despite all that is said about being innocent until proven guilty, an awful lot of people take the view that there is no smoke without fire. They will say that so-and-so must be guilty until the person is cleared. When you depend on public opinion to elect or not elect someone, that can be very damaging. We need to take care in whatever position we take on that.
3335. **The Chairperson:** I have just been reminded that this is our final clause-by-clause session. We really do not have time to get any further information.
3336. **Mr Weir:** That may well be the case. Whether or not the Committee tables an amendment may be significant, but, if we get further information, it may guide a lot of us. We are not at Consideration Stage yet, so further information might provide a guide to us and help us to decide whether to table an amendment then or at Further Consideration Stage. That decision might also relate to whatever assurances are given in the House in connection with this issue. I appreciate that the boat may have sailed as far as amendments at Committee Stage are concerned, but there are other options.
3337. **The Chairperson:** We will need to have further discussions about that in closed session.
3338. We will move on. No amendments were proposed to clause 60.
3339. Clause 62 concerns decisions following report. Officials agreed to report back to us on discussions with the Minister on the possibility of an amendment to introduce an appeals mechanism for complaints, possibly to the High Court. Members have the tabled amendment before them, which allows for appeal to the High Court. Are members content, or do you need further information?
3340. **Mr Weir:** Let me clarify. I am broadly content with the idea of an appeal to the High Court. On that basis, is there any indication of the potential grounds for appeal? By appeal to the High Court, do you mean simply the equivalent of a judicial review, or do you mean that such an appeal could be based on the sentence or the merits of the case against the person?
3341. **Ms Broadway:** In Scotland, legislation specifically allows for grounds for appeal, three of which are really the provisions for judicial review. However, there is an additional ground for appealing.
3342. **Mr Weir:** I would like the grounds to be wider than judicial review. Although procedure may have been followed perfectly, there may be an unduly harsh verdict that, for example, disqualifies a councillor. Alternatively, we may want some level of appeal to say that what the councillor is accused of is not accurate. I think that there needs to be something of that nature. If the legislation simply refers to the right to appeal to the High Court, that leaves a very grey area: is it just judicial review or does it go wider than that? There may be some merit in inserting what the potential grounds for appeal are. You mention the Scottish legislation in which that is provided for. I think that it needs to be wider than judicial review.
3343. **The Chairperson:** What about the cost? The Complaints Commissioner also

- mentioned that it will be very costly for people to take anything to the High Court.
3344. **Ms Broadway:** There was evidence that the cost of appeal and judicial review is quite similar.
3345. **The Chairperson:** So it would cost a lot to take an appeal to the High Court.
3346. **Mr Weir:** I know that cost can be a deterrent. Generally speaking, I know that the stakes are high, but it is likely that the cost will follow the event. So, if the High Court found in favour of the appellant, it is fairly likely that the appellant would be awarded costs. The big downside —
3347. **The Chairperson:** Yes, but the risk —
3348. **Mr Weir:** Risk is the big downside. However, I think that, at the very least, people should have the opportunity to appeal to the High Court. They are probably risking a large amount on getting the right verdict. If someone was disqualified and consequently stood to lose tens of thousands of pounds over the next three or four years, they may well regard an appeal as worthwhile.
3349. **Ms Broadway:** In Scottish legislation, the grounds for appeal against an adjudication are these:
- “The finding was based on an error of law; there has been procedural impropriety in the conduct of the hearing; the Commission has acted unreasonably in the exercise of its discretion; or the Commission’s finding was not supported by facts found to be proved by the Commission.”*
3350. **Mr Weir:** Yes. That stands to reason, but the only issue might be whether there is an additional ground: less about the facts and more about the merits. I wonder whether there is scope for an appeal against the sentence.
3351. **Ms Broadway:** There is something further, which applies to an excessive sanction:
- “The Commission has acted unreasonably in the exercise of its discretion”*
3352. **Mr Weir:** Is that under a separate heading from the ground that the commission acted unreasonably?
3353. **Ms Broadway:** Let me check. I can make this document available to you, if you want.
3354. **Mr Weir:** Will you read out the section?
3355. **Ms Broadway:** Yes.
- “That the commissioner’s finding was not supported by the facts found to be proved by the commission”*
3356. On the sanction being excessive:
- “The Commission has acted unreasonably in the exercise of its discretion”.*
3357. **Mr Weir:** Are those part of the same block?
3358. **Ms Broadway:** It is all in relation to an appeal.
3359. **Mr Weir:** I understand that. I am sorry. I am not making myself clear. Are the reference to the sanction and the reference to the commission acting unreasonably two separate points?
3360. **Ms Broadway:** Sorry. Yes, they are. They are two subsections.
3361. **Mr Weir:** If they were one and the same, it would be a question of reasonableness in the level of sanction, which is different from the level of sanction being too severe. I think that, if those were put in as the specific grounds, it would clarify that and not leave any doubt about what the appeal route is.
3362. **The Chairperson:** Do you want them inserted into the amendment?
3363. **Mr Weir:** It would probably be an additional subclause, something like, “The grounds for appeal under subsection 13 would be under one or more of the following”, which would be followed by a list. I just want to say that, at the moment, there is a lack of clarity.
3364. **Ms Broadway:** We will take that back to the Minister
3365. **The Chairperson:** The next one is clause —

3366. **Lord Morrow:** May I just ask briefly —
3367. **The Chairperson:** I am sorry, Lord Morrow. Yes?
3368. **Lord Morrow:** May we hear the team's thoughts on clause 63(1)(c), which includes the wording, "suspend or partially suspend". How do you partially suspend a person?
3369. **Ms Broadway:** That would happen if the commissioner was carrying out an investigation and it looked as though it might lead to disqualification, or there might be a reason why that person should be taken out of a particular committee. In that case, the commissioner would have the power to issue an interim report and partially suspend the person while the investigation was ongoing.
3370. **Mr Weir:** Would that apply, for instance, if the complaint was something to do with planning? In that case, a person can be taken off the planning committee but is able to remain a councillor throughout that period. Is that right?
3371. **Ms Broadway:** Yes.
3372. **Lord Morrow:** So that is what you call a partial suspension. What would be the status of the councillor during that period?
3373. **Ms Mylene Ferguson (Department of the Environment):** It would be down to the particulars of the case and how the commissioner viewed it. It may just be that they need to be suspended from a particular committee, or it may extend further. It just depends on the nature of the case.
3374. **The Chairperson:** Specific circumstances, really. Are members content with clause 63?
- Members indicated assent.*
3375. **The Chairperson:** We move to clause 67, which is on the expenditure of the commissioner. Departmental officials agreed to report back to the Committee after discussions with the Minister on the apportionment of the commissioner's costs and whether this clause will be amended to reflect that. We have received no amendment. Previously, we heard that it might be top-slicing.
3376. **Ms MacHugh:** We now have the Minister's agreement that that would be the case, so he will put forward an amendment to make that top-slicing provision.
3377. **The Chairperson:** When will you bring us the amendment?
3378. **Ms MacHugh:** We heard that the Minister agreed to that just 10 minutes before we arrived. We will get that drafted as soon as we can and get the precise wording of the amendment to you.
3379. **The Chairperson:** OK.
3380. **Ms MacHugh:** By close of play today, but I will not be here.
3381. **The Chairperson:** We will need to look at it today, really.
3382. **Ms Broadway:** Yes.
3383. We have an additional amendment that you have not yet been made aware of. The amendment is to clause 64 on recommendations. As drafted, if, in the investigation of a case, it becomes clear to the commissioner that a council's procedures might leave some sort of grey area that could give rise to someone being in breach of the code, or if there was such a grey area in the procedures of another public body that could provide means for someone being in breach of the code, the commissioner can issue a report to the council or public body, stating that there may be an issue. As it stands, the commissioner must send a copy of any recommendations to the council and DOE but also to any other relevant Department. The issue is this: how do you define "relevant Department"?
3384. It would be easier for DOE to assess which other Departments are involved and send the report administratively to them than for the commissioner to do so. So the amendment to clause 64 is to put DOE at the centre: we will receive the report from the commissioner and

then follow up with other Departments. It would mean that we would omit clause 64(2)(b), omit clause 64(3)(b)(ii), and take out clause 64(6) completely, meaning that DOE would be at the centre rather than all Departments receiving the report.

3385. **The Chairperson:** It just makes it simpler it all going to DOE. Are members content with that?

Members indicated assent.

3386. **The Chairperson:** We move on to clause 68 on interpretation. The clause clarifies the position of a councillor who is disqualified but has been appointed to an outside body. There is quite a long amendment. Will you explain it to us?

3387. **Ms Broadway:** Last week, the Committee raised the point that we need to be clear on this. In the provision as drafted, it is clear that a councillor, when acting in a representative role for their council, is covered by that clause. However, what about a councillor who is not acting as a representative of their council but is on a public body by virtue of being a councillor? The amendment is to clarify that the provision also covers people acting by virtue of being a councillor.

3388. **Mr Weir:** I just want to clarify what it covers. The one example that immediately came to mind was appointment to the Library Authority and the opportunities, as I understand it, given to councillors to apply. It was the process — I presume that it is the same under the current CAL Minister — that 11 councillors were picked. They are not there as a representative of their council. However, the fact that they are a councillor is effectively a qualifying factor — it may not be a strict qualifying factor — in their serving on the authority. So this would cover that situation. Is that right?

3389. **Ms MacHugh:** Yes.

3390. **The Chairperson:** I think that a lot of organisations would invite a local councillor on to their board.

3391. **Mr Weir:** A grey area is whether they are inviting them because they see them simply as an important local person, for want of a better phrase, or they are there purely because they are a councillor.

3392. **The Chairperson:** Sometimes, that is difficult to define, which is the issue. I am on a number of boards, and I think that they invited me because of my connection with the Assembly.

3393. **Mr Weir:** The distinction is that, if it is a statutory body, it is probably purely on the basis of being a councillor. If, for the sake of argument, it was a local charity that wanted to have somebody in the public eye on the board, that is a different kettle of fish.

3394. **Ms Broadway:** Yes, in the sense that they do not hold that position by virtue of being a councillor.

3395. **The Chairperson:** I hope that we are clear on that. Are members content with the new section in clause 68?

Members indicated assent.

3396. **The Chairperson:** We move on to the amendment to clause 78, which removes, “aim to”. That is very much welcomed, by me anyway.

3397. Sorry, we are on clause 69, which is on community planning. I had jumped ahead. The Committee asked the Minister to give an assurance at Consideration Stage that the role of the voluntary and community sector would be outlined in statutory guidance. Departmental officials agreed to report to us after discussion with the Minister on a possible amendment to the clause to include in statutory guidance well-being, equality and good relations. What about that one, Linda?

3398. **Ms MacHugh:** At this stage, the Minister is not minded to amend the clause. However, he is still taking soundings, so he has not reached a definite conclusion. However, we can give an undertaking that that will be expressed in guidance.

3399. **Mr Murphy:** The Minister is happy to give that assurance at Consideration Stage. We will work with various bodies in local government and other key stakeholders in developing the guidance. The equality and good relations duties on councils and the statutory partners will be a clear element of the guidance.
3400. **The Chairperson:** There will be guidance but not in the Bill.
3401. **Ms MacHugh:** As I said, he is still considering it. At this stage, he is minded not to amend the Bill but has not come to a final conclusion. He will shortly but not just yet.
3402. **The Chairperson:** Is he minded to table an amendment on the role of the voluntary and community sector?
3403. **Ms MacHugh:** No.
3404. **The Chairperson:** Just in guidance.
3405. **Ms MacHugh:** Yes.
3406. **The Chairperson:** OK.
3407. **Mr Boylan:** On deprivation, poverty, social inclusion and all those things, and I can speak only from experience in my area, I am concerned that some old areas in towns and rural settlements are already a wee bit left behind in councils as it is. In a larger council, where they will be linked to bigger urban settings, I am afraid of them getting swallowed up and missing out, so we need to ensure that the likes of tackling deprivation and all is tied down.
3408. I mentioned last time that neighbourhood renewal addresses some issues, but the small areas of deprivation — areas at risk, as they are called — are not being addressed at the minute. We need to ensure that councils take responsibility under the new regime.
3409. **Ms MacHugh:** As I said the last time that we discussed this, community planning is one route but another is the urban regeneration and community development framework, which DSD has issued to councils as the framework against which it is going to be monitoring performance. The obligations on councils to tackle deprivation are enshrined in that document. I do not have enough of a working knowledge of the document to know exactly how the issues around tackling smaller pockets of deprivation are addressed, but that may be worth looking at.
3410. **Mr Boylan:** We have an opportunity now to address deprivation. It is out there. Some people may not have experienced it, but I have used the example about one town area having three wards, with two wards being affluent and the other being in the older part of town. We possibly have an opportunity through the clause to address that, even through working in partnership with other Departments.
3411. **Mr Murphy:** In addressing those issues in guidance, you have greater flexibility to hone in. You can cover the main thrust in statutory guidance but develop certain themes through additional advice notes or further iterations of the statutory guidance.
3412. **The Chairperson:** Are members content with all the information and the explanation?
- Members indicated assent.*
3413. **The Chairperson:** However, we need to press the Department to find out fairly soon whether the Minister is content to table an amendment on equality and good relations.
3414. We move to clause 76. A possible amendment to clause 76(1) is to insert “reasonable” before “arrangements”.
3415. **Ms Broadway:** The Minister has agreed to forward the amendment.
3416. **The Chairperson:** OK. Again, will we see the amendment tonight?
3417. **Ms Broadway:** Yes.
3418. **The Chairperson:** Clause 78 is on duties of Departments in relation to community planning. There is an amendment tabled. It is the one that I jumped to earlier, to remove “aim to” from clause 78(a). It is really just to make the

wording a bit stronger. Are Members content?

Members indicated assent.

3419. **The Chairperson:** We move to clause 85, which is on powers to make supplemental provision. There is a departmental amendment to this clause, too, to strengthen Assembly control of the power by making it subject to a super-affirmative resolution. Are members content?

Members indicated assent.

3420. **The Chairperson:** We move to clause 95, which is on improvement planning and publication of improvement information. Officials agreed to report back on the possibility of amending the clause at subsection (3)(a) from “31st October” to “30th November” to facilitate the local government auditor in the preparation of financial accounts for councils. What about that?

3421. **Ms MacHugh:** That is an operational issue that the Audit Office has raised with the local government auditor. The Minister has agreed to bring forward an amendment to amend the date by which a council has to produce its report to 30 September, so that will give an additional month. It is really a case of striking a balance between the operational requirements of the Audit Office and the issues that would arise for councils from bringing the date forward too far. Therefore, we have provided for an additional month in the legislation.

3422. **The Chairperson:** Will you explain the procedure for those of us who do not understand the local councils’ procedures?

3423. **Mr Murphy:** The new framework will require a council in the early part of the financial year to publish a plan of what it intends to do to improve the delivery of its services, etc. The following year, it will be required to gather information to assess how it performed against the targets that it set itself and any targets set by Departments, and publish a report. Originally it was supposed to be

by 30 October, to give a council the time to gather that information. The auditor would then go in and confirm whether the council, in delivering its performance improvement duty, had complied with all the duties specified in the Bill.

3424. As we said, the auditors felt that one month was not sufficient time for them to undertake that role, and they wanted either the date for the council to prepare its report brought forward or the date for the production of the auditor’s report to be moved to January. The difficulty with moving it into January is that that would then create a problem for the council in preparing its improvement plan for the incoming year, because it has to take account of anything that the auditor identifies. Therefore, it was felt more appropriate to bring forward the date. We are still giving the council six months in which to gather the information and assess how it has delivered against its improvement plan.

3425. **The Chairperson:** I understand now. The councils are going to bring the information a month before — in September — which would allow the auditor almost two months to deal with it. Members, are you content with that?

Members indicated assent.

3426. **The Chairperson:** Have you spoken to the Northern Ireland Audit Office (NIAO) about that?

3427. **Ms Broadway:** Yes.

3428. **Ms MacHugh:** Actually, we needed to speak to the Minister, so I am not sure that we have had the opportunity to tell the NIAO that we are bringing forward the amendment, but we did discuss the issue with it before we took advice to the Minister.

3429. **Mr Weir:** Was it content with what was suggested?

3430. **Ms MacHugh:** I am not sure that we got down to exact dates, but it expressed its view about the issue of having only a month. We took that view away and considered it, and this is what we have agreed with the Minister would be an

- appropriate balance between giving councils enough time to do their work and giving the Audit Office enough time to do its work.
3431. **Mr Weir:** Chair, I appreciate that, and I appreciate that it is too late for a Committee amendment. However, it might be worthwhile for the Committee to contact the Audit Office to see whether it is content with what is being proposed here.
3432. I think that we need to be a wee bit more informed. I appreciate what Linda is saying about discussing this with the NIAO. However, for it to say, “Yes, we are happy enough with things”, does not seem entirely watertight. It seems to me that it is talking about a period and the bit of discussion before you went to the Minister. I think that we need to get a wee bit of reassurance on whether it is content with the position.
3433. **The Chairperson:** We are very, very tight for time. Perhaps we can make a phone call or something.
3434. **Mr Weir:** Chair, I am not suggesting anything from that point of view. I think that doing it through the Committee is probably the way to go. I appreciate that we have to sign off on the clause-by-clause scrutiny today, and I am not holding that up. As with a number of other things, there will be a few loose ends, and, with the best will in the world, the Committee may not be a great position to do anything about that, because our time will have passed. However, collectively, we may seek amendments or reassurances, or, depending on what response we get, we may simply say, “Look, we are happy with things”. I think that it is worthwhile at least enquiring about the NIAO position, because we do have a bit of time between now and Consideration Stage and Further Consideration Stage.
3435. **The Chairperson:** However, in our report, we need to be quite clear on what our position is.
3436. **Mr Weir:** Our report can be based only on the information that we have. If we get subsequent information, that may supersede, in the broadest sense, the report. I am not suggesting that we go back and change reports, or anything of that nature. I think that our job as MLAs is to be as informed as possible when we get to Consideration Stage. Therefore, it would be worthwhile at least making that enquiry, and a couple of other items will probably come into it as well.
3437. **The Chairperson:** In our report, we are saying that we accept the explanation to date.
3438. **Mr Weir:** Yes, based on the information that we have.
3439. **The Chairperson:** Based on the information that we have received so far. OK.
3440. We move to clause 96, which deals with improvement information and planning. The Department has provided a series of amendments to clauses 96 and 98 to replace the reference to “95(6)” with “113”. The amendments have been tabled. Perhaps Linda or John can talk us through this.
3441. **Mr Murphy:** These are really technical amendments, Madam Chair. When the Bill was drafted, we referred to guidance issued under clause 95(6), but any guidance will now be issued under clause 113. Clause 95(6) simply states that, subject to the generality of clause 113, the guidance can deal with specific issues of performance improvement. The amendment is just to clarify the clause under which guidance is issued.
3442. **The Chairperson:** So you replaced it with guidance?
3443. **Mr Murphy:** Yes.
3444. **The Chairperson:** Are members content?
3445. **Lord Morrow:** It sounds all right.
3446. **The Chairperson:** Sorry, there is another issue with the clause. Departmental officials also agreed to provide the wording of an amendment that would review the audit process after two to three years. We have not received any response on that.

3447. **Ms Broadway:** The Minister agreed this morning to bringing forward the amendment. When we leave here today, we will work on it. We have already started work with the draftsman on a draft of that amendment, but it is not fully completed yet. You will hopefully have it by close of play today.
3448. **The Chairperson:** There will be a amendment on the review.
3449. **Ms MacHugh:** It will provide an enabling power for the Department to determine, in consultation with the local government auditor, the councils on which a report should be produced.
3450. **The Chairperson:** OK. So we will see that this evening?
3451. **Ms MacHugh:** Yes.
3452. **The Chairperson:** Are members content?
Members indicated assent.
3453. **The Chairperson:** Is the audit process going to be reviewed every two years or three years? Do we know?
3454. **Ms MacHugh:** Sorry, I think that I am lost. Do you want to talk about the review? The local government auditor raised an issue about having to do a performance review in every council every year and advocated taking a risk-based approach. Again, the Minister has taken that on board. We will bring forward an amendment to provide an enabling power for the Department to determine, in consultation with the local government auditor, which councils should be audited on performance in which year. Not all councils will necessarily be done in every year. A risk-based approach will be taken. After a few years, evidence will have been gathered as to those councils that might need more attention than others, . We have said all along that, because this is new, we will want to review the process, and the Minister will want to review it after a couple of years. It is an undertaking that there will be a review.
3455. **The Chairperson:** There is not going to be an amendment.
3456. **Ms MacHugh:** No. The amendment will be focused on the frequency of council review.
3457. **The Chairperson:** I think that that is sensible. I think that the NIAO is quite concerned about too much unnecessary work.
3458. Clause 98 is on audit and assessment reports. Officials agreed to report back on the possibility of amending the clause at 98(3)(a) from “30th November” to “31st January” or, alternatively, bringing forward the date of the publication of council accounts to a date earlier than 31 October. This relates to clause 95.
3459. **Mr Murphy:** Yes. As I explained, we take the view that we need to leave the auditor’s report at 30 November, and we then change clause 95 to bring forward the date by which a council has to have prepared its report.
3460. **The Chairperson:** Are members content with that?
3461. **Mr Weir:** Yes, but with the same caveat that we want to check the views of the Audit Office to guide us.
Members indicated assent.
3462. **The Chairperson:** OK. Can we ask it to come today?
3463. **Mr Weir:** Chair, as I said, this is not to be part of our report but to give us guidance. If we simply get a one-page letter from the Audit Office, I am sure that it would satisfy us.
3464. **The Chairperson:** Clause 100 is on annual improvement reports. Officials agreed to consult the NIAO on the possibility of amending the annual requirement to publish a report on all councils.
3465. **Mr Murphy:** That is the issue that Linda has just addressed. We are currently working to try to tie down the wording of the amendment, and we will have it with you later today.
3466. **The Chairperson:** OK. I know that we talked about this previously, but perhaps

- not since informal clause-by-clause scrutiny began. Clause 101(4) states: “The Department may direct”. I think that the NIAO is quite concerned about the word “direct” and has asked it to be changed to “request”. The NIAO is saying that it is independent. It is not in the Department, so no Department should “direct” it; rather, it should “request” of it.
3467. **Ms MacHugh:** The local government auditor is independent in how audits are undertaken. However, it is the Department that has the statutory responsibility for the provision and oversight of local government functions, including the provision of a local government audit function, so setting audit policy is for the Department.
3468. The role of the Comptroller and Auditor General (C&AG) in this is to provide the staffing and the expertise. He, as C&AG, and the Northern Ireland Audit Office gather their responsibilities and powers from a different route. The local government auditor sits in his office but gets powers from the Department, and from legislation that the Department sets. We have talked at length with the Comptroller and Auditor General, the Audit Office and, indeed, the local government auditor, and I think that to suggest “request” as opposed to “direct” would fundamentally change the relationship between the Department and the local government auditor. I think that that is certainly outside the scope of the Bill. It may be that, once we have got the reform process out of the way, we want to do a more fundamental review of the audit provisions for local government. However, at this stage, the Minister is not minded to bring forward an amendment on the issue.
3469. **The Chairperson:** OK. I do suppose that subsection (6) states:
- “Before giving a direction under subsection (4), the Department must consult the local government auditor.”*
3470. **Ms MacHugh:** Absolutely. It is a working relationship. As I said, to change “direct” to “request” might seem like a one-word change, but it would fundamentally change the legislative relationship in many respects. The issue would need to be considered in a much wider context and within a wider review of the audit provisions for local government, which is something that we intend to do once we have the new councils up and running. That is our next project.
3471. **The Chairperson:** OK. Are members content with the explanation?
- Members indicated assent.*
3472. **The Chairperson:** We move to clause 106, which deals with the partnership panel. Members, you have the four amendments from the Department.
3473. Perhaps you can talk us through them, John.
3474. **Mr Murphy:** Initially, it was the case that the Bill provided for the Department to appoint councillors to the panel. That was just a mechanism. The Department would not have had a differing view. However, to respond to the views of local government, we have sought to change it now so that each council will nominate a member. Therefore, the Department’s role in appointing, which was, as I said, just a formal mechanism, will no longer exist. It would be purely with the 11 new councils to nominate whom they wish to sit on the partnership panel.
3475. **The Chairperson:** I have one query. You have inserted “(3A)” at the end, but it is already there.
3476. **Ms Broadway:** It is (3A), not “(3)(a)”.
3477. **Mr Murphy:** It is a proposed new subsection.
3478. **The Chairperson:** OK. I am with you now. That is my fault.
3479. **Mr Weir:** To clarify, will subsection (3A) be additional to what is there as opposed to replacing it?
3480. **Mr Murphy:** No.
3481. **Ms Broadway:** We are replacing —
3482. **Mr Weir:** Are you replacing subsection (3)(a) with (3A)?

3483. **Ms Broadway:** No.
3484. **Mr Weir:** That is what I am trying to establish.
3485. **Ms Broadway:** We are amending subsection (3)(a) so that instead of it stating “councillors appointed by the Department”, it would state just “councillors”. Therefore, the panel is to consist of councillors and Ministers. New subsection (3A) would then specify that each of the 11 new councils will nominate. The councils nominate directly, so there is no need for subsection (4). We will not need to consult with councils, because they will nominate directly.
3486. **The Chairperson:** Yes. That is clear to me now. The Northern Ireland Local Government Association (NILGA) is quite strong on the issue. It really wants to see something like that in the legislation.
3487. Do members agree with the amendment? Are you happy with it?
3488. **Mr Weir:** May I make a slightly pedantic point? Will it be subsection (3A), or, because you are replacing (4), would you then renumber it (4)?
3489. **Ms Broadway:** Yes. The subsections will be renumbered when the next draft of the Bill is produced after Consideration Stage.
3490. **The Chairperson:** You said “councillors”. Will it be a single councillor, not more than one?
3491. **Ms Broadway:** It is to be one councillor from each of the new councils.
3492. **The Chairperson:** Yes, so 11 councillors.
3493. **Mr Weir:** Enough for a football team, but no substitutes. *[Laughter.]*
3494. **The Chairperson:** OK. We now move to Part 14, the heading of which is “Control of councils by Northern Ireland Departments”. Officials agreed to consider removing the word “Control”. You suggested “Supervision” last time.
3495. **Ms Broadway:** The Minister has agreed to change it to “Supervision”. I do not think that it is necessary to table an amendment, because the headings are technically not part of the legislation. That can be done simply as a printing amendment, I understand.
3496. **The Chairperson:** Fair enough. That is simple. Why do we have to fight over it so much? *[Laughter.]* OK, righty-ho. Thank you.
3497. **Mr Boylan:** So we are losing control?
3498. **Ms MacHugh:** But you are gaining supervision. *[Laughter.]* That reflects the wording of the 1972 Act.
3499. **The Chairperson:** Next, members, is clause 108, which deals with inquiries and investigations. You agreed to report on the possibility of amending the clause to include the right of appeal for councils against the findings of any investigations. Have you a response on that?
3500. **Ms Broadway:** That is one that we will need to follow up on quickly today for you. We do not have a response on it yet.
3501. **The Chairperson:** When will we get the response?
3502. **Ms Broadway:** We will follow that up today.
3503. **The Chairperson:** OK.
3504. **Lord Morrow:** It is a big day.
3505. **The Chairperson:** It is going to be a long day for them. *[Laughter.]*
3506. **Ms Broadway:** It was a long day yesterday, too.
3507. **The Chairperson:** It was a long day yesterday. I know; we got your list at 8.30 pm. No, no —
3508. **Ms Broadway:** It was at 5.00 pm. *[Laughter.]*
3509. **The Chairperson:** All right, OK. I got it at 8.30 pm.
3510. **Ms Broadway:** Yes. *[Laughter.]*
3511. **The Chairperson:** I was sitting waiting for it. *[Laughter.]* I am glad you did not

have to work too late then; 5.00 pm was fine.

3512. The next clause is 111, which deals with the power to review provisions relating to surcharge. There is a tabled amendment. Members, are you content with that?

3513. **Mr Boylan:** [*Inaudible.*]

3514. **The Chairperson:** Yes, the clarified position.

Members indicated assent.

3515. **The Chairperson:** OK. Next is the new clause after clause 115. It is clause 115A.

3516. **Mr Boylan:** It is in bold.

3517. **The Chairperson:** Yes. Officials agreed to provide the wording of a DFP amendment to allow for transitional rate relief in consequences of changes. Are you happy with that, members?

Members indicated assent.

3518. **The Chairperson:** That is fairly straightforward. I am glad to hear people saying yes so quickly.

3519. **Mr Weir:** Chair, you said the magic word “DFP”.

3520. **The Chairperson:** Oh dear; there are party politics at play here.

3521. Next, is the new clause after clause 119. The amendment has been tabled to allow for the abolition of the Local Government Staff Commission. Are members content with that?

Members indicated assent.

3522. **The Chairperson:** The next clause is —

3523. **Ms Broadway:** Chair, officials would like to speak to that. We have another amendment in relation to a new clause 117A, which is a consequence of introducing the general power of competence. At present, there is provision for making special payments in the Local Government Finance Act (Northern Ireland) 2011. However, with the general power of competence, that

goes much further than that power to make special payments. So, essentially, those provisions are no longer needed. Sections 37, 38 and 40 of the Act would need to be repealed to take account of that. We have an amendment drafted that we can send to you this afternoon.

3524. **The Chairperson:** So that is really a technical —

3525. **Ms Broadway:** It has a capital A.

3526. **The Chairperson:** Yes.

3527. **The Chairperson:** It is tidying up.

3528. **Ms Broadway:** Yes. It is a consequence of the general power of competence.

3529. **The Chairperson:** OK. Are members content with that?

Members indicated assent.

3530. **The Chairperson:** OK. Next is clause 121, which deals with schemes for transfer of assets and facilities. We have a tabled amendment to allow particularly for the transfer of Armagh County Museum to the new council. Five amendments have been tabled. You explained it last time. Members do you need to hear all that again?

3531. **Mr Boylan:** No.

3532. **The Chairperson:** No? You are happy with that. OK.

3533. **Mr Weir:** Chair, I note that it takes just one DFP amendment to deal with the long-term securing of finance for local government, but to deal with the issue of Armagh County Museum, there are five separate amendments.

3534. **Mr Boylan:** Rightly so. It is well noted. Thank you very much.

3535. **Mr Weir:** Absolutely. It is a good job that we have our priorities right.

3536. **The Chairperson:** OK. We will move on now, members. I think that we will have a short break after this. Is that correct?

3537. **The Committee Clerk:** Yes, at the end of the closed session.

3538. **The Chairperson:** OK. Clause 122 deals with compensation for loss of office, to which an amendment has been tabled. Are members content with that? Linda, do you want to add anything?

3539. **Ms MacHugh:** No. We discussed it last time. That is the issue of who pays compensation.

3540. **Ms Broadway:** It is just to make sure that the provisions in clause 121 and 122 cover everything that the Executive agreed concerning the functions being transferred and powers being conferred.

3541. **The Chairperson:** Yes. Is everyone happy with that?

Members indicated assent.

3542. **The Chairperson:** We are on clause 123: Supplementary and transitional provisions, to which two amendments have been tabled. The first is to replace this clause with a new clause.

3543. **Ms Broadway:** That is the same sort of amendment as proposed to clauses 121 and 122: it is a tidying up of clause 123 to take account of the amendments that will be made to the other two provisions.

3544. **The Chairperson:** Are members content?

Members indicated assent.

3545. **The Chairperson:** OK. Clause 124 is: Interpretation. There is one proposed amendment, and the Department has provided details of three consequential amendments. Are those technical?

3546. **Ms Broadway:** Yes. The definition of “external representative” has been added to take account of the amendment that is to be made to section 10. The new definition of “local government body” has been added to take account of the amendments in clauses 121 to 123. They are consequential to those others.

3547. **The Chairperson:** OK. Yes, that goes back to the “external representative”.

3548. **Ms Broadway:** That is right.

3549. **The Chairperson:** OK. Are members content with that?

Members indicated assent.

3550. **The Chairperson:** Lord Morrow, do you have something to say?

3551. **Lord Morrow:** It is OK, Chair.

3552. **The Chairperson:** We then move to clause 125: Regulations and orders, amendments to which have been tabled to ensure that clauses 51 and 54 are subject to the daft affirmative rather than the negative resolution procedure. Are members content with that?

Members indicated assent.

3553. **The Chairperson:** We move to schedule 3, Positions of responsibility. Officials agreed to provide clarification on the wording at Part 3(14) regarding the absence from the district of the chair of a council.

3554. **Mr Murphy:** That, Madam Chair, is simply to ensure that there is continuity in the operation of a council, so that if the chair appointed is absent, unable to attend or to contribute for a period of three months, the position would be declared vacant. That would allow the party that had selected that position if the Sainte-Laguë system had been used to put a new person into the chair.

3555. **The Chairperson:** Are members content?

Members indicated assent.

3556. **The Chairperson:** OK. Thank you. We move to schedule 4: Appointment of councillors to committees. Officials agreed to investigate a possibility that, using the quota greatest remainder formula, independents may not be appointed to any of the council committees.

3557. **Mr Murphy:** We need to work through the mechanics of the difference between the provision’s application to individual committees and on a bloc. To sort of [*Inaudible.*] that one, we need to work that through.

3558. **Mr Weir:** The Committee Stage of the Bill will be over the line by the time that is worked through. It is a wee bit difficult for people to get their heads round

and, to be honest, even to make sure that we get what we want. However, it may be helpful of you to produce two or three scenarios as working examples. I suppose that most of the councils will have 40 members. Examples of a couple of different distributions of seat allocations for, let us say, eight main committees each with 15 members would show how that would work out in practice. I have a bit of concern that if it is purely done one committee at a time and is, if you like, almost completely self-contained, it will create a degree of distortion across the board. There would not be a single distortion if you were looking at just one committee. It would not necessarily even go against small parties, but, depending on different parties, it will give either a level of over-representation or under-representation. It will possibly depend on where they fall with the remainder. You might almost get a situation in which a smaller party, for instance, gets the final seat every single time, disproportionately. That party might also not be given its proper proportion across the board. In particular, I suspect that it would mean that independents would have grave difficulty getting onto those committees. Can some worked examples be produced on that? It may be too late for a Committee amendment, but one or other of the parties could consider tabling an amendment, and that would probably get broad support, if there were a need for an amendment. It might be that, when we see the figures, it looks perfectly grand and no one has any complaints, but it is important to work through that.

3559. **The Chairperson:** How does that process work? I am quite confused about the quota and the greatest remainder process.
3560. **Mr Weir:** Chair, there is a sort of divisor figure that then suggests that there will be a certain number of whole places for all of the main parties on any committee. I do not know whether we use it in the Assembly, but, for example, because of the figures in the Assembly, it is pretty much guaranteed that the

DUP will have a minimum of three representatives on every Committee. The figures guarantee that Sinn Féin will have two and that the SDLP and the Ulster Unionists will have one each. That fills up seven of the 11 places on any Committee. How you fill the other four depends on greatest remainders. If you apply that across the board, it means that, if, in each case, one party has an entitlement to 0.75 of a place, they will probably get one of the additional places in those no matter what. If a party has an entitlement of 0.2 under the greatest remainder system, there is probably a fair chance that it will not get any of those places. That, possibly, could skew the thing so that, instead of there being a split on, say, eight committees where one of those parties maybe gets six additional places and the other gets two, it could actually mean that one party gets eight and the other gets zero. That can happen with the greatest remainder system. It depends whether it applies across the board. If it is applied across the board, one problem is that you either have to have some negotiation or some formula then to work out who gets the choice on which committee. In the Assembly, it is applied across the board, and a degree of discussion tends to take place between the parties, and there will be a bit of give and take over who gets onto what Committee. Effectively, they will decide where parties get the additional place and where they do not.

3561. **The Chairperson:** So, as Peter said, the proposed process is that all the committee positions be put together as a group.
3562. **Mr Weir:** I think that I am right in saying that, in the way that it is currently drafted, the greatest remainder system would be applied to each individual committee. If you are having only one committee on the council, that would be perfectly fair. If you were to replicate that across a number of committees, particularly if the committees are the same size, it may well mean that it skews it overall and that some parties may be over-represented. That may not

necessarily be the largest parties as a result of the quotas under the greatest remainder system, and some may be under-represented as a whole. That is where there may be a problem that may need some degree of tweaking. I suppose that the problem with moving to using greatest remainder for the whole system is that you may have to deal with the separate issue that if, for the sake of argument, your party, the Alliance Party, were entitled to representation on five out of eight committees, some sort of mechanism would be needed for deciding which five out of the eight you would get onto. By the same token, it might be fairer to say that, instead of Alliance being on every committee or being on no committees, you would be on the appropriate number of committees. Given the circumstances, unless the committees are very large, the system of quotas using greatest remainder is probably likely to mean that an individual independent member will have grave difficulty in getting onto any committee.

3563. **The Chairperson:** How do we address that?
3564. **Mr Boylan:** We are going to need the examples, I think.
3565. **Ms Broadway:** We will work that through and provide the Committee with worked examples.
3566. **The Chairperson:** Sorry, is the proposal to let the committees themselves decide?
3567. **Mr Weir:** No, first, we have to establish whether there is a problem and to what extent there is a problem on that. So, the worked examples will steer us towards that. I have to say, we are getting a bit tired. I do not envy Eilis having to do the draft. I am not quite sure whether it is in legislation or procedure, but the Assembly uses the greatest remainder but applies it across all the main statutory Committees. There is probably a formula that could be used; for instance, in the legislation setting up the Assembly, the Northern Ireland Act or something. That could be

used under those circumstances and could make the tweaks to be able to do that.

3568. **Mr Murphy:** My understanding is that it is not. I looked at the Northern Ireland Act, and it does not provide any formula.
3569. **Mr Weir:** It may not do, John, but it has been used to determine the overall balance of Committees here. It may well be the case that it is in the Standing Orders of the Assembly.
3570. **Mr Murphy:** I think that there is material in Standing Orders, yes.
3571. **Mr Weir:** Judging by the nodding that everybody else is doing, that may be the case.
3572. **The Chairperson:** Sheila confirms that.
3573. Are members content?

Members indicated assent.

3574. **The Chairperson:** Schedule 9: minor and consequential amendments relating to local government audit. An amendment has been tabled. Are members content with that?

Members indicated assent.

3575. **The Chairperson:** Schedule 10: transfer schemes. Again, an amendment has been tabled in relation to paragraph 2(3)(d) to allocate the responsibility to the transferee council for payment of compensation to staff, which would make it clearer. Are members content with that?

Members indicated assent.

3576. **The Chairperson:** Schedule 11: minor and consequential amendments. Departmental officials have provided details of an amendment to the schedule. It is quite straightforward.
3577. **Ms Broadway:** It is to ensure that the list of what is local government legislation specified in the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 includes this Act.

3578. **The Chairperson:** That is right. Are members clear on that?

Members indicated assent.

3579. **The Chairperson:** Schedule 12: repeals. Two amendments have been tabled. Perhaps you can quickly explain those.

3580. **Mr Murphy:** On the discharge of functions by councils, section 104 of the Local Government Act (Northern Ireland) 1972 separated out the provision for a council to arrange for another council the discharges function into section 104 as opposed to section 18. We brought all the provisions relating to the discharge of council functions into a single clause. To remove that anomaly, we are repealing the appropriate phrases in section 104(1).

3581. **Ms Broadway:** It is a consequential amendment because of the arrangements for the discharge of functions in the Bill.

3582. **The Chairperson:** OK. Are members clear on that?

Members indicated assent.

3583. **The Chairperson:** On to the next one.

3584. **Ms Broadway:** The repeal of the Local Government (Best Value) Act (Northern Ireland) 2002 is to take account of the new provisions on performance improvement because they replace that Act.

3585. We have an additional amendment. Earlier, I mentioned removing the power to make special payments because of the introduction of the general power of competence. It is to add sections 37 and 38 of the Local Government Finance Act to the repeal section. There is an amendment to section 39 of that to remove the right to make payments for special purposes, because it is no longer needed.

3586. **The Chairperson:** Are members content with the explanation?

Members indicated assent.

3587. **The Chairperson:** Are there any other issues that members wish to raise on

any other clauses? This is your last chance.

3588. **Mr Boylan:** Just one issue, because I missed the previous day. Are international obligations on council responsibilities — for the likes of waste management or biodiversity targets — included?

3589. **Ms MacHugh:** If it goes anywhere in the Bill, it would be in the performance framework section. There are current policy obligations set by my colleagues in the environmental policy division. It would be a mix of the councils themselves determining that they were going to include waste management targets in their performance measures — that is something that they currently do — or indeed the Department could decide that it will use the new performance framework to set individual targets for councils within the parameters of the overall performance framework.

3590. **Mr Boylan:** Go wider than that. Say a new obligation was brought forward. Is there scope to add it? How would that work? I am only using waste management and biodiversity as examples.

3591. **Mr Murphy:** The Department with the policy responsibility could use clause 92 if it felt it appropriate. That provides for the Department to set performance indicators and standards.

3592. **Mr Boylan:** To meet those obligations.

3593. **Mr Murphy:** To meet those obligations.

3594. **Ms MacHugh:** Or, indeed, if it was a different Department, there could be separate legislation that it could use to place a duty on councils to do certain things. There might be provisions there as well. John is right: they could use this as well. If, for example, it was a new international obligation, it is likely that the Department with the policy responsibility would need to bring forward legislation to ensure that Northern Ireland was meeting those obligations. I cannot determine, at this stage, whether duties would be imposed

- on councils and certain performance indicators in that legislation. However, in the absence of that, clause 92 could be relied on.
3595. **Mr Eastwood:** You say that it would cover any European or international regulations or laws that would affect council performance. There are so many different ones.
3596. **Ms MacHugh:** If the Department with the policy responsibility in Northern Ireland chose to do so, it could use clause 92 to set targets.
3597. **Mr Boylan:** In setting those, however, it would have to come to the Assembly, would it not? How would that work within the legislative framework?
3598. **Mr Murphy:** Through clause 92, they would come back to the Assembly through the draft affirmative procedure.
3599. **Mr Eastwood:** Would it not be simpler to say in the Bill or in the guidance that councils should be cognisant of all their European and international obligations?
3600. **Mr Murphy:** That is the other side to it. In addition to taking the more formal approach, and if a Department wanted, in the development of the guidance on performance improvement and community planning, if appropriate, those issues could be included.
3601. **Mr Eastwood:** To this Bill.
3602. **Mr Murphy:** Yes.
3603. **Mr Boylan:** In statute.
3604. **Mr Murphy:** Yes.
3605. **Mr Boylan:** OK.
3606. **Mr Eastwood:** Would you consider that?
3607. **Ms MacHugh:** Certainly in the guidance, yes.
3608. **The Chairperson:** Thank you very much, all four of you. We are moving into closed session now.
3609. **Ms MacHugh:** I thank the Committee for its perseverance and patience with us. It has been a long haul, but we got through it.
3610. **The Chairperson:** It has been a long haul. Thank you for your co-operation.
3611. **Mr Eastwood:** We do not want to see you for another six months. *[Laughter.]*
3612. **Mr Boylan:** Enjoy your Christmas holidays. *[Laughter.]*
3613. **The Chairperson:** It is a long, long piece of legislation, and you have all worked very hard. Thank you very much.

13 February 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Cathal Boylan
Mr Colum Eastwood
Mr Ian Milne

3614. **The Chairperson:** I will now commence the formal clause-by-clause analysis of the Local Government Bill. I remind members that formal clause-by-clause consideration is the last opportunity to discuss the clauses of the Bill and any decisions will be final. I intend to group clauses about which the Committee has previously indicated that it is content.

Clause 1 agreed to.

Clause 2 (Constitutions of councils)

Question, That the Committee is content with clause 2, subject to the proposed amendment, put and agreed to.

3615. **Mr Boylan:** Excuse me, Chair, can we do some of the clauses en bloc or together?

3616. **The Chairperson:** Yes, we can.

3617. **Mr Boylan:** Do we have to go through them individually now?

3618. **Ms Éilís Haughey (Bill Clerk, Northern Ireland Assembly):** Chair, I should advise that the Committee had previously asked for a Committee amendment to be prepared for clause 2 to insert a date upon which the first —

3619. **The Chairperson:** Yes. You have a tabled paper, members, with Éilís's proposed amendment. So, clause 2 there sorry, jump back. Éilís, talk to us about that. Clause 2 is options.

3620. **Ms Haughey:** The Committee had wished to insert a date by which the first constitution would be made available. The amendment tabled is at clause 2, page 1, line 17. It would insert, after the

word “that” in line 17 in subsection (2), which is the subsection that requires copies of the constitution to be available at the principal office for inspection by members of the public at all reasonable hours, that copies must be available from 30 April 2015.

3621. **The Chairperson:** Are members agreed?

Members indicated assent.

Clauses 3 to 9 agreed to.

Clause 10 (Positions of responsibility)

Question, That the Committee is content with clause 10, subject to the proposed amendment, put and agreed to.

3622. **The Chairperson:** I want to put it on record that I want STV to be the default position instead of d'Hondt.

Clause 11 (Arrangements for discharge of functions of council)

Question, That the Committee is content with clause 11, subject to the proposed amendment, put and agreed to.

Clauses 12 to 24 agreed to.

Clause 25 (Council executives)

3623. **The Chairperson:** We have two Committee amendments tabled. Can you explain those to us please, Éilís?

3624. **Ms Haughey:** Clause 25, page 11, line 31: leave out “four” and insert “six”. That was on the Committee's request to raise the minimum number of members of the executive. Then there is a further amendment consistent with that to clause 25, page 11, line 34: leave out “four” and insert “six”, which would affect committees in a streamlined committee executive and ensure a minimum number of six members.

3625. **The Chairperson:** What about that one on the chair and deputy chair?

3626. **Ms Haughey:** OK. There is one more, an amendment to clause 25, page 11, line 29: leave out subsection (3) and insert new subsection (3):

“The chair and deputy chair of the council shall be ex officio non-voting members of the executive.”

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

Clauses 26 to 33 agreed to.

Clause 34 (Reference of matters to overview and scrutiny committee etc.)

Question, That the Committee is content with clause 34, subject to the proposed amendment, put and agreed to.

Clauses 35 to 49 agreed to.

3627. **The Chairperson:** I have been requested to return to clause 25. Let me just confirm that Members are content with the three suggested Committee amendments.

Members indicated assent.

Clause 50 (Application to committees and sub-committees)

Question, That the Committee is content with clause 50, subject to the proposed amendment, put and agreed to.

Clauses 51 to 57 agreed to.

Clause 58 (Investigations)

Question, That the Committee is content with clause 58, subject to the proposed amendment, put and agreed to.

Clauses 59 to 61 agreed to.

Clause 62 (Decision following report)

3628. **The Chairperson:** Is the Committee content with clause 62, subject to the proposed departmental amendment and Committee amendment to specify grounds of appeal?

Question, That the Committee is content with clause 62, subject to the proposed amendments, put and agreed to.

3629. **The Chairperson:** Do you need Éilís to talk you through that?

3630. **Mr Boylan:** No, we are content to agree.

3631. **Ms Haughey:** We do not have a drafted amendment yet, Chair.

Clause 63 (Decisions on interim reports)

Question, That the Committee is content with clause 63, subject to the proposed amendment, put and agreed to.

Clause 64 (Recommendations)

Question, That the Committee is content with clause 64, subject to the proposed amendment, put and agreed to.

Clauses 65 to 67 agreed to.

Clause 68 (Interpretation)

Question, That the Committee is content with clause 68, subject to the proposed amendment, put and agreed to.

Clauses 69 to 77 agreed to.

Clause 78 (Duties of departments in relation to community planning)

Question, That the Committee is content with clause 78, subject to the proposed amendment, put and agreed to.

Clauses 79 to 84 agreed to.

Clause 85 (Powers to make supplemental provision)

Question, That the Committee is content with clause 85, subject to the proposed amendment, put and agreed to.

Clauses 86 to 94 agreed to.

Clause 95 (Improvement planning and publication of improvement information)

3632. **The Chairperson:** Is the Committee content with clause 95, subject to Committee amendment and one departmental amendment as well?

3633. **The Committee Clerk:** We have not got a departmental amendment.

3634. **The Chairperson:** No? Just the Committee amendment. Éilis could quickly mention that.

3635. **Ms Haughey:** The Committee had previously requested that an amendment be prepared to grant an enabling power to the Department to amend the date in clause 95(3)(a).

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

Clause 96 (Improvement information and planning)

Question, That the Committee is content with clause 96, subject to the proposed amendment, put and agreed to.

Clause 97 agreed to.

Clause 98 (Audit and assessment reports)

Clause 98 agreed to.

3636. **The Chairperson:** We do not have a Committee amendment on this one? Yes, we have. Sorry, I will read that again.

Question, That the Committee is content with clause 98, subject to the proposed amendment, put and agreed to.

Clauses 99 to 105 agreed to.

Clause 106 (Partnership Panel)

Question, That the Committee is content with clause 106, subject to the proposed amendment, put and agreed to.

Clauses 107 to 110 agreed to.

Clause 111 (Power to repeal provisions relating to surcharge, etc.)

Question, That the Committee is content with clause 111, subject to the proposed amendment, put and agreed to.

Clauses 112 to 115 agreed to.

New Clause

3637. **The Chairperson:** Is the Committee content with new clause 115A?

3638. **The Chairperson:** Yes? I did not hear you.

3639. **Mr Boylan:** You paused there, Chair. Is that a capital A?

3640. **The Chairperson:** Capital A, yes.

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

Clause 116 agreed to.

New Clause

3641. **The Chairperson:** Is the Committee content with new clause 117A?

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

Clause 118 agreed to.

New Clause

3642. **The Chairperson:** There is a new clause after clause 119. We need to see clause 119 too. We have not said 119.

3643. **The Committee Clerk:** We have got 119. That is a new clause too.

3644. **The Chairperson:** OK. New clause after clause 119.

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

3645. **The Chairperson:** Do we need to call out clause 119?

3646. **The Committee Clerk:** It just comes under new clause after 119.

3647. **The Chairperson:** We just say, "Is the Committee content with the clause as amended?"

3648. **Ms Haughey:** We need to put the question on clause 119 as it stands, as well as the new clause — the existing clause 119.

Clause 119 agreed to.

Clause 120 agreed to.

Clause 121 (Schemes for transfers of assets and liabilities)

Question, That the Committee is content with clause 121, subject to the proposed amendments, put and agreed to.

Clause 122 (Compensation for loss of office or diminution of emoluments)

Question, That the Committee is content with clause 122, subject to the proposed amendment, put and agreed to.

Clause 123 (Supplementary and transitional provisions for the purposes of this Act and other purposes)

Question, That the Committee is content with clause 123, subject to the proposed amendment, put and agreed to.

Clause 124 (Interpretation)

Question, That the Committee is content with clause 124, subject to the proposed amendment, put and agreed to.

Clause 125 (Regulations and orders)

Question, That the Committee is content with clause 125, subject to the proposed amendment, put and agreed to.

Clauses 126 to 128 agreed to.

Long title agreed to.

Schedules 1 to 3 agreed to.

Schedule 4 (Appointment of councillors to committees, etc.)

3649. **The Chairperson:** Schedule 4 is subject to a proposed Committee amendment. Éilis, can you explain about that, please?

3650. **Ms Haughey:** We do not have the text of an amendment yet, but the Committee requested that we prepare an amendment to ensure that the formula for appointments to committees be run for all committee positions at once for the duration of the council term based on the number of seats that each party has immediately after the election. It is a recommendation that an amendment be developed, so the question will

be on schedule 4 subject to such an amendment.

3651. **The Chairperson:** Is the Committee content with schedule 4, subject to the Committee amendment?

3652. **Mr Milne:** I just have a question. I have some experience in council. After the chair and vice-chair, how is it decided what committee comes next? There has to be some kind of formula or procedure.

3653. **Mr Eastwood:** Usually d'Hondt is run within —

3654. **Mr Milne:** Yes, I know that it runs on one after the other —

3655. **Mr Eastwood:** It is your choice to pick which Committee, is that not right?

3656. **Mr Milne:** Yes, but who decides which committee comes after the chair and the vice-chair?

3657. **The Chairperson:** Is it up to the party? Is that what Colum is saying?

3658. **Mr Eastwood:** You would be picking the chair of each committee as well. Say our party was up first; we would pick the chair of the development committee, or whatever it is. Then, if you are next, you pick the chair of environment, and then it runs through the membership. Is that not right?

3659. **Mr Boylan:** That is the normal process. Where do you see an issue?

3660. **Mr Milne:** With putting other members onto the committee. After the chair and vice-chair of the committee, how do we select further members? I am of the opinion that I would say, "Right, we elect someone onto the housing group", because I wanted to fit in with the way that d'Hondt runs. How is all that determined?

3661. **The Chairperson:** I know what you mean, because there are so many different committees.

3662. **Mr Milne:** It is very important.

3663. **Mr Eastwood:** Normally, what happens is that each committee is the same

size. Those positions are given out based on the size of your party. The largest party gets a certain number, and so on. You get numbers, and the party then slots in the members. Isn't that the way it works?

3664. **Mr Boylan:** Yes, you pick out the committee chairs first right across the committees, and you fill the positions.
3665. **Mr Eastwood:** The chairs first, and, after that, you have a certain number.
3666. **The Chairperson:** For whatever you want, spreading it out, generally; is that right?
3667. **Mr Eastwood:** No. Say, we had four members. If we had the chair, there will only be three members after that. It is then up to the party to nominate the three or four members onto the committee. The committee numbers in each committee will also be decided by d'Hondt separately. Do you know what I mean?
3668. **Mr Boylan:** Are you happy enough?
3669. **Mr Milne:** Yes, that makes more sense.
3670. **The Chairperson:** That is normally the way that it is done; is that right?
3671. **Mr Boylan:** You go down through each committee. You take the chair and the main positions and then fill the committees out.
3672. **The Chairperson:** Whichever committee you want to fill, you put it in: is that right?
3673. **Mr Eastwood:** After the chairs and deputy chairs, there is a set number based on d'Hondt. You run d'Hondt separately.
3674. **Mr Boylan:** That is the way you run it.
3675. **The Chairperson:** OK. Are members agreed with that one? Do you want me to read it again?
3676. **Mr Boylan:** Yes, Chair. Read it into the record.

Question, That the Committee is content with schedule 4, subject to the proposed amendment, put and agreed to.

Schedules 5 to 8 agreed to.

Schedule 9 (Minor and consequential amendments relating to local government audit)

Question, That the Committee is content with schedule 9, subject to the proposed amendment, put and agreed to.

Schedule 10 agreed to.

Schedule 11 (Minor and consequential amendments: general)

Question, That the Committee is content with schedule 11, subject to the proposed amendment, put and agreed to.

Schedule 12 (Repeals)

Question, That the Committee is content with schedule 12, subject to the proposed amendment, put and agreed to.

3677. **The Chairperson:** OK, members. Thank you very much. That concludes formal clause-by-clause consideration of the Bill. The draft report will be brought forward for members' consideration at our next meeting, which is an additional meeting next Tuesday, from 12.30 pm until 2.00 pm, in Room 29. The draft will be sent to members.

18 February 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mrs Pam Cameron (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Tom Elliott
 Mr Alban Maginness
 Mr Ian McCrea
 Mr Barry McElduff
 Lord Morrow
 Mr Peter Weir

3678. **The Chairperson:** We have the Department's reply to outstanding Committee queries about the Bill. The Department has replied to all Committee queries dating back to the meeting of 24 January. Do members have any comments? If not, are you content to note the correspondence?

Members indicated assent.

3679. **The Chairperson:** The next item is the Department's reply regarding further amendments to the Local Government Bill. The Department has now provided a list of further amendments to the Bill. Are there any comments on that? It is for information only; we cannot change decisions now that were taken during formal clause-by-clause scrutiny. Are members content?

Members indicated assent.

3680. **The Chairperson:** We have further correspondence about the Bill from the Northern Ireland Local Government Association (NILGA) and from Community Places. As discussed earlier, we have formally closed the scrutiny stage, so, as a Committee, we cannot consider amendments to the Bill. However, there is nothing to stop Committee members or any MLA proposing amendments in support of the issues raised by those two stakeholders. We will include their correspondence in our report as late submissions. We will also include the

Department's response to the two organisations.

3681. **Lord Morrow:** Chair, I just want to be clear about this so that there is no misunderstanding at a later stage. This will not be a Committee stance but will be left to an individual or a party, which will undoubtedly happen, to say and do as they like when the matter comes up on the Floor of the House.

3682. **The Chairperson:** Absolutely.

3683. **Lord Morrow:** It will not be put forward as someone speaking on behalf of the Committee.

3684. **The Chairperson:** No, but individual Committee members or any party can obviously take it forward if they wish to.

3685. **Lord Morrow:** Fine. Thank you.

3686. **The Chairperson:** I refer members to clauses 95 and 98. Earlier, we had a discussion with the Bill Clerk about the suggested amendments that were put forward previously. Now, however, there is no need for those two amendments from the Committee. Members, are you content that amendments agreed at last week's meeting will not be proposed by the Committee, as the powers are already included in the Bill?

Members indicated assent.

3687. **The Chairperson:** Thank you. We will now go back into closed session to discuss our draft report. Do members agree to that?

Members indicated assent.



Northern Ireland
Assembly

Appendix 3

Written Submissions

Association of Local Government Finance Officers (ALGFO)

C/O Carrickfergus Borough Council,
Museum & Civic Centre,
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Email: ian.eagleson@carrickfergus.org

Date: 13 November 2013

Sheila Mawhinney and Sean McCann
Committee for the Environment
Northern Ireland Assembly

Dear Ms Mawhinney and Mr McCann

Local Government Bill [As Introduced]

As a local government stakeholder, the Association of Local Government Finance Officers (ALGFO) welcomes the opportunity to provide evidence to the Committee for the Environment on the Local Government Bill, and, if called upon, to elaborate on our comments. The Association was founded in the 1970s, and is the representative body for senior finance officers working in local government in Northern Ireland.

ALGFO recognises that the Bill is enabling legislation and that much of the detail will be contained in subordinate legislation and guidance which is still in the process of being developed. We wish to support the NILGA submission that this legislation (and associated guidance) is developed in partnership with local government prior to its introduction to the Assembly as there will be no opportunity to make amendments once that has occurred.

Of particular professional interest to the Association is Part 12 of the Bill which introduces proposed arrangements for Performance Improvement. The Association recognises the benefits and supports the concept of an agreed performance framework, annual reporting and assurance reporting by Local Government Audit but urges that provisions should allow Local Government to develop the protocols for such a format.

The proposed legislative framework would appear to be transposed from the Welsh experience and promotes a prescribed reporting format policed by Local Government Audit. The Association would like to see a more progressive framework offering best practice advice and help to local Councils which is aimed at developing a performance management culture led by Councillors and officials. Councils would determine their own reporting needs and in doing so this would rebalance the focus away from regulators towards local communities as citizens, service users and taxpayers. This would be similar to the principles established when the Prudential Code was introduced in Northern Ireland. This removed a number of central controls, replacing them with a principle driven regime, requiring local decisions on its application, based on local circumstances.

The Committee will be aware in the 2002 review of the Best Value Bill a similar raft of legislation, involving a panoply of prescribed performance indicators, league table reviews and mechanistic reporting by Audit, was rejected as inappropriate. If anything that argument is stronger in 2013, as the rest of the UK moves away from this approach.

The Association would contend that despite the increase in services and size of the new Councils their remains an overwhelming argument to avoid the worst extremes of the

'performance industry' which sprung up around the Best Value initiative. The new Councils in NI will spend around 5% of the public purse compared to 25% by the typically much larger UK local authorities. The Association would want to ensure that any performance framework will be in proportion to the much smaller range of services and size of the new Councils in NI.

In summary, the arguments against a prescriptive performance framework regime include the following:

- Equity – there is no evidence that there has been any historical need for a rigorous performance regime. On the contrary persistent regional surveys have established high levels of rate payer satisfaction with Council services and we believe annual Auditor reports indicate an increasingly sophisticated approach to governance and management control issues. In addition, Local Government Audit have an existing legal authorisation to carry out special value for money (VFM) audits and in the last 25 years have restricted this arm of their service to a periodic review of 'absenteeism'.
- Costs – the costs of establishing a rigorous regime based on prescribed performance maintenance and reporting, with Councils and Audit both allocating key personnel to deal with what has evolved as a negative audit culture, will displace key resources which could more usefully be ploughed into the service of the New Councils or help ameliorate the District Rate. Additional audit costs alone have been estimated at £1m per annum (source: 2009 PWC report to the Department on re-organisation options).

As stated above the Association recognises the benefits and supports the concept of an agreed performance framework, which focuses on local improvement and adding value. However we would argue that the transposition of prescribed reporting formats and negative mechanistic audit reports are out of time and out of place.

We thank the Committee for the opportunity to present our views and trust that they may receive due attention.



Graham Coulter
Chair – Association of Local Government Finance Officers

Antrim and Newtownabbey Statutory Transition Committee

Antrim + Newtownabbey Statutory Transition Committee “Local Government Bill” Key Issues

Positions of responsibility (Part 3)

There are concerns that the Bill is highly prescriptive in terms of how Members may be selected for positions of responsibility and committee membership.

Whilst the principle of proportionality is firmly supported, it would contend that consideration be given to permitting local solutions which are politically acceptable - perhaps through a requirement for local arrangements to be approved via the quality majority voting procedure.

There are also concerns that the Bill proposes that all ‘positions of responsibility’ will be grouped into one pool and councils will be required to apply the identified proportionality methods in order to fill all of the positions of responsibility for the forthcoming 4 year term.

It is contended that the legislation should not require that the positions of responsibility be grouped together into one pool nor should it specify the period of time of the appointments, but rather it should be left to each individual council to decide how best the application of proportionality should be carried out.

Permitted Forms of Governance (Part 3)

The options of permitted forms of governance are noted and that it will be a matter for the council to determine its own arrangements locally.

Qualified Majority Voting (Part 7)

It was highlighted that local government within Northern Ireland has operated for many years on the basis of a simple majority vote. It is accepted that qualified majority voting may be seen to be desirable as a form of protection for political minorities in circumstances where there is a sizeable political majority in a Council area. Where a council is equally divided politically, such a system may have an impact upon the decision making process and ability of councils to get things done in local areas. The principle of proportionality is supported and we believe that local solutions which are politically acceptable should be permitted – perhaps through a requirement for local arrangements to be approved via the qualified majority voting procedure.

It is recommended that careful consideration is therefore given to the identification and detailed definition, through regulations, of the specific types of decisions to be subject to QMV and that further engagement and detailed discussions should take place with local government in this regards.

Call in (Part 7)

There are no objections to the principle of “call in” being available, however, it would be concerned with the current broad definition of the two circumstances in which call-in can apply (as set out at a Clause 45 (1) of the Bill) and the potential for a high percentage of council decisions being subjected to call-in and thereby making effective decision making more difficult.

The Department is therefore urged to liaise with local authorities in order to develop and agree robust and clear definitions around the criteria for each of the two circumstances and to examine and detail the practicalities and process for implementing such procedures (e.g. procedure, format and time limits for any requisition to be submitted)

It is also recommended that consideration is given to limiting the power to call in a particular decision/recommendation to a single requisition / challenge.

Conduct of councillors (Part 9)

Council has consistently supported the establishment of a statutory ethical standards framework and a mandatory code of conduct for all Councillors and therefore welcome, in principle, the proposals set out within the Bill.

The role that such frameworks provide in reinforcing the trust in councils and in local democracy is recognised and that this is particularly important in the context of any future transfer and delivery of new functions by councils. Further engagement is sought with the Department in developing such frameworks.

There are concerns however that the legislation does not contain a specific appeal mechanism, other than through a Judicial Review. It is therefore recommended that a right of appeal is clearly set out within the Bill.

It is further recommended that consideration be given to extending or creating a supplementary to the Code of Conduct to cover the role of elected Members on public bodies.

The enhanced role of the Commissioner to investigate complaints under the code is welcomed, in principle, as this would ensure independence in the process. However, further detail of the procedures to be adopted by the Commissioner in undertaking any such investigations and the associated capacity and resource requirements around this would be helpful.

Community Planning (Part 10)

Full support is given to the proposal that local authorities lead and facilitate community planning and would view this as a key enabler for the integration of services to address local needs. Local councils are uniquely and ideally placed to lead and facilitate community planning.

It would appear that the Community Planning model proposed in the legislation is largely similar to the Welsh community planning model. Whilst there is no objection to the adoption of the model, it is vital that the legislation and supporting guidance takes account of the specific circumstances in Northern Ireland.

In other jurisdictions (e.g. Scotland, Wales etc) there are significant regional support structures in place to support and promote local government improvement and community planning. There are currently no similar support arrangements within Northern Ireland and we would suggest that the establishment of a regional support structure to support improvement and community planning is included in the proposals.

It is also important to note that local authorities within other jurisdictions have larger remits and deliver other key public services such as e.g. health, education, and housing; which are not the case in Northern Ireland. Furthermore, as noted at Clause 74 of the Bill, the Northern Ireland Departments will remain responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners.

It is noted that the Bill makes a clear distinction as to what is required between 'community planning partners' who must 'participate in community planning and assist the council', and the NI Departments who will have 'a duty to promote and encourage community planning'.

The effectiveness of the community planning process and the delivery of improved outcomes will be dependent on the strength of relationships between councils, departments and

other public bodies. It is viewed that the legislative provision in Part 10 should be further strengthened, particularly in relation to the collaborative use of resources and alignment of plans. It is also suggested that consideration be given to the possible introduction of a statutory duty upon all relevant public bodies (including Gov Departments) and statutory agencies to participate and contribute to the community planning process.

Furthermore, it would appear that there is no mechanism included in the Bill for redress for non-compliance with community planning duty. The Department has advised that this may be a role for the Partnership Panel but it is suggested that a more robust accountability mechanism is put in place.

Performance Improvement (Part 12)

Members would advocate that any performance framework brought forward is not overly bureaucratic, does not depart from existing legislative and statutory obligations of councils and is set within the context of community planning and providing councils with the appropriate flexibility to address local needs.

It is recommended that the Committee should advocate for the ability for local government to have control over its own improvement, through a collaborative agreed approach, rather than having to deal with an outdated top-down legislative arrangement.

The current policy shift in neighbouring regions is towards greater self-regulation and away from overly bureaucratic and centralised scrutiny/inspection, subject to the achievement of a set of agreed (with central government) targets or outcomes.

Presently the Local Government (Best Value) Act (Northern Ireland) 2002 states that a council 'shall make continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.' It is noted that the Bill would appear to depart from the Local Government (Best Value) Act (NI) 2002. Clauses 87- 89 of the Bill extend the areas which councils must have regard to in terms of improving the exercise of its functions in terms of: strategic effectiveness; service quality; service availability; fairness (equity); sustainability; efficiency and innovation. These objectives are identical to those specified in the Welsh legislation and do not necessarily reflect the Northern Ireland context.

It is further highlighted that there would appear to be tensions and potential duplication between these provisions and of existing statutory duties of councils such as those expressed in S75 of the Northern Ireland Act 1998 and S25 of the NI (Miscellaneous Provisions) Act 2006 (duplicating the sustainability requirement). It is therefore recommended that the defined objectives are reviewed and further developed and defined in the context of Northern Ireland.

In the absence of further definition on the performance objectives as set out, there is concern that there is now no explicit reference made within the Bill to a key aspect of Best Value - 'economy' - and, therefore potentially removing considerations around cost and value for money.

It was pointed out that in considering each of the performance objectives individually and not collectively; there exist potential tensions between some of the objectives, for example, the interplay and balance between service availability and efficiency.

Similar to the Best Value Act, it is recommended that the Department ensures that councils are enabled to consider and take into account of a combination of and interplay between the performance objectives.

Local government auditor (Part 12)

If the arrangements specified in Part 12 of the Bill are taken forward, there would be concerns in relation to the capacity and resourcing of the local government auditor, which will need to be enhanced.

Concern was also expressed in relation to the proposed extension of the role of the auditor in terms of the auditing of councils' corporate and/or improvement plans, as this would potentially undermine the democratic process. It is recommended that the scrutiny of corporate plans should be undertaken by elected members who set the priorities for the organisation and should oversee delivery against these priorities.

A Partnership Panel (Part 13)

The establishment of the Partnership Panel is welcomed and it is believed that this would provide a further mechanism to enhance the engagement between central and local government. Members would highlight the importance that the local government representation be nominated by the sector and agreed by the Department and should include representation from each of the new councils at a minimum.

It is also recommended that the Clause adequately ensures the ability of local government to nominate its own representatives, through an agreed appointment process. At present the clause appears to give the Department control of these appointments, with only a requirement to consult local government prior to making its decision.

Control of councils (Part 14)

There are concerns that the power of intervention, previously provided to the DoE (but rarely used), is now extended to all NI departments. Whilst recognising that specific functions will transfer from central to local government as part of the LGR process, the specific rationale for such provisions may need further clarification.

Members consider the language used in these clauses, and the scope of powers conferred on departments to be contradictory to the spirit of fostering a more collaborative working arrangement between central and local government. The Committee is reminded of the comments set out above in relation to Clause 103, and would again note that it will be important for guidance to be produced for government departments to ensure that they don't begin to micro-manage councils and do not place unrealistic reporting expectations on them.

It is particularly noted that under this part of the Bill, there is no requirement to consult, either with local government in general, or with individual local councils.

It is further recommend that the ability of other NI departments to intervene must be restricted to matters pertaining directly to those departments who have transferred functions but retain the policy responsibility.

arc21

Introduction

arc21 welcomes the opportunity to provide comments to the Committee for the Environment on the proposed Local Government Bill and our response is set out below as follows.

Part 1 - Councils

2(2) - Given the developments in technology and the fact that all Councils now have websites, then there should be the flexibility to publish the Council Constitution, and other documents, on the website and other social media outlets.

2(3)(b) - Given the practical experience of Councils in relation to the Freedom of Information Act 2000, it would be useful if there were enshrined in legislation the indicative charges that could be applied by Councils, even minimum charges.

Our experience has been that the FOIA is being used mainly by third parties who have a commercial interest in seeking information. Councils could also be empowered to refund charges to FOIA applicants, in certain circumstances.

In any case, it is normal practice for Councils to make available to the public a substantial volume of information. However, there needs to be more of a deterrent to enable information of a contractual or commercially sensitive nature to be protected.

Part 2 - Councillors

8(2)(a)(ii) - the "six month" non attendance

It is noted that the "six month" non attendance rule appears to be applicable to Joint Committee. This matter should be clarified so that guidance can be provided to take account of circumstances whereby a Councillor who, for example, has been able to attend the Council meetings but has been unable to attend the Joint Committee meetings. Circumstances may arise in which the Councillor may have to prioritise in favour of attending the main Council meetings.

Part 3 - Positions of Responsibility

In general the proposals appear to be too prescriptive, leaving little for councils to make decisions on a local basis to suit local needs and political representation.

10(1)(f) - It would be helpful if the legislation confirmed that Special Responsibility allowances should be made to those nominated to the positions set out in 10(1) (a) to (f).

Part 4 - Discharge of Functions

13(2)(a) - It is noted that the new proposals maintain the provision to allow Councils to arrange for the discharge of functions by way of a Joint Committee. However, reference should be made to 18(2)(a) which enables Councils to form Joint Committees as Bodies Corporate, similar to the position with arc21.

Part 5 - Permitted Forms of Governance

arc21 is generally supportive of the provisions set out in this Part.

Part 6 - Executive Arrangements

39(3)(a) - access of the public to meetings of Joint Committees. Provision should be made to allow Joint Committees to seek requests, from the public to attend, in writing for logistical

reasons and in order that the business of the Joint Committee can be structured to better accommodate those wishing to attend.

For example, it is our normal practice, during a meeting, to formally go “In Committee” to deal with matters of a confidential or commercially sensitive nature. If members of the public are seeking to attend then arrangements can be made, for example, to deal firstly with Agenda items of a non confidential manner.

Part 7 - Meetings and Proceedings

43(4) - “simple majority” - In the case of a Joint Committee further clarification needs to be given in this regard. For example, it could be the majority of Councils in attendance or be based on the number of Councillors in attendance. The regulations could also state that it is a matter for each Council, when forming a Joint Committee to determine the methodology for Decision Making.

44 - Qualified Majority - The level of 80% mandatory appears to be quite a high bar to adopt and given that Clause 43 takes into account a situation which has been well tried and tested it would appear that there is not a need to include this clause. In terms of our Joint Committee, full consensus of all our Councils is required but, based on almost ten years of practical experience is subject to review as part of the development of a new Constitution for the new Council Structures. Applying a mandatory Qualified Majority clause would restrict our flexibility to produce an updated Constitution to meet the needs of the new organisation post 2015.

Part 8 - Access to Meetings and Documents

46(6) - as outlined above in Part 6, arc21 would suggest that members of the public, including the media, be required to request in writing should they wish to attend meetings, primarily for practical reasons.

47 - Provision should be made to enable Non Council Committees i.e. Joint Committees, to be exempt from making reports open to inspection to the public at least 5 days in advance of meetings. In our experience it would not be practical to do so, particularly given the nature of one of our main activities, public procurement, which often involves the collation of information which is received within a shorter time scale and includes tabling data at meetings.

50(3)(a) - application to Joint Committees - our comments have been incorporated above in relation to access to meetings and information by the public.

Part 9 - Conduct of Councillors

65- disclosure and registration of councillor's interests – provision should also be made for “conflicts of interest” declarations to be formally made at the commencement of meetings to ensure that the register is kept as up to date as possible.

65(4)(a) - in an environment in which one of the key economic drivers to reform is to enable councils to be more efficient, then this additional expense to publish in one or more newspapers circulating in the district is an unnecessary expense. Councils should be able to publish their Registers on their own websites and other social media without having to incur the cost of advertising.

Part 10 - Community Planning

arc21 is generally supportive of Councils being empowered with Community Planning in order that local needs can be considered and determined more effectively than the current process allows.

However, we agree with the general NILGA response that there is widespread concern within the local government sector that the proposed legislation is not strong enough to compel partners to fully participate, ensuring investment of time and budget by senior decision makers in order to fulfil the identified objectives. Whilst Community Planning is, of course,

about building relationships and working together, financial resources will inevitably be required to deliver on the full range of necessary actions. Colleagues in Scotland with longstanding experience of operating a council-led community planning system have identified the omission of **a clear reference to resources as a particular weakness in the Bill.**

Accordingly, we urge that the Bill is strengthened through the insertion of appropriately worded clauses to provide the required reassurance to councils that Partners will have to attend, sending senior officials, and, where may be required, to realign their budgets accordingly. For example, stating that the determination and implementation of a Community Plan requires specified and relevant partners to invest the human and financial resource to achieve a key performance target within the Plan, would be a good approach, and would put plans on a business like footing with the community as custodians, through council, of a local, public purse.

At present, Departments are tucked away under a miscellaneous heading, rather than grouped with Councils and partners who also have duties. The wording of the proposed duties of Departments needs strengthening to ensure that all parties relevant to the success of Community Planning have strong obligations placed upon them.

It is considered vital to the success of the community planning process that partners are compelled to attend relevant meetings, and align plans and budgets to the community plan, but there is no indication that the forthcoming order will be any more than a specified list of organisations. This is why NILGA asserts that the wording must emphasise the need for human and financial resource investment in a community plan. The success of this key initiative will be dependent upon the sum of the parts. The Bill must therefore offer no ability for partners to avoid their responsibilities or, worse still, suggest that such responsibilities and costs could be borne by others.

Part 11- General Power of Councils

arc21 is generally supportive of the provisions set out in this Part.

Part 12 - Performance Improvement

In general arc21 supports the thrust of this Part but would urge the Committee to adopt a flexible approach to enable local government bodies to better address performance issues on a local or Joint Committee area basis. Also, caution is recommended regarding the role of the Local Government Auditor as the proposals would appear to have the potential to undermine the democratic process.

88(1) - Improvement Objectives – It is recommended that these be set out in a Corporate plan extending over a longer period, at least 3 years, rather than one year as proposed. Also provision could be made for regular Performance Reports against the Corporate plan to be required (say on an annual basis as set out in 95(2)(a)).

95(3)(a) - Given the focus of the Local Government Auditor in finalising the annual statutory accounts information for Councils by 31 October, it is suggested that the performance information be required to be published after this date – say by 30 November, particularly given the LGA requirements set out in Clause 100 – Annual Improvement Reports.

Part 13 - Partnership Panel

arc21 is generally supportive of the provisions set out in this Part.

Part 14 - Control of Councils by Northern Ireland Departments

It is suggested that these provisions are co-ordinated through one Government Department in order to prevent, for example, a similar issue being sought by more than one Government Department at the same time. Also, arc21 is of the opinion that the Clauses in this Part

appear to be more prescriptive leaving little room for consultation and co-operation between both parties.

Part 15 - Amendment of the 2005 Order

arc21 is generally supportive of the provisions set out in this Part.

Part 16 - Miscellaneous

arc21 is generally supportive of the provisions set out in this Part.

In particular, arc21 would like to ask the Committee to consider the position of local government bodies such as arc21 in relation to **Clause 121 - Schemes for transfers of assets and liabilities**. In order to better manage the smooth transition of a Body Corporate, such as arc21, it is important that the assets remain intact in support of the confirmation that its contractual liabilities, will continue to be met, up to and beyond the period of transition.

Schedules

arc21 is generally supportive of the provisions set out in this Part.

In particular, in respect of Schedule 7 - Meetings and Proceedings:

1(1) - it is suggested that Councils take into account the need for continuity in membership of Councillors serving on Joint Committees and therefore are empowered to nominate Councillors to serve for more than one year. In our experience, the introduction of new blood is important but we need to have a balance of longer serving Members and new Members given the capacity building that is acquired, in dealing with often highly complex technical matters, over a time span which exceeds one year. Continuity, in this regard, is important to the effective delivery of our services.

In particular, in respect of Schedule 10 - Transfer Schemes :

arc21 would recommend that the comments set out in Part 16 above be taken into account.

Explanatory and Financial Memorandum

arc21 is generally supportive of the provisions set out in this Part but would ask the Committee to take into account our comments in each of the Parts of the Bill, as set out above.

11 November 2013

Ballymena Borough Council

Call for evidence by the Committee of the Environment on the Local Government Bill.

Response on behalf of Ballymena Borough Council

November 2013

1. Introduction

This document provides details of the response of Ballymena Borough Council to the Committee for the Environment's Call for Evidence on the Local Government Bill.

The Local Government Bill was formally introduced to the Northern Ireland Assembly on 23 September 2013 and received its Second Reading on 1 October 2013. The Bill has now been referred to the Committee for the Environment, who have opened a Call for Evidence from all interested parties, with a closing date of 12 November 2013.

2. Comments

Ballymena Borough Council is broadly supportive of the reform of local government. We firmly believe that local government is key to the effective and joined-up delivery of all public services on the ground. Our Corporate Plan is very much aligned with the focus, drive and strategic priorities outlined in the Northern Ireland Executive's Programme for Government and supporting Economic and Investment Strategies.

Ballymena Borough Council continue to work proactively with our colleagues in Carrickfergus Borough Council and Larne Borough Council in order to complete all necessary preparations to ensure a smooth transition to Mid and East Antrim Council.

A number of the provisions contained in the Bill cater for additional powers, duties and responsibilities for councils. We particularly welcome the Community Planning Duty, as Council has adopted a community planning approach over a number of years and much has been achieved by that approach.

In preparing this response to the Call for Evidence, we have offered comments on a number of the provisions in the Local Government Bill.

Ballymena Borough Council are broadly supportive of the response compiled by NILGA. We would however wish to make the following additional comments:

- We welcome and endorse the General Power of Competence and see great potential for our local areas through this power;
- It is imperative that the Code of Conduct pays due regard to the issues associated with the transfer of the planning function. In particular, this should recognise the complexity and potential legal implications associated with the transfer of the planning function. Members were particularly concerned and wished to be reassured that appropriate legal advice and support would be available on all occasions.

3. Further information

For Further information, please contact Anne Donaghy, Chief Executive: Email: Anne.Donaghy@ballymena.gov.uk ; Tel: 028 2566 0300.

4. NILGA response - attached

Banbridge District Council

Banbridge District Council Response to the Call for Evidence on the Local Government Bill

This Council welcomes the opportunity to support the submission to the Committee on behalf of Local Government to be presented by NILGA.

Of particular concern to the Council is Part 12 of the Bill regarding the proposed concept of a performance improvement framework policed by Local Government Audit. The legislation would appear to be based on the prescriptive Best Value provisions brought into the UK by the 1997 Labour regime and the justification needs to be challenged.

In the 2002 review of Best Value legislation the NI Assembly accepted arguments put forward by local government that there was no requirement for a legislative regime involving a prescriptive panoply of performance indicators, league table reviews and mechanistic quantitative reports by Local Government Audit. Despite the increase in services and Councils' size, those arguments remain strong.

In summary, arguments against a prescriptive performance framework include the following:

- Size – UK local authorities provide significant strategic services in health, education and social services, represent approximately 25% of the public purse, and, are 80% funded by the Exchequer.

REORGANISED NI LOCAL AUTHORITIES WILL REMAIN TINY IN COMPARISON REPRESENTING JUST 5% OF THE PUBLIC PURSE WHICH WILL BE 80% FUNDED FROM LOCAL RATES.

THE ARGUMENT THAT THE BEST VALUE FRAMEWORK WAS ESSENTIAL FOR LARGE PROFLIGATE AND POLITICALLY MOTIVATED COUNCILS IN THE UK DOES NOT CARRY IN THE MUCH SMALLER POLITICALLY 'CONSERVATIVE' NI LOCAL GOVERNMENT REGIME.

- Equity – there is no evidence that there has been any historical need for a rigorous performance regime. Local Government Audit have an existing legal authorisation to carry out special value for money (VFM) audits and in the last 25 years have restricted this arm of their service to a periodic review of 'absenteeism'. If there was prima facie evidence of poor performance, Local Government Audit would no doubt have implemented this statutory prerogative.
- Capacity – Local Government Audit does not have the experience to fulfil the role envisaged in the legislation and would require a significant boost in resources to operate a sophisticated Framework.
- Costs – the costs of establishing a prescriptive 'performance industry' will displace resources which could more usefully be ploughed into services or help ameliorate the District Rate.
- Timing – it is clear that after 15 years' experience in the rest of the UK that there is a move away from the 'Best Value' approach of continuous improvement with decisions on Performance Reporting delegated to local government and being subsumed into local strategic planning.

This Council recognises that Councils should be obliged to report on performance annually and that Local Government Audit should provide assurance on such reports. It should be left to Local Government to develop the protocols and parameters of a performance improvement framework and to incorporate a more robust implementation of the ICE initiative.

Belfast City Council



Belfast City Council Written Evidence to the Committee for the Environment “Local Government Bill”

1.0	<u>INTRODUCTION</u>
1.1	<p>Belfast City Council welcomes the opportunity to provide evidence to the Committee for the Environment on the ‘<i>Local Government Bill</i>’ and believes that the introduction of the Bill is a further step forward in the local government reform programme.</p> <p>The Council recognises that the Bill is enabling legislation and that much of the detail will be contained in subordinate legislation and guidance which is still in the process of being developed. It is imperative that this legislation (and associated guidance) is developed in partnership with local government prior to its introduction to the Assembly as there will be no opportunity to make amendments once that has occurred.</p>
1.2	<p>The Council has carried out a clause by clause review of the Bill and a detailed commentary is appended for the Committees consideration. Set out below is an initial summary of the Councils comments on the most significant issues within the Bill. The response is intended to be constructive and seeks to ensure that the proposals within the Bill take account of the associated operational and implementation issues within local government. It will be important that all efforts are taken to ensure that the proposals are both progressive but realisable.</p>
2.0	<u>KEY ISSUES</u>
2.1	<p>The following provides a summary of the priority issues as identified by the Council – however, it is recognised that many of the proposals contained within the Bill will be subject to political consideration and individual Party Groups may wish to express their own views.</p>
3.0	<u>Positions of responsibility (Part 3)</u>
3.1	<p>The Council would be concerned that the Bill is highly prescriptive in terms of how Members may be selected for positions of responsibility and committee membership.</p> <p>Whilst the Council firmly supports the principle of proportionality, it would contend that consideration be given to permitting local solutions which are politically acceptable - perhaps through a requirement for local arrangements to be approved via the quality majority voting procedure.</p> <p>The Council would be concerned that the Bill proposes that all ‘positions of responsibility’ will be grouped into one pool and councils will be required to apply the identified proportionality methods in order to fill all of the positions of responsibility for the forthcoming 4 year term.</p> <p>The Council would contend that the legislation should not require that the positions of responsibility be grouped together into one pool nor should it specify the period of time of the appointments, but rather it should be left to each individual council to decide how best the application of proportionality should be carried out.</p>
4.0	<u>Qualified Majority Voting (Part 7)</u>
4.1	<p>The Council would highlight that local government within Northern Ireland has operated for many years on the basis of a simple majority vote. It is accepted that qualified majority voting may be seen to be desirable as a form of protection for political minorities in circumstances where there is a sizeable political majority in a Council area. Where a council is equally divided politically, such a system may have an impact upon the decision making process and ability of councils to get things done in local areas.</p>

	The Council would recommend that careful consideration is therefore given to the identification and detailed definition, through regulations, of the specific types of decisions to be subject to QMV and that further engagement and detailed discussions should take place with local government in this regards.
5.0	Call in (Part 7)
5.1	<p>The Council does not have any objections to the principle of “call in” being available, however, it would be concerned with the current broad definition of the two circumstances in which call-in can apply (as set out at a Clause 45 (1) of the Bill) and the potential for a high percentage of council decisions being subjected to call-in and thereby making effective decision making more difficult.</p> <p>The Council would therefore urge the Department to liaise with local authorities in order to develop and agree robust and clear definitions around the criteria for each of the two circumstances and to examine and detail the practicalities and process for implementing such procedures (e.g. procedure, format and time limits for any requisition to be submitted)</p> <p>The Council would also recommend that consideration is given to limiting the power to call in a particular decision/recommendation to a single requisition / challenge.</p>
6.0	Conduct of councillors (Part 9)
6.2	<p>Belfast City Council has consistently supported the establishment of a statutory ethical standards framework and a mandatory code of conduct for all Councillors and therefore welcome, in principle, the proposals set out within the Bill.</p> <p>The Council recognises the role that such frameworks provide in reinforcing the trust in councils and in local democracy and that this is particularly important in the context of any future transfer and delivery of new functions by councils. The Council would seek further engagement with the Department in developing such frameworks.</p> <p>The Council would be concerned however that the legislation does not contain a specific appeal mechanism, other than through a Judicial Review. The Council would therefore recommend that a right of appeal is clearly set out within the Bill.</p> <p>The Council would further recommend that consideration be given to extending or creating a supplementary to the Code of Conduct to cover the role of elected Members on public bodies.</p> <p>The Council would welcome, in principle, the enhanced role of the Commissioner to investigating complaints under the code, as this would ensure independence in the process. However, further detail of the procedures to be adopted by the Commissioner in undertaking any such investigations and the associated capacity and resource requirements around this would be helpful.</p>
7.0	Community Planning (Part 10)
7.1	<p>The Council would fully support the proposal that local authorities lead and facilitate community planning and would view this as a key enabler for the integration of services to address local needs. Local councils are uniquely and ideally placed to lead and facilitate community planning.</p> <p>It would appear that the Community Planning model proposed in the legislation is largely similar to the Welsh community planning model. Whilst there is no objection to the adoption of the model, it is vital that the legislation and supporting guidance takes account of the specific circumstances in Northern Ireland.</p> <p>In other jurisdictions (e.g. Scotland, Wales etc) there are significant regional support structures in place to support and promote local government improvement and community planning. There are currently no similar support arrangements within Northern Ireland and we would suggest that the establishment of a regional support structure to support improvement and community planning is included in the proposals.</p> <p>It is also important to note that local authorities within other jurisdictions have larger remits and deliver other key public services such as e.g. health, education, and housing; which are not the</p>

	<p>case in Northern Ireland. Furthermore, as noted at Clause 74 of the Bill, the Northern Ireland Departments will remain responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners.</p> <p>The Council would note that the Bill make a clear distinction between what is required between 'community planning partners' who must 'participate in community planning and 'assist the council', and the NI Departments who will have 'a duty to promote and encourage community planning'.</p> <p>The effectiveness of the community planning process and the delivery of improved outcomes will be dependent on the strength of relationships between councils, departments and other public bodies. The Council would be of the view that the legislative provision in Part 10 should be further strengthened, particularly in relation to the collaborative use of resources and alignment of plans. The Council would also suggest that consideration be given to the possible introduction of a statutory duty upon all relevant public bodies (including Gov Departments) and statutory agencies to participate and contribute to the community planning process.</p> <p>Furthermore, it would appear that there is no mechanism included in the Bill for redress for non-compliance with community planning duty. The Department has advised that this may be a role for the Partnership Panel but the Council would suggest that a more robust accountability mechanism is put in place.</p>
8.0	Performance Improvement (Part 12)
8.1	<p>The Council would advocate that any performance framework brought forward is not overly bureaucratic, does not depart from existing legislative and statutory obligations of councils and is set within the context of community planning and providing councils with the appropriate flexibility to address local needs.</p> <p>The Council would recommend that the Committee should advocate for the ability for local government to have control over its own improvement, through a collaborative agreed approach, rather than having to deal with an outdated top-down legislative arrangement.</p> <p>The current policy shift in neighbouring regions is towards greater self-regulation and away from overly bureaucratic and centralised scrutiny/inspection, subject to the achievement of a set of agreed (with central government) targets or outcomes.</p> <p>In preparation for the proposed development of a new performance framework for Northern Ireland, Belfast City Council commissioned UK Research and Consultancy Services Ltd, headed up by former Director General of the Audit Commission in Wales, Dr. Clive Grace, to provide an advocacy and recommendations report to help inform our thinking. A summary of the key findings of the report is appended to this response, and the Committee may find it helpful to invite Dr Grace to provide evidence to the Committee to inform their thinking.</p> <p>This is particularly pertinent given that Part 12 of the Bill, relating to Performance Improvement arrangements, appears to mirror much of what is contained in the part 1 of the Local Government (Wales) Measure 2009. It should be noted that in Wales, there is significant regional support structures in place to support and promote local government improvement processes. There are currently no similar support arrangements within Northern Ireland and we would suggest that the establishment of a regional support structure to support continuous improvement and community planning is included in the Bill.</p> <p>Presently the Local Government (Best Value) Act (Northern Ireland) 2002 states that a council 'shall make continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.' It is noted that the Bill would appear to depart from the Local Government (Best Value) Act (NI) 2002. Clauses 87- 89 of the Bill extend the areas which councils must have regard to in terms of improving the exercise of its functions in terms of: strategic effectiveness; service quality; service availability; fairness (equity); sustainability; efficiency and innovation. These objectives are identical to those specified in the Welsh legislation and do not necessarily reflect the Northern Ireland context.</p>

	<p>The Council would further highlight that there would appear to be tensions and potential duplication between these provisions and of existing statutory duties of councils such as those expressed in S75 of the Northern Ireland Act 1998 and S25 of the NI (Miscellaneous Provisions) Act 2006 (duplicating the sustainability requirement). It is therefore recommended that the defined objectives are reviewed and further developed and defined in the context of Northern Ireland.</p> <p>In the absence of further definition on the performance objectives as set out, the Council would be concerned that there is now no explicit reference made within the Bill to a key aspect of Best Value - 'economy' - and, therefore potentially removing considerations around cost and value for money.</p> <p>The Council would point out that in considering each of the performance objectives individually and not collectively; there exist potential tensions between some of the objectives, for example, the interplay and balance between service availability and efficiency.</p> <p>Similar to the Best Value Act, the Council would recommend that the Department ensures that councils are enabled to consider and take into account of a combination of and interplay between the performance objectives.</p>
9.0	Local government auditor (Part 12)
9.1	<p>If the arrangements specified in Part 12 of the Bill are taken forward, the Council would have concerns in relation to the capacity and resourcing of the local government auditor, which will need to be enhanced.</p> <p>The Council would also have concerns in relation to the proposed extension of the role of the auditor in terms of the auditing of councils' corporate and/or improvement plans, as this would potentially undermine the democratic process. The Council would recommend that the scrutiny of corporate plans should be undertaken by elected members who set the priorities for the organisation and should oversee delivery against these priorities.</p>
10.0	A Partnership Panel (Part 13)
10.1	<p>The Council would welcome the establishment of the Partnership Panel and believe that this would provide a further mechanism to enhance the engagement between central and local government. The Council would highlight the importance that the local government representation be nominated by the sector and agreed by the Department and should include representation from each of the new councils at a minimum.</p>
11.0	Control of councils (Part 14)
11.1	<p>The Council would be concerned that the power of intervention, previously provided to the DoE (but rarely used), is now extended to all NI departments. Whilst recognising that specific functions will transfer from central to local government as part of the LGR process, the specific rationale for such provisions may need further clarification.</p> <p>The Council considers the language used in these clauses, and the scope of powers conferred on departments to be contradictory to the spirit of fostering a more collaborative working arrangement between central and local government. The Council would remind the Committee of the comments set out above in relation to Clause 103, and would again note that it will be important for guidance to be produced for government departments to ensure that they don't begin to micro-manage councils and do not place unrealistic reporting expectations on them. It is particularly noted that under this part of the Bill, there is no requirement to consult, either with local government in general, or with individual local councils.</p> <p>The Council would further recommend that the ability of other NI departments to intervene must be restricted to matters pertaining directly to those departments who have transferred functions but retain the policy responsibility.</p>
12.0	Conclusion
12.1	<p>The Council would welcome the opportunity to work closely with the Department and the Committee for the Environment on the further development of all subsequent legislation and guidance.</p>

Clause	Explanatory Memorandum	Belfast City Council Response
PART 1 - COUNCILS		
1	<p><u>Names of Councils</u> This clause provides for how the names are to be formed and makes provision for the name given to a council to be altered by subordinate legislation.</p>	<ul style="list-style-type: none"> The Council is aware that supplementary legislation will mean that at the May 2014 elections, candidates will be standing for election to Belfast District Council rather than Belfast City Council. It would be good if the Committee word clarify with the Department when subordinate legislation will be brought forward to permit councils to obtain Borough or City status. The Council would recommend that both the Department and local councils will need to work together to consider how best to communicate the new council names to the public in advance of the election.
2	<p><u>Constitution</u> This clause requires a council to maintain a constitution and ensure that it is available for inspection by members of the public. The constitution is to include standing orders, a copy of the code of conduct, such information as the Department may direct and such other information as the council considers appropriate. A council will have to supply a copy to anyone who requests one, upon payment of a reasonable fee.</p>	<ul style="list-style-type: none"> The Council welcomes the requirement for councils to prepare and maintain a constitution and believes that this provides an appropriate framework through which to outline out the councils governance arrangements and decision making processes. The Council would request that councils are involved in the development of any model framework brought forward.
PART 2 – COUNCILLORS		
3 – 9	<p>These clauses re-enact sections 3 to 10 of the Local Government Act (Northern Ireland) 1972 in relation to individuals being elected to or acting as a councillor. Clause 3 sets out the conditions to be satisfied for a person to be qualified to be elected or to be a councillor.</p>	<p>Clause 4 (Schedule 1)</p> <ul style="list-style-type: none"> In relation to council employees acting as a councillor, it should be noted that in other jurisdictions (e.g. England and Wales), an officer can stand for and be elected to any council except the one for which they work (As set out under Section 80 of the Local Government Act 1972)

¹As per the Local Government (Boundaries)(2008 Act)(Commencement, Transitional Provisions and Savings) Order 2013

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	<p>Clause 4 gives effect to Schedule 1 which sets out the conditions under which a person is disqualified for being elected or acting as a councillor. These conditions include the introduction of a bar on MLAs, MPs and MEPs being elected, or being, councillors.</p> <p>Clause 5 sets out the penalties for acting as a councillor while disqualified.</p> <p>Clause 6 requires a person elected as a councillor to serve a declaration, as set out in Schedule 2, on the clerk of the council before acting as a councillor. This declaration requires the person to affirm that they will observe the Northern Ireland Local Government Code of Conduct for Councillors in the performance of their functions.</p> <p>Clause 7 provides for a person to resign as a councillor at any time.</p> <p>Clause 8 provides for a person to cease to be a member of a council if they fail, subject to certain conditions, to attend any meeting of the council over six consecutive months.</p>	<ul style="list-style-type: none"> It will be important that clear guidelines are developed through supporting regulations and/or guidance in relation to potential conflicts of interest as a result of an employee also acting as a councillor.
<p>PART 3 – POSITIONS OF RESPONSIBILITY</p>		
10	<p>This clause sets out the positions of responsibility to be held by an elected member of the council, which must be allocated across the political parties represented on the council, and the process which must be used for the allocation.</p> <p>Positions of responsibility are specified as the chair and deputy chair of the council, chairs and deputy chairs of council committees, the membership of a cabinet-style executive and representative positions on external bodies.</p>	<ul style="list-style-type: none"> The Council would be concerned that the Bill is highly prescriptive in terms of how Members may be selected for positions of responsibility and committee membership. Whilst the Council firmly supports the principle of proportionality, it would contend that consideration be given to permitting local solutions which are politically acceptable - perhaps through a requirement for local arrangements to be approved via the quality majority voting procedure. The Council would be concerned that the Bill proposes that all 'positions of responsibility' will be grouped into one pool and councils will be required to apply the identified proportionality methods in order to fill all of the positions of responsibility for the forthcoming 4 year term. The Council would contend that the legislation should not require that the

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		<p>positions of responsibility be grouped together into one pool nor should it specify the period of time of the appointments, but rather it should be left to each individual council to decide how best the application of proportionality should be carried out.</p> <ul style="list-style-type: none"> • The Council would contend that further detail should be provided in any supplementary regulations and/or guidance in relation to the sequencing of the establishment of cabinet or committee systems and the appointment process for positions of responsibility. For example, further clarification is required in relation to: <ul style="list-style-type: none"> - whether the establishment of Committees (under Schedule 4) should take place in advance of positions of responsibility being selected using a method of proportionality prescribed in Schedule 3; - should the appointment of the chair and deputy chair of a cabinet executive and the selection of one of these positions by a party count as one choice (as a member of the cabinet) or two choices (as a member and as the chair or deputy chair). - the definition of a 'prescribed' public body, as well as the process through which a council may make appointments to outside bodies which are not identified as a 'prescribed public body'. • The Council is aware that the Department would intend to bring forward a draft order (i.e. Transitional and Supplementary Provisions Order), which will outline the functions, powers and duties of the Shadow Councils between May 2014 and April 2015. It will be important that this Order includes appropriate provisions to enable Shadow Councils to choose the form of governance for the incoming new council and to apply the chosen proportionality method so that the governance arrangements are in place for the first meeting of the new councils in April 2015. As the membership of the shadow councils and new councils are the same, this should not provide for any conflict but would be of considerable operational convenience.
PART 4 – DISCHARGE OF FUNCTIONS		
11 - 14	<p>Clauses 11 to 14 – Arrangements for discharge of functions These clauses set out the arrangements that a council may use</p>	<ul style="list-style-type: none"> • In terms of those functions to be reserved to councils as defined under Clause 11 of the Bill (i.e. making a district rate, borrowing money or acquiring or disposing of land), the Council would recommend that

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	<p>for the discharge of its functions and responsibilities.</p> <p>Clause 11 provides that a council may arrange for any of its functions to be discharged by a committee, sub-committee or an officer of the council, or by another council. The authority to delegate to a lower tier of governance is also provided for committees and sub-committees. The clause also specifies that making a district rate, borrowing money or acquiring or disposing of land may only be discharged by the council.</p> <p>Clause 12 places limitations on making arrangements for the discharge of functions under executive arrangements. It sets out the arrangements that will apply if a council has arranged for a function to be discharged by another council and one of the participating councils is operating or begin to operate executive arrangements and the relevant function is the responsibility of that executive.</p> <p>Clause 13 provides for the establishment of a joint committee between two or more councils to discharge a function of the participating councils. It provides that joint committees cannot discharge a function that is the responsibility of the executive of any of the participating councils.</p> <p>Clause 14 provides that a council or a committee is not prevented from exercising a function if it has arranged for that function to be discharged by a committee or sub-committee.</p>	<p>appropriate flexibility be included to provide for minor technical land disposals, way leaves, small loans, etc to be excluded if a council was to choose to do so.</p> <ul style="list-style-type: none"> This would help streamline the level of business having to be brought to full council and could be provided for through the inclusion of a similar provision to Section 100 (1) of the Local Government Act 1972 which provides for an officer to make contracts or instruments on behalf of the council providing that the value does not exceed a specified threshold (i.e. £30,000).
15-17	<p>Clauses 15 and 17 – Appointment of committees</p> <p>Clause 15 provides that a council may appoint a committee, and two or more councils may appoint a joint committee, to discharge functions. The appointing council or councils are responsible for determining the number of members of the committee, their term of office and the committee's remit. The clause also provides that, subject to certain restrictions, a committee may include persons who are not members of the appointing council or councils.</p> <p>Clause 16 enables a council, and two or more councils, to appoint a committee, that may include persons who are not members of the appointing council or councils, to advise on the</p>	<ul style="list-style-type: none"> The Council would seek further clarification in relation to what transitional provisions will be brought forward by the Department to ensure the effective transition of existing Joint Committees of two or more councils (e.g. Waste Management Groups) beyond April 2015.

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18 - 22	<p>discharge of functions.</p> <p>Clause 17 gives effect to Schedule 5 which provides for the sharing of membership of a committee between the political parties represented on the council.</p> <p>Clauses 18 to 22 - Supplementary</p> <p>Clause 18 provides that the expenses of a joint committee must be met by the appointing councils. It also provides a power for the Department by order to constitute a joint committee as a corporate body on the application of the appointing councils.</p> <p>Clause 19 provides that a person disqualified from being elected or being a member of a council cannot be a member of a committee or sub-committee of that council, or a joint committee on which the council is represented or on one of its sub-committees.</p> <p>Clause 20 provides that a person who is not a member of a council may not act as a member of a committee until the person has signed a declaration agreeing to observe the Northern Ireland Local Government Code of Conduct for councillors.</p> <p>Clause 21 provides that a person appointed to a committee who is not a member of the appointing council has no voting rights at meetings of that committee.</p> <p>Clause 22 specifies that a person who is no longer a member of a council is also no longer a member of a committee of that council.</p>	No specific comment
PART 5 - PERMITTED FORMS OF GOVERNANCE		
23 - 24	<p>Clauses 23 and 24</p> <p>These clauses set out the forms of political governance a council may operate for its decision-making. These are executive arrangements, a committee system or prescribed arrangements. Clause 23(4) provides a definition of executive arrangements.</p>	<ul style="list-style-type: none"> • The Bill is currently silent in relation to potential forms of governance arrangements linked to statutory or quasi-judicial functions to be undertaken by councils (e.g. planning, licensing etc) and the associated processes and rules which may or may not apply in this instance (e.g. QMV, Call-In). • Given the significance of planning and the fact that this is a new function transferring to local government, the Bill should ensure that appropriate

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	<p>A power is provided for the Department to make regulations prescribing alternative forms of governance that may be adopted by a council. It provides that the Department must have regard to any proposals received from a council when it considers whether or how to make regulations under this clause.</p>	<p>provisions are put in place.</p> <ul style="list-style-type: none"> The Council would seek clarification from the Department as to whether such committees will be subject to the same rules in relation to QMV and call-in as the other committees. The Council would advocate committees exercising quasi-judicial functions are not subject to QMV and call-in
<p>PART 6 – EXECUTIVE ARRANGEMENTS</p>		
25	<p>Clause 25: Council Executives</p> <p>This clause provides that an executive of a council must take the form of either:</p> <ol style="list-style-type: none"> a committee of the council to be known as a “cabinet-style executive”, or more than one committee of the council to be known as a “streamlined committee Executive” <p>It also prohibits the chair or deputy chair of the council from being a member of the executive, and limits the number of councillors who can be on the executive to 10 (unless a different maximum number is specified in regulations).</p>	<ul style="list-style-type: none"> The Council has no objection to Clause 25 but would seek clarification from the Department as to the practical steps which need to be taken (sequencing) in order to fill places on committees
26	<p>Clause 26: Functions which are the responsibility of an executive</p> <p>This clause provides the mechanism for determining which council functions are to be the responsibilities of the executive. It provides a power for the Department to make regulations to specify those functions which may, but need not, be the responsibility of the executive, and those functions which must not be the responsibility of the executive. The presumption is that all functions of the council are to be the responsibility of the executive unless specified in regulations or in any other legislation.</p>	<ul style="list-style-type: none"> In relation to Clause 26, it is noted that the Executive would be responsible for all of the functions of a council except those which would be identified in regulations. It will be important that councils are consulted in respect of the development of any such regulations.

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27	<p>Clause 27: Functions of an executive: further provision</p> <p>This clause makes further provision on the exercise and discharge of functions which are the responsibility of the council executive.</p>	<ul style="list-style-type: none"> No specific comment
28-30	<p>Clauses 28 to 30 – Allocation and discharge of functions</p> <p>These clauses set out in greater detail how decision-making is to be undertaken under executive arrangements and provide for the executive to determine how functions which are the responsibility of the executive should be discharged. Provision is also made for the Department to make regulations to enable an executive to arrange for functions for which it is responsible to be discharged by another council or by a joint committee.</p>	<ul style="list-style-type: none"> No specific comment
31 - 37	<p>Clauses 31 to 37 – Overview and scrutiny committees</p> <p>These provisions require a council, which is operating executive arrangements, to set up overview and scrutiny committees. Executive arrangements must ensure that these committees have power to make reports and recommendations, either to the executive or the council, on any aspect of council business. They must also have the power to make reports and recommendations on other matters which affect the council's area or its inhabitants.</p> <p>Where an overview and scrutiny committee reviews or scrutinises an executive decision which has been made but not yet implemented, it may recommend that it is reconsidered by those responsible, or else arrange for the council to review the decision and, where necessary, ask those responsible for the decision to reconsider it.</p> <p>Clause 32 describes in detail how overview and scrutiny committees may carry out their functions, giving them the power to appoint sub-committees and make arrangements for these sub-committees to discharge any functions of the overview and</p>	<p>Clause 31</p> <ul style="list-style-type: none"> The Council supports the need to ensure that effective scrutiny arrangements are in place to underpin the deciding making processes within councils. However, the Council would urge that caution is taken to ensure that the introduction of such scrutiny arrangements do not result in the orderly and efficient transaction of business within councils being adversely impacted upon. The Council would seek clarification with regards to the scrutiny powers provided in Clause 2(c) for Overview and Scrutiny committees to scrutinise those decisions which are not the responsibility of the Executive. The Council would contend that this power does not extend to those decisions which require ratification by the full council – such as those outlined in clause 11. Under Clause 3 (b), an Overview and Scrutiny Committee can decide that any Executive decision made but not yet implemented be referred to the full Council. Further definition is required in relation to the point at which a decision is determined to have been 'implemented' and the process and timescales in relation to the decision-making and when an officer has authority to act on a decision taken.

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	<p>scrutiny committee. It also allows an overview and scrutiny committee to require officers of the council and members of the executive to appear before it and invite any other person to appear before it. Neither the overview and scrutiny committee nor any of its sub-committees may include any member of the council's executive, but can include people who are not members of the council. People who are not members of the council co-opted to an overview and scrutiny committee will not have voting rights unless they are permitted to vote under paragraph 1 of Schedule 6.</p> <p>Clause 33 provides that a council operating executive arrangements must designate one of its officers as a scrutiny officer to perform the functions set out in this section. The clerk of the council or the chief financial officer may not be designated as its scrutiny officer.</p> <p>Clause 34 provides that a council's executive arrangements must make provision to enable members of an overview and scrutiny committee, including a sub-committee of such a committee, to refer matters to the committee or sub-committee.</p> <p>It also stipulates that a council operating executive arrangements must make arrangements to enable councillors who are not members of either the committee or sub-committee to refer any matters, which are not specified as excluded matters in an order, to overview and scrutiny committees.</p> <p>Clause 35 makes further provision in relation to the reference of matters to overview and scrutiny committees by a member of a council who is not also a member of the committee. It specifies certain factors that a committee may have regard to when considering whether to exercise its powers to review and scrutinise matters which have been referred by such a non-member.</p> <p>Clause 36 makes provision about reports and recommendations of overview and scrutiny committees. It provides that overview and scrutiny committees may publish reports and recommendations and must, in writing, require the council or executive to take the steps specified.</p>	<p>Clause 32</p> <ul style="list-style-type: none"> The Council note that the legislation does not put in place the procedures for the practical operation of the Overview and Scrutiny Committees, and in particular the timescales to be applied for the exercise of their powers. The Council would recommend that further detail is included within the Bill or associated regulations and/or guidance clearly setting out the procedures for the practical operation of the Overview and Scrutiny Committees and in particular the timescales to be applied for the exercise of their powers. In addition the guidance should be clear on the processes to be applied by councils including, for example, whether decisions should be referred as a matter of procedure to an Overview and Scrutiny Committee to decide whether to a) seek reconsideration of the decision or, b) refer to full Council, and whether this process should take place before officers act upon the decision.

Clause	Explanatory Memorandum	Belfast City Council Response
	<p>Clause 37 makes provision in relation to an overview and scrutiny committee or a council excluding “confidential information” and “relevant exempt information” when publishing a document.</p>	
38 - 39	<p>Clauses 38 and 39: Meetings and access to information etc. These clauses provide powers for the Department to specify in regulations the circumstances in which meetings of the Executive or its committees must be open to the public and which meetings must be held in private. Other than where specified in regulations, it will be for the Executive to choose whether to meet in private or in public. Written records of prescribed decisions made at meetings of the Executive held in private must be kept, including reasons for the decisions. These records, together with such reports and background papers as may be prescribed, must also be made available to the public. Regulations may also make provision requiring prescribed information about prescribed decisions to be made publicly available, and may also make provision about access to meetings of joint committees</p>	<ul style="list-style-type: none"> The Council would support greater transparency and openness in the operation and decision-making processes within local government.
PART 7 – MEETING AND PROCEEDINGS		
40 - 42	<p>Clauses 40 to 42 – General and standing orders These clauses make provision on the timing and general arrangements for meetings of a council, and require a council to make standing orders for the regulation of the proceedings and business of councils and their committees. A power is provided for the Department by regulations to specify matters that must be included in a council's standing orders.</p>	<p>Clause 42 Subsection 2(b)</p> <ul style="list-style-type: none"> This subsection indicates that regulations may require such standing orders to contain provisions for specific decisions of a committee to be referred to and reviewed by the Council itself. The Council would seek clarification as to what these decisions may be and would recommend that the regulations specifying matters that must be included in standing orders are drawn up with local government.

Clause	Explanatory Memorandum	Belfast City Council Response
43-44	<p>Clause 43 (Simple Majority) and 44 (Quality Majority)</p> <p>These clauses provide for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority.</p> <p>A power for councillors to require decisions to be reconsidered, in specified circumstances, is also provided.</p>	<ul style="list-style-type: none"> Clearly such proposals will be subject to political consideration and individual Party Groups may wish to express their own views in regards to the application of Quality Majority Voting. The Council would highlight that local government within Northern Ireland has operated for many years on the basis of a simple majority vote. It is accepted that qualified majority voting may be seen to be desirable as a form of protection for political minorities in circumstances where there is a sizeable political majority in a Council area. Where a council is equally divided politically, such a system may have an impact upon the decision making process and ability of councils to get things done in local areas. The Council would recommend that careful consideration is therefore given to the identification and detailed definition, through regulations, of the specific types of decisions to be subject to QMV and that further engagement and detailed discussions should take place with local government in this regards. The Council would recommend that further clarification is required in terms of the practical implementation of QMV by councils, including e.g. whether the QMV rule applies only at the point at which a decision is taken or where it is discussed? For decisions which are taken or discussed at an Executive or Traditional Committee but which then require ratification at full Council, is it the case that QMV could apply twice? The Council would advocate that the use of Qualified Majority Voting be counterbalanced against the expressed intentions of the local government reform to expedite the decision making process
45	<p>Clause 45 - Power to require decisions to be reconsidered (call-in)</p> <p>This clause includes provisions for councillors to require decisions to be reconsidered, in specified circumstances, is also provided.</p>	<ul style="list-style-type: none"> Clearly such proposals will be subject to political consideration and individual Party Groups may wish to express their own views in regards to the application of Quality Majority Voting. The Council does not have any objections to the principle of "call in" being available, however, it would be concerned with the current broad definition of the two circumstances in which call-in can apply (as set out at a Clause 45 (1) of the Bill) and the potential for a high percentage of council decisions being subjected to call-in and thereby making effective decision making more difficult. The Council notes that the second ground for reconsideration (45(1)(b))

Clause	Explanatory Memorandum	Belfast City Council Response
		<p>relates to disproportionate adverse impact, and would point out that local government within Northern Ireland already have a duty as set out in their approved Equality Schemes to take into consideration equality considerations in administering their functions.</p> <ul style="list-style-type: none"> • The Council would therefore urge the Department to liaise with local authorities in order to develop and agree robust and clear definitions around the criteria for each of the two circumstances and to examine and detail the practicalities and process for implementing such procedures (e.g. procedure, format and time limits for any requisition to be submitted) • The Council is unclear as to how the power of call-in is to operate in executive arrangements when considered alongside the powers of the Overview and Scrutiny Committee. If a decision of an Executive is being reviewed or scrutinised by an Overview and Scrutiny Committee, which can include asking for it to be reconsidered or referred to full council, does this mean that the same decision may still remain subject to the call-in process? • Further definition is required in relation to Clause 45(2) and the role of the practising barrister or solicitor in considering and giving an opinion on requisitions made wholly or partly on the grounds of Clause 4 (1)(b) – that a decision would disproportionately affect adversely any section of the inhabitants of a district. Clarity should be provided within the Bill or supplementary regulations/guidance whether such an opinion can be provided by a council’s in-house legal support. • The Council would note that there is no limit to call in. The power to call in a particular decision/recommendation should be limited to a single challenge.
PART 8 – ACCESS TO MEETINGS AND DOCUMENTS		
46 - 49	<p>Clauses 46 to 49 These clauses make provision in relation to public access to meetings of councils, and to the agenda and connected reports on issues to be discussed at a meeting of the council.</p>	<ul style="list-style-type: none"> • The Council would highlight that whilst Clause 46(6) states that 5 days’ notice must be given of a council meeting - this clause appears to be contradicted by Paragraph 5(1) of Schedule 7 (Meetings and proceedings) which says that 3 days’ notice must be given.

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	<p>Provision is also made to enable members of the public to inspect the minutes and other documents, and background papers, after a meeting of the council. Exclusions are applied to ensure that any confidential information, either discussed at a meeting of a council or included in any papers, is not open to the public. These provisions are also applicable to meetings of council committees.</p>	
50	<p>Clause 50 This clause specifies that section 46-49 apply in relation to a committee or a sub-committee of a council as they apply in relation to a council.</p>	<ul style="list-style-type: none"> • Clarification is required as to whether Clause 46-49 apply also to Executive arrangements and, if so, is there a need for Clauses 38 and 39 which replicate such provisions.
PART 9 – CONDUCT OF COUNCILLORS		
	<p>Clause 56: Code of conduct This clause provides for the Department to issue the Northern Ireland Code of Conduct for Councillors. The Code must specify the principles which are to govern the conduct of councillors. Before issuing or amending the Code, the Department must consult with associations or bodies representative of councils, officers of councils, councillors and such other persons as appear to the Department to be appropriate. A draft of the Code must be approved by resolution of the Assembly before it can issue.</p>	<ul style="list-style-type: none"> • The Council welcomes the introduction of a mandatory Code of Conduct for councillors within Northern Ireland. The Council would recommend that consideration be given to extending or creating a supplementary to the Code of Conduct to cover the role of elected Members on public bodies. • The Council welcomes the opportunity to input into the consultation process to be initiated by the Department in developing the Code of Conduct, as set out under Clause 56(8)
57	<p>Clause 57: Guidance This clause states that the Northern Ireland Commissioner for Complaints (Commissioner) may issue and publish any guidance on matters relating to the conduct of councillors.</p>	<ul style="list-style-type: none"> • The Council notes that the Commissioner may issue guidance under this Clause in relation to the conduct of councillors, and believes that and such guidance would provide useful information to Members as regards the application of the Code. It remains unclear whether the guidance will have a statutory or advisory effect.

Clause	Explanatory Memorandum	Belfast City Council Response
58-59	<p>Clauses 58 and 59: Investigations</p> <p>These clauses deal with the conduct of investigations carried out by the Commissioner on receipt of a written allegation of a breach of the Code. Clause 58 provides that the purpose of an investigation is to determine whether there is evidence of any failure to comply with the Code and whether action needs to be taken in respect of the matters under investigation and if an adjudication should be made by the Commissioner on the matter under investigation.</p> <p>The procedure for conducting an investigation shall be such as the Commissioner considers appropriate. Clause 59 provides that the person who is the subject of an investigation should be given the opportunity to comment on the allegation put to the Commissioner.</p>	<ul style="list-style-type: none"> The Council would welcome, in principle, the proposed role of the Commissioner to in investigating complaints under the code, as this would ensure independence in the process. However, further detail of the procedures to be adopted by the Commissioner in undertaking any such investigations and the associated capacity and resource requirements around this.
60-61	<p>Clauses 60 and 61: Reports</p> <p>These clauses provide for the Commissioner to produce a report on the findings of an investigation and, where the Commissioner considers it necessary in the public interest, to produce an interim report prior to the completion of an investigation. These clauses also specify the persons who must be given a copy of such a report.</p>	<ul style="list-style-type: none"> No specific comments
62	<p>Clause 62: Decision following report</p> <p>The clause provides for the Commissioner to adjudicate on any matter by deciding whether or not a person has failed to comply with the Code and sets out to whom this information must be sent. This clause also permits the Commissioner to decide on the extent to which the Code has been breached and to establish if a councillor should be censured, suspended or partially suspended, or disqualified for being, or becoming, a councillor.</p> <p>The Commissioner will specify the details of such sanction(s).</p>	<ul style="list-style-type: none"> The Council recommend that the Department include a right of appeal to the County or High Court for a Member who may be found to be in breach of the code and any associated sanctions to be specified by the Commissioner. The Council also notes that judicial review may not provide adequate remedy as it is essentially a review of the process undertaken and will not always examine the merits of any decision.
63	<p>Clause 63: Decisions on interim report</p> <p>This clause provides that, where the Commissioner considers that</p>	<ul style="list-style-type: none"> Further clarification and guidance is required in terms of the process to be applied by the Commissioner

Clause	Explanatory Memorandum	Belfast City Council Response
	<p>there is evidence that a person who is subject to an interim report has failed to comply with the code and that the failure is such that it would be likely to result in disqualification, and if the Commissioner considers that it would be in the public interest to immediately suspend or partially suspend the person, then the Commissioner may give notice to the clerk of the council accordingly, giving effect to that consideration.</p>	
64	<p>Clause 64: Recommendations</p> <p>This clause provides for the Commissioner, having adjudicated on any matter, to make recommendations to a council about any matters relating to the exercise of the functions of a council or the failure to observe the Code. A copy of the recommendations must be sent to the Department concerned. A council, having received any such recommendation, must consider this and, if necessary, prepare a report for the Department concerned within such period as the Commissioner may specify, giving details on what action the council proposes to take to address the recommendations. The Department concerned, on receipt of a report from the council, may require the council to publish a statement giving details of the recommendations made by the Commissioner and the reasons for those not being fully implemented if necessary. The consideration of any such recommendations by a council may only be considered by the council meeting as a whole.</p>	<ul style="list-style-type: none"> No specific comments
65	<p>Clause 65: Disclosure and registration of councillors' interests, etc.</p> <p>This clause provides for the clerk of the council to establish and maintain a register of the interests of its councillors and for the council to ensure that the register is available for public inspection.</p>	<ul style="list-style-type: none"> No specific comments
66	<p>Clause 66: Extension of 1996 Order</p> <p>This clause provides for certain provisions of the Commissioner for Complaints (Northern Ireland) Order 1996 to apply as if references to that Order includes reference to this Bill. These provisions set out the powers available to the Commissioner in conducting the duties conferred by this Bill in relation to the conduct of councillors.</p>	<ul style="list-style-type: none"> No specific comments

Clause	Explanatory Memorandum	Belfast City Council Response
67	<p>Clause 67: Expenditure of Commissioner under this Act This clause provides for the Commissioner to apportion the estimated amount of the expenses of the Commissioner's office in relation to the ethical standards framework between all the councils in Northern Ireland. Councils must pay the apportioned amount to the Commissioner at such time and in such manner as the Commissioner directs. The method of apportioning the costs will be prescribed in regulations.</p>	<ul style="list-style-type: none"> The Council would seek clarification on the prescribed manner for dividing the costs of the Commissioner between all of the councils in Northern Ireland.
67	<p>Clause 68: interpretation To be included</p>	<ul style="list-style-type: none"> The Council notes that Clause 68(3)&(4) states that where a councillor is suspended / disqualified from being a councillor they are also suspended / disqualified from being a member of any committee, joint committee or sub-committee of the council. Clarification is required as to the position in regard to the membership of outside bodies in any such instances.
PART 10 – COMMUNITY PLANNING		
69	<p>Clause 69: Community planning This clause places a duty on councils to initiate, maintain, facilitate and participate in community planning for their area. It also places a duty on community planning partners to participate in community planning and assist the council in the discharge of its duty. The clause defines community planning as a process by which a council and its community planning partners identify long-term objectives for improving the economic, social and environmental well-being of the local government district, and also contribute to the achievement of sustainable development. The duty also requires the identification of actions to be performed and functions to be exercised for the purpose of meeting the objectives.</p>	<ul style="list-style-type: none"> The Council would fully support the proposal that local authorities lead and facilitate community planning and would view this as a key enabler for joining-up services to address local needs. Local councils are uniquely and ideally placed to lead and facilitate community planning. Democratically accountable to local people and with a broad remit to protect and enhance their district area, community planning is a natural extension of this role. It appears that the Community Planning model proposed in the legislation is largely similar to the Welsh community planning model as outlined in part 2 of the Local Government (Wales) Measure 2009. The Council would highlight that whilst there is no objection to the adoption of the Welsh model, it is important that the legislation and any supporting guidance takes account of the specific circumstances in Northern Ireland. In other jurisdictions (e.g. Scotland, Wales etc) there is significant regional support structures in place to support and promote local government improvement and community planning. There are currently no similar support arrangements within Northern Ireland and we would suggest that the establishment of a regional support structure to support improvement and community planning is included in the proposals.

Clause	Explanatory Memorandum	Belfast City Council Response
70	<p>Clause 70: Community planning partners</p> <p>This clause provides a power for the Department by order to specify the bodies or persons who are to be the community planning partners of a council. Such an order can only be made following consultation with the bodies or persons concerned, and with district councils and other bodies as the Department considers appropriate. A power is also provided for the Department, by order, to amend, to add to or to remove bodies from those listed.</p>	<p>Clause 70 and 78</p> <ul style="list-style-type: none"> The Council would note that the Bill make a clear distinction between what is required between 'community planning partners 'who must 'participate in community planning and 'assist the council', and the NI Departments who will have 'a duty to promote and encourage community planning'. It is also important to note that local authorities within other jurisdictions have larger remits and deliver other key public services such as e.g. health, education, and housing; which are not the case in Northern Ireland. Furthermore, as noted at Clause 74 of the Bill, the Northern Ireland Departments will remain responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners. The effectiveness of the community planning process and the delivery of improved outcomes will be dependent on the strength of relationships between councils, departments and other public bodies. The Council would therefore recommend that the legislative provision in Part 10 should be further strengthened, particularly in relation to the collaborative use of resources and alignment of plans. The Council would also suggest that consideration be given to the possible introduction of a statutory duty upon all relevant public bodies (including Gov Departments) and statutory agencies to participate and contribute to the community planning process. At present there is no mechanism included in the Bill for redress for non-compliance with community planning duty. The Department has advised that this may be a role for the Partnership Panel but the Council would suggest that a more robust accountability mechanism is put in place.
	<p>Clause 71: Production of community plan</p> <p>This clause specifies that, once a council and its community planning partners have reached a consensus as to the community plan objectives and actions, the council must produce a document (known as a community plan) capturing that consensus. This must be as soon as practicable after the consensus has been reached. The clause requires the plan to contain appropriate objectives and actions for meeting those objectives.</p>	<ul style="list-style-type: none"> No specific comments

Clause	Explanatory Memorandum	Belfast City Council Response
72-74	<p>Clauses 72 and 73 – Review of community plan These clauses require a council and its community planning partners to review the community plan at least every four years to consider the extent to which objectives have been met and, if not met, the progress made towards the objectives. They also specify the actions that may be taken following the review.</p> <p>Clause 74: Monitoring This clause requires a council, and its community planning partners, to make arrangements for monitoring progress made on meeting the community planning objectives and the associated actions. It also places a duty on a council to publish a statement at least every two years on the progress which has been made towards meeting the community planning objectives and undertaking the actions attributed to the various community planning bodies.</p>	<ul style="list-style-type: none"> • While councils will be required to report on progress, it is unclear how accountability will be shared and made possible, particularly as NI Departments are responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners. There may be a risk that the Departments do not provide the appropriate oversight into the contribution of their agencies to the community plan and this could impact on the councils' ability to deliver progress on the ground. • It is unclear how community planning "performance" will be assessed. In Part 12, Performance Improvement, councils will be subject to a performance duty which defines a council's strategic objectives as 'the objectives contained in its current community plan'. Further guidance may detail this, but issues regarding accountability (see above) will need to be taken into account.
75	<p>Clause 75: Implementation This clause requires that a council or a community planning partner must take all reasonable steps to perform any action or exercise any function assigned to it in the community plan.</p>	<ul style="list-style-type: none"> • The Council would reiterate the apparent distinction made in the Bill between 'community planning partners' and central government departments and would contend that Clause 75 be extended to include Government Departments.

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76	<p>Clause 76: Community involvement</p> <p>This clause requires a council and its community planning partners to make arrangements to involve, and take account of the views of:</p> <ul style="list-style-type: none"> • local residents; • non-residents who receive services provided by the council or one of its community planning partners; • representatives of voluntary organisations; • representatives of business interests; and • anyone else whom the council considers to have an interest in improving the district's economic, social or environmental well-being <p>...in connection with community planning, preparation of a community plan and the review of a community plan.</p>	<ul style="list-style-type: none"> • The Council would welcome the provisions as set out within the Bill.
77	<p>Clause 77: Guidance</p> <p>This clause provides a power for the Department to issue guidance in relation to community planning to which a council and its community planning partners must have regard.</p>	<ul style="list-style-type: none"> • The Council believes that it is essential that any such guidance is based upon an understanding of the current practice in partnership working within local council areas and any learning emerging from this, including any on-going "pilot" work with respect to community planning. Community planning is an evolving process and by its nature will require compromise and flexibility. This will need to be reflected in any guidance. • Again, the Council would urge that local government must be fully involved in the development of the community planning framework and associated guidance to ensure that local government experience and knowledge is taken into account. This will not only ensure that the framework is achievable but will set the basis for ongoing partnership working between local and central government. • The Council would welcome the intention by the Department to consult with councils before issuing any guidance on any aspect relating to community planning and believe that this would ensure that local circumstances and experiences are adequately taken into account - a one size may not fit all - and this may need to be reflected in the guidance and reporting arrangements. Any such guidance must take account of the potential lead

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78	<p>Clause 78: Duty of departments in relation to community planning</p> <p>This clause places a duty on Northern Ireland Departments, as far as it is reasonably practical for them, to promote and encourage community planning when exercising a function which might affect community planning, and to have regard to any implications of a community plan on the exercise of functions.</p>	<p>in time required to develop processes and build the necessary relationships to deliver community planning and local results.</p> <ul style="list-style-type: none"> The Council would recommend that there should be no distinction made between the duty placed on Departments in relation to community planning and that placed upon 'community planning partners'. The Council firmly believe that for community planning to work, all partners must be statutorily obliged to participate and contribute to the process. There should be a shared commitment to align plans and resources to address identified needs insofar as practical. This will also help assist in the alignment and delivery at a local level key central government priorities as set out within the Programme for Government and Investment Strategy.
79	<p>Clause 79: Establishment of bodies corporate</p> <p>This clause provides a power for the Department, by order, to establish corporate bodies to co-ordinate and further community planning following application by a council and one or more of its community planning partners, and consideration of a report on matters specified in subsection (2) of the clause.</p>	<ul style="list-style-type: none"> No specific comments
	<p>Clause 80: Amendments to the Planning Act (Northern Ireland) 2011</p> <p>This clause amends the Planning Act (Northern Ireland) 2011 to provide a statutory link between community planning and spatial planning.</p>	<p>Clause 82</p> <ul style="list-style-type: none"> The Council would welcome the formal linkages being made between community planning and spatial planning
PART 11 - GENERAL POWERS OF COUNCILS		
82 - 86	<p>Clause 82: Council's general power of competence</p> <p>This clause provides a general power of competence for councils. It gives councils the same power to act that an individual generally has and provides that the power may be</p>	<ul style="list-style-type: none"> The introduction of the general power of competence is welcomed.

Clause	Explanatory Memorandum	Belfast City Council Response
	<p>used in innovative ways, that is, in doing things that are unlike anything that a council – or other public body – has done before, or may currently do. Where the council can do something under the power, the starting point is that there are to be no limits as to how the power can be exercised other than it cannot be used outside Northern Ireland.</p> <p>Clause 83: Boundaries of the general power</p> <p>This clause sets out the boundaries of the general power, requiring councils to act in accordance with statutory limitations or restrictions. Restrictions that apply to existing powers that are overlapped by the general power are applied to the general power. So for instance, if an existing power requires a particular procedure to be followed, the same procedure will apply to the use of the general power to do the same thing. It also applies any express prohibitions, restrictions and limitations within primary or secondary legislation, to the use of the general power.</p> <p>The general power does not give councils power to delegate or contract out delivery of their functions, nor to alter political governance arrangements.</p> <p>Clause 84: Limits on charging in exercise of the general power</p> <p>This clause restricts the ability of a council to charge for providing a service to a person using the general power, or where they are using an existing provision which provides a similar power. If no specific charging power exists, councils can charge up to full cost recovery for discretionary services – that is those that they are not required to provide to a person, where that person has agreed to their being provided.</p> <p>Clause 85: Powers to make supplemental provision</p> <p>This clause provides the Department with powers to remove or change statutory provisions that prevent or restrict the legal capacity of councils to use the general power to do things that an ordinary individual can do, and to remove overlaps between the general power and existing powers. Powers are also</p>	

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	<p>provided for the Department to restrict what a council may do under the general power or to make its use subject to conditions. Before exercising any of these powers the Department must consult with any person, or their representatives, substantially affected by the proposal. This duty to consult does not apply to orders that only amend an earlier order so as to apply it to further councils or disapply it in relation to a particular council.</p> <p>Clause 86: Limits on the power conferred by clause 85</p> <p>This clause requires the Department, before exercising the power provided by clause 85, to consider whether certain specified conditions have been met.</p> <p>These conditions are: that the effect of the provision made by the order is proportionate to its policy objective, in other words that the Department considers that there is an appropriate relationship between the policy aim and the means chosen to achieve it; that the provision made by the order, taken as a whole, strikes a fair balance between the public interest and the interests of the persons adversely affected by the order, including any new or increased burdens; that the provision does not remove any necessary protection such as protections in the areas of civil liberties, health and safety, the environment of national heritage; the provision will not prevent any person from continuing to exercise any right or freedom which the person might reasonably expect to continue to exercise such as, for example, rights conferred by the European Convention on Human Rights; and that the provision is not constitutionally significant. This last condition would allow orders to amend enactments which are considered to be constitutionally significant, but only if the amendments are not themselves constitutionally significant.</p> <p>The clause provides that the Department may not make orders that delegate or transfer legislative powers, or abolish or vary any tax.</p>	

Clause	Explanatory Memorandum	Belfast City Council Response
<p>PART 12 – PERFORMANCE IMPROVEMENT</p> <p>87</p>	<p>Clause 87: Improvement: general duty</p> <p>This clause requires a council to make arrangements to secure continuous improvement in the exercise of its functions. In doing so, a council must have regard in particular to the need to improve the exercise of its functions in terms of: strategic effectiveness; service quality; service availability; fairness (equity); sustainability; efficiency and innovation. These terms are defined in clause 89.</p>	<ul style="list-style-type: none"> • There appears to be an overreliance within the Bill, on ‘Best Value’ to drive service improvement rather than setting the performance framework within the context of community planning and providing councils with the appropriate flexibility to address local needs. • The Council would recommend that the committee should advocate for the ability for local government to have control over its own improvement, through a collaborative agreed approach, rather than having to deal with an outdated top-down legislative arrangement. • The current policy shift in neighbouring regions is towards greater self-regulation and away from overly bureaucratic and centralised scrutiny/inspection, subject to the achievement of a set of agreed (with central government) targets or outcomes. • In preparation for the proposed development of a new performance framework for Northern Ireland, Belfast City Council commissioned UK Research and Consultancy Services Ltd, headed up by former Director General of the Audit Commission in Wales, Dr. Clive Grace, to provide an advocacy and recommendations report to help inform our thinking. A summary of the key findings of the report is appended to this response, and the Committee may find it helpful to invite Dr Grace to provide evidence to the Committee to inform their thinking on this issue. • This is particularly pertinent given that Part 12 of the Bill, relating to Performance Improvement arrangements, appears to mirror much of what is contained in the part 1 of the Local Government (Wales) Measure 2009. • The Council would highlight that whilst there is no objection to the adoption of the Welsh model, it is important that the legislation and any supporting guidance takes account of the specific circumstances in Northern Ireland and the current absence of a support infrastructure. • It should be noted that in Wales, there is significant regional support structures in place to support and promote local government improvement processes. There are currently no similar support arrangements within Northern Ireland and we would suggest that the establishment of a regional support structure to support continuous improvement and community planning is included in the Bill.

Clause	Explanatory Memorandum	Belfast City Council Response
88	<p>Clause 88: Improvement objectives</p> <p>This clause requires a council, for each financial year, to set itself improvement objectives for improving the exercise of particular functions of the council and to have in place arrangements to achieve those objectives. A council must frame</p>	<p>It is noted that this Part of the Bill would appear to depart from the Local Government (Best Value) Act (NI) 2002, which referred to ‘continuous improvement in the way in which...functions are exercised, having regard to a combination of economy, efficiency and effectiveness’.</p> <p>Clauses 87- 89 of the Bill extend the areas which councils must have regard to in terms of improving the exercise of its functions in terms of: strategic effectiveness; service quality, service availability; fairness (equity); sustainability; efficiency and innovation. These objectives are identical to those specified in the Welsh legislation and do not necessarily reflect the Northern Ireland context.</p> <p>In the absence of further definition on the performance objectives as set out, the Council would be concerned that there is now no explicit reference made within the Bill to ‘economy’ and, therefore potentially removing considerations around cost and value for money. The Council would also refer to the three criteria used by the National Audit Office to assess the value for money of government spending (the optimal use of resources to achieve the intended outcomes) as set out below:</p> <ul style="list-style-type: none"> • Economy: minimising the cost of resources used or required (inputs) – spending less; • Efficiency: the relationship between the output from goods or services and the resources to produce them – spending well; and • Effectiveness: the relationship between the intended and actual results of public spending (outcomes) – spending wisely. <ul style="list-style-type: none"> • Presently the Local Government (Best Value) Act (Northern Ireland) 2002 states that a council ‘shall make continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.’ • It is noted that this Part of the Bill would appear to depart from the Local

Clause	Explanatory Memorandum	Belfast City Council Response
	<p>each improvement objective so as to bring about improvement in at least one of the specified aspects of improvement as defined in clause 89.</p>	<p>Government (Best Value) Act (NI) 2002. Clauses 87- 89 of the Bill extend the areas which councils must have regard to in terms of improving the exercise of its functions in terms of: strategic effectiveness; service quality; service availability; fairness (equity); sustainability; efficiency and innovation. These objectives are identical to those specified in the Welsh legislation and do not necessarily reflect the Northern Ireland context.</p> <ul style="list-style-type: none"> • In the absence of further definition on the performance objectives as set out, the Council would be concerned that there is now no explicit reference made within the Bill to 'economy' and, therefore potentially removing considerations around cost and value for money. • The Council would also refer to the three criteria used by the National Audit Office to assess the value for money of government spending (the optimal use of resources to achieve the intended outcomes) as set out below: <ul style="list-style-type: none"> - Economy: minimising the cost of resources used or required (inputs) – spending less; - Efficiency: the relationship between the output from goods or services and the resources to produce them – spending well; and - Effectiveness: the relationship between the intended and actual results of public spending (outcomes) – spending wisely. • The Council would highlight that in considering each of the performance objectives individually and not collectively; there exist potential tensions between some of the objectives, for example, the interplay and balance between service availability and efficiency. • Similar to the Best Value Act, the Council would recommend that the Department ensures that councils are enabled to consider and take into account of a combination of and interplay between the performance objectives. • The Council would further highlight that there would appear to be tensions and potential duplication between these provisions and of existing statutory duties of councils such as those expressed in S75 of the Northern Ireland Act 1998 and S25 of the NI (Miscellaneous Provisions) Act 2006 (duplicating the sustainability requirement). It is therefore recommended that the defined objectives are reviewed and further developed and defined in the context of Northern Ireland.

Clause	Explanatory Memorandum	Belfast City Council Response
89	<p>Clause 89: Improvement Supplementary</p> <p>This clause defines the aspects of improvement which feature in this Part of the Bill, and allows a council to demonstrate improvement in a variety of different ways. The clause also creates a number of aspects of improvement which are used to assess whether improvement has taken place. Explanations of the definitions and how they will operate in practice, such as illustrative examples and circumstances in which a council might apply the aspects of improvement, will be set out in guidance. A power is provided for the Department to amend, add to or remove aspects of improvement.</p>	<ul style="list-style-type: none"> • Some of the improvement objectives are also vague and unclear (e.g. fairness) and could leave Council's open to legal challenge. • In general the Council would welcome detailed guidance on how these areas may be applied in practice including information about how precisely such improvement might be defined and how they should themselves be prioritised (in case of conflicts between two or more of them e.g. service availability and efficiency) or where instances where applying a value in one geographical area conflicts with its application in another location (e.g. service availability and fairness). • Clause 89 (d)(i) refers to 'particular groups', with no further explanation. The committee is requested to seek clarification on this wording. • Clause 89 (d)(ii) places improvement of social wellbeing under the fairness category, whereas local government would view social well-being as one of the three pillars of sustainable development, which are replicated in the Part 10 community planning clause 69(2)(a). It is recommended that the Committee gives particular scrutiny to the list of improvement objectives and ensures that there are clear definitions for each category. • Clause 89(2) refers to the council's community plan, but there is no reference to its corporate plan. The Committee may wish to consider whether the relationship between the two needs to be further developed within this clause.
90	<p>Clauses 90: Consultation on Improvement duties</p> <p>This Clause places a duty on a council, in fulfilling its duty and setting improvement objectives, to consult with representatives of people falling within specified categories;</p> <ul style="list-style-type: none"> • persons liable to pay rates; • those who use or are likely to use services provided by the council; and • persons appearing to the council to have an interest in the district. 	<ul style="list-style-type: none"> • The Council would have no objections to this clause. It is the view of local government that any performance framework which is implemented should be based on a number of principles, one of which is that councils are accountable to their ratepayers. • The Council would seek clarification on how the duty to consult sits with Part 10, Clause 76 of the Bill relating to a duty to take account of the views of various parties in the production of community plans, is detailed.

Clause	Explanatory Memorandum	Belfast City Council Response
91	<p>Clause 91: Appropriate arrangements under sections 87(1) and 88(2)</p>	<ul style="list-style-type: none"> The Council has no objections to this clause, provided a collaborative, partnership approach with local government is taken forward to the production of departmental guidance.
92	<p>Clause 92: Performance indicators and performance standards</p> <p>This clause provides the Department with a power to prescribe by order factors of performance (performance indicators) against which a council's performance will be measured. In addition, the Department may set performance standards in respect of the performance indicators set by it. This clause also gives the Department the discretion to specify different performance indicators and standards for different councils.</p> <p>Before specifying performance indicators or standards, the Department must consult with councils, bodies representative of councils and others as appear appropriate. A council must make arrangements to exercise its functions so that any performance standards are met.</p>	<ul style="list-style-type: none"> The Council would recommend that any such performance indicators are developed in partnership with local government. It is important that local government takes the initiative in relation to performance improvement and ensures that they are jointly responsible for setting the performance agenda - rather than having something imposed upon them by central government. The Council believe that this is important as it would minimise the risk of performance measures being agreed which are at best of no value to the local authority or, at worst obstructive to their improvement efforts.
93	<p>Clause 93 Collection of information relating to performance</p> <p>These clauses require a council during each financial year to collect information which will allow it to assess its performance in achieving its improvement objectives and to measure its performance against performance indicators or standards set by the Department or any other indicators or standards which the council chooses to use.</p> <p>A council is required to use this information to measure its performance against a previous year's performance and compare its performance, so far as is practicable, with the performance of other councils and other public bodies. In addition, a council must use the information it collects to assess whether it could improve its performance and, based on that, must decide on steps to take to improve its performance in exercising its functions.</p> <p>A requirement is placed on a council to make arrangements to publish specified information relating to its performance before</p>	<ul style="list-style-type: none"> The Council would recommend that any process introduced for the collection of performance information should be as streamlined as possible and not place an unduly over bureaucratic burden on Councils. The Council would recommend that consideration be given to a system based approach being introduced such as Ffyoan, a performance system introduced and funded by Welsh Government to meet the performance management requirements of local authorities, fire and rescue services, national park authorities and their partners.

Clause	Explanatory Memorandum	Belfast City Council Response
	<p>31 October immediately following the financial year to which it relates. A council must ensure it publishes a summary of any report relating to a special inspection by the Local Government Auditor.</p> <p>A council is also required to publish an 'improvement plan' which sets out its plans for discharging its duties under clauses 87, 88 and 92 for a financial year and, if appropriate, subsequent years. This must be published as soon as practicable after the start of the financial year to which it relates.</p>	
94	<p>Clause 94 Use of Performance Information</p>	<ul style="list-style-type: none"> The Council would have no objections to this clause, and is fully supportive of the sharing of good practice between councils.
95	<p>Clause 95 Improvement planning and publication of improvement information</p>	<ul style="list-style-type: none"> No specific comments
96-100	<p>Clauses 96 to 100: Improvement audits and assessments</p> <p>Clause 96 requires the Local Government Auditor to carry out an audit to assess whether a council has discharged its duties under clause 95 and acted in accordance with any guidance issued by the Department.</p> <p>Clause 97 places a duty on the Local Government Auditor to carry-out a forward-looking assessment of how far a council is likely to meet the requirements of this Part in that year: this may cover more than one year if the Local Government Auditor so wishes.</p> <p>Clause 98 places a duty on the Local Government Auditor to produce a report or reports for each council in relation to his duties under clauses 96 and 97. The report or reports should:</p> <ul style="list-style-type: none"> certify the Local Government Auditor has carried out the audit under clause 96 and state whether as a result it is believed that the council has discharged its duties under clause 95 and acted in accordance with guidance; certify that the Local Government Auditor has carried out the assessment under clause 97 and state whether as a result of the assessment it is believed that the council is likely to 	<ul style="list-style-type: none"> If the arrangements specified in Part 12 of the Bill are taken forward, the Council would have concerns in relation to the capacity and resourcing of the local government auditor, which will need to be enhanced. This is likely to place an additional cost on councils. The Council would also have concerns in relation to the proposed extension of the role of the auditor in terms of the auditing of councils' corporate and/or improvement plans, as this would potentially undermine the democratic process. The Council would recommend that the scrutiny of corporate plans should be undertaken by elected members who set the priorities for the organisation and should oversee delivery against these priorities. The proposed use of the external auditor in this regard contradicts what is happening in the rest of the UK. The Council would urge that further consideration needs to be given to resource and capacity implications resulting from any proposed extension to the role of the local government auditor. The Council would see potential benefit in the local government auditor being asked to provide assurance on the implementation of the agreed framework.

Clause	Explanatory Memorandum	Belfast City Council Response
	<p>comply with the requirements of this Part;</p> <ul style="list-style-type: none"> • recommend (if appropriate) any action the council should undertake to discharge its duties or to act in accordance with guidance; and • state whether the Local Government Auditor is minded to undertake a special inspection under clause 101. <p>Copies of the reports should be sent to the relevant council and the Department by 30 November each year. This date may be changed by the Department by order.</p> <p>Flexibility is provided for the Local Government Auditor, in circumstances in which it would be unreasonable or impractical to issue a report on a specified council by the specified date to ask the Department for an extension to complete the audit and assessment reports for one or more named councils (without the need for an order)</p> <p>Clause 99 requires a council to respond to a report or reports from the Local Government Auditor if it contains:</p> <ul style="list-style-type: none"> • a recommendation to the council as to the action it should take to comply with the requirements of this Part; or • a statement that the Local Government Auditor intends to undertake a special inspection. <p>The council must prepare a statement setting out the actions that the council proposes to take and the timetable for doing so. The council must also include the statement in the improvement plan for the next financial year. Where a report includes a recommendation that a Department use the power of intervention in clause 103, the council must also send a copy of its statement to the Department within 30 working days.</p> <p>Clause 100 requires the Local Government Auditor to produce and publish each year an annual improvement report for each council. The report must contain a summary of the results of any report issued under clauses 98 and 102. The Local Government Auditor must consider in the light of the report whether to:</p>	

Clause	Explanatory Memorandum	Belfast City Council Response
	<ul style="list-style-type: none"> • make a recommendation that a department exercise its powers under clause 103; and • exercise any of the Local Government Auditor's functions in relation to the council. 	
103	<p>Clause 103: Powers of direction, etc.</p> <p>This clause contains powers for a relevant department to intervene in and direct a council which is failing, or is at risk of failing to comply with this Part of the Bill. The clause also sets out the options open to the relevant department.</p>	<ul style="list-style-type: none"> • The Council believe that the powers of direction should be supplemented with a new duty on Ministers to offer support and advice prior to issuing direction similar to provisions available in other jurisdictions including Wales. • The Council feel it is unfortunate that one of the most supportive elements of the Welsh legislation (which is otherwise almost entirely replicated here) has not been included - the obligation on Ministers to "...provide assistance to the authority.." (g) (i) prior to issuing direction. We believe that incorporating such an obligation within our own legislation would demonstrate a greater sense of shared responsibility for improvement across the sector. • The Council would also recommend that the power of direction extended to other relevant departments must be supported by the introduction of clear guidance on the use of such powers. • The Council would further recommend that the ability of other NI departments (in addition to DoE) to direct councils must be restricted to matters pertaining directly to the functions of that Department which are transferring to local government, and would seek an amendment to this clause (possibly at Clause 103 (3) to that effect).
104	Power to modify statutory provisions and confer new powers	<ul style="list-style-type: none"> • No specific comments
105	Application of certain local government audit provisions	<ul style="list-style-type: none"> • No specific comments
PART 13 – PARTNERSHIP PANEL		
106	Clause 106 requires the Department to establish a Partnership Panel for Northern Ireland whose members, to be appointed by the Department, are to comprise Northern Ireland Ministers and	<ul style="list-style-type: none"> • The Council would welcome the establishment of the Partnership Panel and believe that this would provide a further mechanism to enhance the engagement between central and local government. The Council would

Clause	Explanatory Memorandum	Belfast City Council Response
	<p>members of district councils. Before appointing district council members, the Department will be required to consult appropriate bodies representative of local government.</p> <p>The functions of the Panel will be to advise the Northern Ireland Ministers on matters affecting their functions, to make representations on matters affecting, or of concern to, those involved in local government in Northern Ireland, and also to give advice to those involved in local government in Northern Ireland.</p>	<p>highlight the importance that the local government representation be nominated by the sector and agreed by the Department and should include representation from each of the new councils at a minimum.</p>
<p>PART 14 – CONTROL OF COUNCILS BY NORTHERN IRELAND DEPARTMENTS</p>		
<p>107 - 109</p>	<p>Clause 107: Power of any Northern Ireland department to direct council to make reports</p> <p>This clause re-enacts section 127 of the Local Government Act (Northern Ireland) 1972 but extends it to all departments, not just DOE. It provides a power for any department to require a council to make reports and returns and provide information in relation to the exercise of its functions specified in a direction to that department. A duty is placed on a council to comply with any such direction.</p> <p>Clause 108: Inquiries and investigations</p> <p>This clause re-enacts section 128 of the Local Government Act (Northern Ireland) 1972 but extends it to all departments, not just DOE. It provides the power for any department to instigate an inquiry or an investigation into the administration of any statutory provisions relating to the functions of any council or any committee or sub-committee of a council.</p> <p>Clause 109: Power of any Northern Ireland department to intervene in case of default by council</p> <p>This clause re-enacts section 129 of the Local Government Act (Northern Ireland) 1972 but extends it to all departments, not just DOE. It provides a power for any department, if it is satisfied following an inquiry or investigation that a council has failed to discharge any of its function, to intervene in the operation of the</p>	<ul style="list-style-type: none"> • The Council notes that the power of intervention, previously provided to the DoE (but rarely used), is now extended to all NI departments. Whilst recognising that specific functions will transfer from central to local government as part of the LGR process, the specific rationale for such provisions may need further clarification. • The Council considers the language used in these clauses, and the scope of powers conferred on departments to be contradictory to the spirit of fostering a more collaborative working arrangement between central and local governments. The Council would remind the Committee of the comments set out above in relation to Clause 103, and would again note that it will be important for guidance to be produced for government departments to ensure that they don't begin to micro-manage councils and do not place unrealistic reporting expectations on them. • It is particularly noted that under this part of the Bill, there is no requirement to consult, either with local government in general, or with individual local councils. The Council would recommend that a clause of this nature must be included in this section. • The Council would further recommend that the ability of other NI departments must be restricted to matters pertaining directly to those departments who have transferred functions which they retain the policy responsibility.

Clause	Explanatory Memorandum	Belfast City Council Response
	council. This intervention may take the form of either a direction requiring the council to specified actions within a specified timeframe, or if such a direction is not complied with to arrange for the exercise of those functions other than by the council.	
PART 15 – AMENDMENTS OF THE 2005 ORDER		
110	<p>Clause 110: The local government auditor</p> <p>This clause amends the Local Government (Northern Ireland) Order 2005 to reflect the Comptroller and Auditor General's responsibility for local government audit with the Northern Ireland Audit Office (NIAO), and structural and procedural changes within the local government audit section. It provides for the designation of a member of staff of the NIAO as the local government auditor, and for arrangements to be made for members of staff in the NIAO to assist in the performance of the local government auditor's functions.</p>	<ul style="list-style-type: none"> The Council welcomes the insertion of a provision to the effect that any sums payable by the local government auditor in consequence of any liability for breach of duty incurred in the exercise of his/her functions will be charged on and issued out of the Consolidated Fund.
111	<p>Clause 111: Power to repeal provisions relating to surcharge, etc.</p> <p>This clause provides a power for the Department to remove the provisions relating to the surcharge of councillors, contained in the Local Government (Northern Ireland) Order 2005, by regulations.</p>	<ul style="list-style-type: none"> No specific comment
112	Minor and consequential amendments	<ul style="list-style-type: none"> No specific comment
PART 16 – MISCELLANEOUS		
113	<p>Clause 113: Guidance</p> <p>This clause provides a power for the Department to issue guidance on any aspect provided for in the Bill. A duty is placed on a council to have regard to any such guidance.</p>	<ul style="list-style-type: none"> The Council would welcome Clause 113(2) and the associated provision which ensures that any guidance to be issued under this legislation will be consulted upon with Councils.
114	Clause 114: Transitional rate relief in consequence of	<ul style="list-style-type: none"> The Council welcomes the inclusion of the necessary measure to give effect to the proposed transitional rate convergence relief.

Clause	Explanatory Memorandum	Belfast City Council Response
	<p>changes in local government districts</p> <p>This clause amends the Rates (Northern Ireland) Order 1977 to provide a transition scheme for managing rates convergence where there are wide disparities in the level of district rates between the merging councils.</p>	
115	<p>Clauses 115: Commencement of the Local Government (Boundaries) Order (Northern Ireland) 2013</p> <p>This clause amends Article 1(4) of the Local Government (Boundaries) Order (Northern Ireland) 2012 to ensure there is clarity on which hereditaments the new councils will have the power to make a rate in respect of before they take on full responsibility for all their functions on 1 April 2015.</p>	No specific comment
116	<p>Clause 116: Exclusion of non-commercial considerations</p> <p>This clause re-enacts the provisions in section 2 of the Local Government (Best Value) Act (Northern Ireland) 2002 to provide a power for the Department to specify a matter that should cease to be a non-commercial consideration for the purposes of district council contracts.</p>	No specific comment
117	<p>Clause 117: Control of disposals and contracts of existing councils and their finances</p> <p>This clause amends the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 to supplement the controls on existing councils in the run up to reorganisation to take account of the Local Government Finance Act (Northern Ireland) 2011. The clause also adds controls in respect of the borrowings and reserves on the existing councils and, extends the controls provisions to include the new councils whilst operating in shadow mode.</p>	No specific comment
118 - 120	<p>Clauses 118 to 120</p> <p>These clauses re-enact the provisions in sections 34, 35 and 39</p>	<ul style="list-style-type: none"> In relation to clause 120, the Council would query the arrangements for insurance and indemnity for councillors on outside bodies. The Committee may wish to clarify with the Department if a further clause is necessary on

Clause	Explanatory Memorandum	Belfast City Council Response
121	<p>of the Local Government Act (Northern Ireland) 1972 in respect of persons ceasing to hold office, validity of acts done by unqualified person and insurance against accidents to councillors.</p> <p>Clause 121: Schemes for transfers of assets and liabilities This clause requires the Department, and any other department transferring a function to the new councils, to make a scheme or schemes for the transfer of assets and liabilities of a local government body or a department to a new local government body. It also introduces Schedule 10 which deals with the transfer of assets and liabilities, and staff, from a local government body or department to a new local government body.</p>	<p>that issue.</p> <ul style="list-style-type: none"> • The Council would note that previous LGR deliberations, it was proposed that the legislation would provide a 'standard' rule for the potential transfer of assets and liabilities from the 26 council structure to the new 11 council structure. This would avoid the need for Transfer Schemes for the majority of local government assets. • The Council would seek assurance that the model Transfer Scheme being drafted by the Department will include a standard rule for the transfer of assets and liabilities from the predecessor councils to the successor councils. • Any additional transfer schemes will therefore only be required to capture the transfer of property, rights and liabilities which are outside this standard rule arrangement.
122 - 128	<p>Clause 122: Compensation for loss of office or diminution of emoluments Clause 123: Supplementary and transitional provisions for the purposes of this Act and other purposes Clause 124: Interpretation Clause 125: Regulations and orders Clause 126: Minor and consequential amendments&repeals Clause 127: Commencement Clause 128: Short title</p>	<p>No specific comment</p>
Schedule 1	<p>Disqualifications for being elected or acting as a councillor</p>	<ul style="list-style-type: none"> • The Council are aware that regulations will designate those employee roles which would be disqualified from acting as councillors. • We are aware that these regulations are unlikely to be in place in time for the 2014 elections but would nevertheless seek assurance from the Department that robust guidelines will be provided to deal with any potential

Clause	Explanatory Memorandum	Belfast City Council Response
		<p>conflict of interest as a result of an employee also acting as a councillor</p> <ul style="list-style-type: none"> The Council would raise concerns as to how this will work in practice. For example, how would the council deal with such a person with regard to disciplinary, grievance procedures etc and how would such an officer be able to fulfil his or her party role without breaching the code of conduct with regard to political neutrality and impartiality? The Council would suggest that similar rules apply as do elsewhere that an officer can stand for and be elected to any council except the one for which they work.
Schedule 2	Declaration of a councillor	<ul style="list-style-type: none"> No specific comments
Schedule 3	Positions of responsibility	<ul style="list-style-type: none"> Part 3 Paragraph 14 – The Council are unsure as to how anyone can know where a Mayor may be if he is absent. How can we know if he has been “continuously absent from the district”?
Schedule 4	Appointment of councillors to committees	<ul style="list-style-type: none"> The Council notes that the application of the Quota Greatest Remainder process for the appointment of councillors onto committees is to be employed separately for each committee rather than grouping all committee places together into an overall “pool” and the effect this will have on individual Parties’ will be dependant both on the outcome of the election and on the choice made as to the number of places on each committee.
Schedule 5	Declaration on appointment to committee of person who is not a councillor	<ul style="list-style-type: none"> No specific comments
Schedule 6	Overview and scrutiny committees: voting rights of co-opted members	<ul style="list-style-type: none"> No specific comments
Schedule 7	Meetings and proceedings	<ul style="list-style-type: none"> The Council notes the proposal that a meeting of the council can be requisitioned by 5 members rather than what had been previous the case - ‘5 or one-fifth, whichever is the greater’ The Council would seek clarification on the rationale for the proposed reduction in the threshold and whether the previous provisions would be more relevant given the scale and number of elected Members of the 11 new councils. The Council would highlight the potential conflict between Schedule 7 (5) stating that the summons for a council meeting has to be published at least

Clause	Explanatory Memorandum	Belfast City Council Response
		3 days before the meeting and Clause 47(3) of the Bill which indicates that documents and papers have to be available for inspection at least 5 days before a meeting?
Schedule 8	Access to information: exempt information	<ul style="list-style-type: none"> No specific comments
Schedule 9	Minor and consequential amendments relating to local government audit	<ul style="list-style-type: none"> No specific comments
Schedule 10	Transfer schemes	<ul style="list-style-type: none"> No specific comments
Schedule 11	Minor and consequential amendments: general	<ul style="list-style-type: none"> No specific comments
Schedule 12	Repeals	<ul style="list-style-type: none"> No specific comments

Appendix 1

Extract from Clive Grace performance and accountability report.

Other parts of the UK have changed the number of councils and introduced community planning. But **no one of them has tried to do this simultaneously and also transfer new functions to local authorities. And all of them started from a strong base in terms of the capacity of local councils, government departments, their local government associations and audit offices.** To get from where it is now to where it wishes to be Northern Ireland will need to develop:

- Significant capacity in people, systems, and machinery
- Stronger working relationships between local government and departments within the Executive;
- More effective partnership working between councils and regional bodies;
- Policies, planning and performance frameworks that are better aligned with both local and national priorities; and
- A performance oriented culture which means that public services are open to challenge and alive to the need for change.”

It is important to be clear at the outset that none of the approaches adopted elsewhere provides a perfect solution. All performance frameworks involve trade-offs and they need to be sufficiently flexible to allow development and fine-tuning over time as priorities, performance and capacity evolves. **Existing performance frameworks from elsewhere cannot be ‘cut and pasted’ to Northern Ireland. There are no ‘off the shelf’ solutions.**

We recommend that the performance framework for local government in Northern Ireland is therefore constructed as a whole system which takes account of the interactions between institutions and the need to align policy instruments with the both policy objectives and the capacity of stakeholders.

It is **important that the initial framework which is put in place in Northern Ireland is sufficiently pliable to adapt and change over time as priorities change and, hopefully, as the capacity of local government and other stakeholders increases.**

Finally, and crucially, it is very **important that the performance is designed as a collaborative system in which localist and centralist instincts and ideologies are subservient to considerations of the most effective means of achieving the best outcomes** for the people and communities of Northern Ireland. This has some very important and very practical implications. It means that:

1. The performance framework must **reflect and promote the delivery of local and national priorities and encourage shared responsibility for performance between local government and the Executive.**
2. Councils should take responsibility for own performance and **there should be a strong sense of a collective responsibility in local government for ensuring that the sector as a whole delivers.**
3. Councils need to welcome legitimate Ministerial interest in their performance and accept external challenge and comparison.
4. Councils should seek out peer challenge and support from outside Northern Ireland, and the Executive and **the local government association should invest in leadership development, support networks and capacity building in the new councils.**

5. **There should be a commitment to review and adapt the performance framework as local government capacity and capability grows** and confidence is built between councils, the Executive and other stakeholders.

These principles provide important benchmarks against which the performance framework can be assessed. They also point to some of the actions and attributes that will be required from the key stakeholders:

- Councils will need to be self aware and self improving, willing to identify and address weaknesses in performance.
- **The Executive needs to specify clear priorities and be able to coordinate the policies and actions across its own departments. It needs to see devolving functions and ‘letting go’ of budgets as a way of gaining a more effective partner in local government, rather than as losing a contest.**
- **The Audit Office needs to become more knowledgeable and engaged in order to be able to challenge councils and support them in improving corporate capacity and service delivery.**
- **The Northern Ireland Local Government Association needs to work with the Executive and professional bodies to develop appropriate support and capacity building programmes for new councils, including councillor and officer development. We also recommend that it engages with councils, the Audit Office and the Executive to develop a data sharing function and performance improvement body (perhaps governed by nominees from local councils, NI Executive, professional bodies, consumer interests).**
- **Regional bodies and other local agencies need to be willing to engage with community planning and respect local government’s leadership of the process.**
- **Professional bodies should contribute the recruitment and development of managerial capacity and to policy development.**

The changes envisaged are both multi-dimensional and more far reaching than local government reorganisation in Scotland and Wales in the mid-1990s. Moreover, **local government is starting from a lower base in terms of capacity and existing powers.** The programme will lead to change not just in the number and functions of local government but also in the relationships – between councils, with other local and regional bodies, and with the Executive.

This clearly calls for a new framework to ensure accountability and achievement, and we believe that it is important that the framework is designed and implemented as a ‘whole-system’. By this we mean – simply, but importantly – that **the framework which emerges must have regard to all the relevant elements, including the available skills and capacities, which can or may reasonably be deployed to make it work well. It is important to be realistic and to recognise the likelihood that any framework will evolve over time as needs and capacities develop.**

It would be valuable to develop a strong and comprehensive overall Project Plan for local government reform which is agreed between the Executive and local government. **Reform on this**

scale requires culture change and effective leadership but it also requires good project management.

Experience elsewhere suggests that it will be **important to take a developmental perspective**. It will be necessary to build confidence within the local government community and between it and the Executive. And it is clear that any overarching local government performance management framework is likely to evolve quite rapidly – typically within a 3-5 year timescale. So it will be **important to put in place arrangements that are capable of further development and change over time in ways that build on what has been achieved** rather than having to start again from scratch.

Whatever kind of framework is adopted initially though, **there will be a need for consistent and verifiable data and purposeful measures to develop institutional capacity** - within the new councils, the local government association, among community planning partners, in the audit office and in key central government departments.

Overall, the scale and character of what Northern Ireland hopes to achieve means investing in the leadership of the local government sector and in particular recruiting and nurturing new managerial talent. It also **means opening up the whole system to external challenge and robust peer/expert assessment to help ensure that councils have strong corporate capacity** and also that all the other major players are equally well equipped to make their own critical contributions.

Belfast Healthy Cities



Local Government Bill Evidence submission to the Committee of the Environment

November 2013

Belfast Healthy Cities is pleased to have the opportunity to submit evidence to the Committee stage of the Local Government Bill.

Belfast Healthy Cities is a partnership organisation working to improve the health and wellbeing of people in Belfast and beyond. The organisation acts as the link to the World Health Organization (WHO) European Healthy Cities Network on behalf of Belfast as a WHO Healthy City, and currently holds the WHO secretariat for the Network. The role of Belfast Healthy Cities is to bring organisations and sectors together to consider how their work contributes to health and wellbeing; to share evidence and build capacity, and to introduce and pilot new concepts linked to core themes identified by the WHO European Healthy Cities Network. DOE is among Belfast Healthy Cities' key partners, alongside Belfast City Council, Belfast Health and Social Care Trust, Bryson Group, DHSSPS, DSD, DRD, NIHE, Public Health Agency, QUB and UU.

Engaging communities and service users in decision making is a core principle of the Healthy Cities approach, which seeks to focus action on how people's wider physical and social living conditions contribute to their life and health outcomes. Healthy urban planning has also been a core theme for Healthy Cities for a number of years, and work in Belfast has recently focused in particular on exploring elements of child friendly cities. The concept of healthy urban planning aims to identify how spatial planning shapes both people's lives and the work of other sectors, and how collaboration across sectors can maximise benefits and enhance synergies. Our evidence submission is based on these principles, and will as such focus on the community planning elements of the Bill.

Comments on the Bill

Clause 69

Belfast Healthy Cities welcomes the introduction of community planning to Northern Ireland. Community planning offers an important new opportunity to agree a shared vision for an area between stakeholders across sectors, and to develop shared action towards this vision. Community planning can be particularly valuable for strengthening health and wellbeing and tackling inequalities, as health outcomes are shaped by

people's wider living conditions, and community planning offers a platform for considering these links with all stakeholders.

A key issue not raised within the Bill is how equity across council areas will be ensured, and how community plans will link to the Programme for Government. The latter would seem particularly relevant, in that many community planning partners will be directly involved in delivering PfG targets, and appropriate linkage could maximise both impact and resource efficiency. It can also be noted that while Local Area Agreements in England have been abolished, in Scotland the Single Outcomes Agreement (SOA) system has been viewed as valuable for promoting a coherent approach across government. Notably, the SOAs are linked to the Scotland Performs performance management system, which consists of a limited set of outcomes and performance indicators that both Scottish Government and councils work towards.

Belfast Healthy Cities believes it would be helpful to consider a mechanism, potentially modelled on the Scottish system, that sets out how community planning aims and objectives should reflect or link to central government objectives. In itself, this would ensure an appropriate balance of local flexibility and equity across the region in terms of the overall aims and objectives set in community plans.

Clause 70 – community planning partners

Belfast Healthy Cities welcomes the proposal to consult proposed community planning partners regarding the relevant bodies that should be included. However, as the Bill sets out statutory provisions that community planning partners have a duty to comply with, identifying core community planning partners in this primary legislation would create important clarity and promote effective collaboration.

It would also be very helpful to clearly set out that partners include community representatives, since community planning as a concept is about engaging local residents and community and voluntary sector bodies in the decision making process.

Clause 71 – community plan

It would be helpful in this section to include reference to baseline data, community profiles and analysis of local needs, in order to ensure that the community plan is built on a sound evidence base. In addition, it would be helpful to set out a broad timetable for the production of a community plan. While sufficient time should be given to allow for thorough engagement with stakeholders, data gathering and debate on issues arising, a timetable or pathway to production would be helpful to encourage an effective process. A suggested timetable might be to allow one year for initial engagement and up to two years for agreeing a plan, setting a cut off deadline for production of a plan within three years.

If possible, it would be particularly helpful to set out provisions that encourage simultaneous production of the local development plan and the community plan, as

these will have significant impacts on each other and valuable synergies could be achieved by aligning the production processes.

Clauses 72-73 – review of community plan

Engaging with the wider community as part of the review is important, in order to gain an understanding of how local people, service users, providers and businesses feel the community plan has delivered against its aims and objectives. It would therefore be helpful to include reference to engagement beyond partners as part of the review process.

Clause 76 – community involvement

Belfast Healthy Cities would stress that in keeping with the spirit of the community planning concept, persons listed under subsection (2) are stakeholders in community planning, and not only consultees. Therefore, relevant representatives for these groups should be part of the core community planning partnership(s), while provisions under this Clause should set out how to engage with these persons as a wider community.

It is important to note that engagement can take place at several stages of the community planning process, from identifying issues and wishes as evidence for the process, to commenting on proposals and reviewing progress against these. Engagement can also take many forms, from traditional public consultations to workshops and creative sessions with children and other harder to reach groups. Significant benefits can be gained from effective engagement, both for the community plan itself and for the health and wellbeing of local people – for example, working with local communities on local priorities enables a sense of ownership that not only promotes delivery, but also for its part contributes to mental wellbeing and community cohesion.

The Clause might helpfully in either Clause 76 or Clause 77 clarify that guidance is to be provided on methods for engagement, to ensure fairness and a degree of consistency across council areas.

Clause 77 – guidance

Many organisations outside councils and their representative bodies will have considerable expertise and experience in relation to issues relevant to community planning. It would be important to reflect this and incorporate a provision to engage community, voluntary and public sector bodies in developing guidance as relevant, in order to ensure guidance developed is based on the widest possible knowledge.

Clause 78 – duties of Departments in relation to community planning

Departments will retain a wide range of functions crucial to community planning, and as such the success of community planning will depend on Departments participating effectively. It is perhaps helpful to note that effective community planning will provide

significant benefits to Departments and effective participation can strengthen these – for example, an intersectoral approach to promoting mental wellbeing can reduce absenteeism and pressure on health care, while action on community safety can reduce pressure on these budgets. Therefore, it would be helpful if this Clause made provision for stronger promotion of community planning by Departments (eg. through removing the words ‘aim to’).

A cross government approach that aligns central government and community planning aspirations – such as the Scottish Single Outcome Agreement linked to Scotland Performs - would also provide a clear basis on which Departments can participate and be assured of mutual benefits.

Clause 80 – Amendments to the Planning (Northern Ireland) Act 2011

Belfast Healthy Cities strongly welcomes the provisions in this Clause, which link spatial and community planning. Spatial planning sets the overall context within which all other services are provided and developed, and has direct impacts on people’s lives and through this, their health and wellbeing. For example, zoning plays a key role for the job opportunities people can avail of, and in extension, has an impact on people’s income and through this, both lifestyles and health outcomes as well as local spending power. Transport is a key intermediary; good public transport can help especially more disadvantaged groups and areas widen the relevant area for job search.

Based on this understanding, it is crucial that the local development plan and community plan are appropriately aligned, and ideally prepared simultaneously.

Clause 82 – Council’s general power of competence

Belfast Healthy Cities supports the introduction of the General Power of Competence, but some concern is expressed that the previously suggested power of wellbeing has been withdrawn. This power provides for councils to undertake action that enhances the wellbeing of residents, and offers an important opportunity to focus on how action to strengthen wellbeing enhances wider social, environmental and economic aims. It is not clear how the general power of competence can be used, and to what extent it offers an opportunity to focus on wellbeing. Belfast Healthy Cities believes it is essential that guidance should be provided at an early stage to aid understanding of the power and potential ways to utilise it to enhance the social, environmental and economic wellbeing of local people and places.

Clauses 87-90 Improvement duties

In relation to all of the above Clauses, the focus is on self identified improvement goals and self certified improvement. While later Clauses make provision for audits by the Local Government Auditor, in line with performance management principles it would appear appropriate that local stakeholders and rate payers are given an opportunity to contribute to targets as well as review improvement against these

targets. It would be helpful if this was reflected more strongly in provisions in this Part, especially under Clause 90 – consultation on improvement duties.

Experience from Scotland indicates that linking local government to the overarching Scotland Performs framework has provided clarity and a shared approach that helps stakeholders assess the relative performance of both central and local government.

In conclusion, Belfast Healthy Cities welcomes the Local Government Bill and the provisions made for introducing community planning. People's health is shaped by their wider physical and social living conditions, and many opportunities to prevent ill health and tackle inequalities have been missed due to a lack of an intersectoral platform for considering cross cutting impacts and effects. Community planning offers an opportunity to bridge such gaps, and can also effectively engage local people in decision making that affects their lives, encouraging participation and taking control of personal lives. Learning from other places where community planning has been implemented can help develop local practice, and some elements could also contribute to legislation that effectively supports the process.

Castlereagh Borough Council



CASTLEREAGH BOROUGH COUNCIL

Stye Braes o Ulidia Burgh Cooncil

Stephen Reid BSc MBA
Chief Executive

Anna Lo, MBE, MLA
Chairperson, Committee for the Environment
Room 245
Parliament Buildings
Ballymiscaw
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BT4 3XX

By email: committee.environment@niassembly.gov.uk

14 November 2013

Our Ref: 26(l)/CEP141113/05

Dear Ms Lo

Castlereagh Borough Council Response to Call for Evidence on The Local Government Bill

At a Castlereagh Borough Council meeting held on Tuesday 12 November the Council considered the "Local Government Bill" and their response to the call for evidence by the Department of the Environment, Environment Committee. The Council welcomed the opportunity to provide evidence to the Committee on the Bill and believes that its introduction is a further positive step forward in the local government reform programme.

The Council recognises that the Bill is enabling legislation and that much of the detail will be contained in subordinate legislation and guidance, which is still in the process of being developed. It is imperative that this legislation (and associated guidance) is developed in partnership with local government prior to its introduction to the Assembly, as there will be no opportunity to make amendments once that has occurred.

The Council supports the NILGA response to the call for evidence dated the 11 November with the following additional comments.

Positions of responsibility (Part 3)

The Council is concerned that the Bill is highly prescriptive in terms of how Members may be selected for positions of responsibility and committee membership. Whilst the Council firmly supports the principle of proportionality, it would contend that consideration be given to permitting local solutions which are politically agreed.

Call-In and Qualifying Majority Procedures (Part 7)

The Council agreed that this part was too inflexible and was concerned with the current broad definition of the two circumstances in which call-in can apply (as set out at a Clause 45 (1) of the Bill). I felt that this has potential for a high percentage of council decisions being subjected to call-in and thereby making effective decision making extremely difficult. The Council therefore felt that because of the potential delay in decision making and potential cost of legal advice that this part of the Bill should be removed, but if this is not supported request the Department to develop robust and clear definitions around the criteria for each of the two circumstances and to examine and detail the practicalities and process for implementing such procedures.

Press/Public access to Meeting (Part 8)

The Council supported NILGA's view on openness and transparency, but felt that there may be a need to restrict attendance at committees or other subcommittees because of the practicalities and costs involved in providing information and access for the public.

Control of Councils by Government Departments (Part 14)

The Council is strongly opposed to being "controlled" by Central Government Departments and request that guidance be produced to ensure that Departments do not micro-manage councils and put in place unrealistic reporting expectations on them. They further agreed that Councils should be only accountable to one Government Department, being the Department of the Environment.

I trust that the Environment Committee will be made aware of the Council's comments. The Council would welcome the opportunity to work closely with the Department and the Committee for the Environment on the further development of all subsequent legislation and guidance.

Yours sincerely



Stephen Reid
Chief Executive

Castlereagh Lisburn Statutory Transition Committee



CASTLEREAGH BOROUGH COUNCIL

Stye Braes o Ulidia Burgh Coouncil

Stephen Reid BSc MBA
Chief Executive

Anna Lo, MBE, MLA
Chairperson, Committee for the Environment
Room 245
Parliament Buildings
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BT4 3XX

By email: committee.environment@niassembly.gov.uk

14 November 2013

Our Ref: 26(I)/CEP141113/04

Dear Ms Lo

Castlereagh and Lisburn Statutory Transition Committee Response to Call for Evidence on The Local Government Bill

At a Castlereagh and Lisburn Statutory Transition Committee meeting held on Wednesday 13 November the Committee considered the "Local Government Bill" and their response to the call for evidence by the Department of the Environment, Environment Committee. The Committee welcomed the opportunity to provide evidence to the Environment Committee on the Bill and believes that its introduction is a further positive step forward in the local government reform programme.

The Committee recognises that the Bill is enabling legislation and that much of the detail will be contained in subordinate legislation and guidance, which is still in the process of being developed. It is imperative that this legislation (and associated guidance) is developed in partnership with local government prior to its introduction to the Assembly, as there will be no opportunity to make amendments once that has occurred.

The Committee supports the NILGA response to the call for evidence dated the 11 November with the following additional comments.

Positions of responsibility (Part 3)

The Committee is concerned that the Bill is highly prescriptive in terms of how Members may be selected for positions of responsibility and committee membership. Whilst the Committee firmly supports the principle of proportionality, it would contend that consideration be given to permitting local solutions which are politically agreed.

Call-In and Qualifying Majority Procedures (Part 7)

The Committee agreed that this part was too inflexible and was concerned with the current broad definition of the two circumstances in which call-in can apply (as set out at a Clause 45 (1) of the Bill). It felt that this has potential for a high percentage of Committee decisions being subjected to call-in and thereby making effective decision making extremely difficult. The Committee therefore felt that because of the potential delay in decision making and potential cost of legal advice that this part of the Bill should be removed, but if this is not agreed request the Department to develop robust and clear definitions around the criteria for each of the two circumstances and to examine and detail the practicalities and process for implementing such procedures.

Press/Public access to Meeting (Part 8)

The Committee supported NILGA's view on openness and transparency, but felt that there may be a need to restrict attendance at committees or other subcommittees because of the practicalities and costs involved in providing information and access for the public.

Control of Committees by Government Departments (Part 14)

The Committee is strongly opposed to being "controlled" by Central Government Departments and request that guidance be produced to ensure that Departments do not micro-manage Committees and put in place unrealistic reporting expectations on them. They further agreed that Committees should be only accountable to one Government Department, being the Department of the Environment.

I trust that the Environment Committee will be made aware of the Statutory Transition Committee's comments. The Committee would welcome the opportunity to work closely with the Department and the Committee for the Environment on the further development of all subsequent legislation and guidance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Henderson', with a small 'pp' written to the left of the signature.

Alderman Michael Henderson
Chair of the Castlereagh/Lisburn Statutory Transition Committee

Children in Northern Ireland (CiNI)

Consultation Response 2013

CiNI

Children in Northern Ireland

Response to

Local Government Reorganisation Bill

November 2013

Consultation Response 2013

Introduction

Children in Northern Ireland (CiNI) are the regional umbrella body for the children's sector in Northern Ireland.

CiNI represents the interests of its 160 member organisations providing policy, information, training and participation support services to members in their direct work with and for children and young people. CiNI membership also includes colleagues in the children's statutory sector recognising that the best outcomes for children and young people are increasingly achieved working in partnership with all those who are committed to improving the lives of children and young people in NI.

CiNI welcomes this opportunity to provide some feedback and commentary on the Local Government Reorganisation Bill. We trust that our comments will be positively used to inform the next step in the process.

General Comments

While CiNI is disappointed at the slowness by which progress has been made on the Reform of Public Administration within Local Government, we would however highlight that it is imperative that serious and on-going efforts are made to ensure the reform of local government in the interests of delivering optimal, efficient and effective administration of local government services to complement health, education and other core public services and serve the best interests of all individuals and communities across Northern Ireland. The comments following will be limited to Community Planning (Part 10, Clause 69), Community Involvement (Clause 76), Community Planning Partners (Clause 70) and the General Power of Competence (Clause 82).

Community Planning – Part 10

Consultation Response 2013

CiNI fully support the introduction of a council led and facilitated community planning process. However we would strongly advocate that community planning legislation must specifically include a statutory obligation in respect of consultation, co-operation and engagement in line with statutory obligation to have due regard to the promotion of equality of opportunity and in line with best practice on engagement and consultation. We would point out that the obligation to consult and co-operate with all bodies responsible for providing public services in the district must include the voluntary and community sector, which are increasingly relied on and acknowledged as a significant public service provider. It is particularly important that legislation is explicit in requiring engagement with the community and other bodies and individuals in the planning process; this must include voluntary sector agencies alongside their community sector partners.

Clause 69 (2) (C)

We recommend that this clause contains reference to *service provision*.

We would highlight, with regard to service provision for children and young people, the new regional arrangements for Children's Services Planning which operate as a cross-sectoral and multi-agency the *Children and Young People's Strategic Partnership* led by the Health and Social Care Board and supported and assisted by local government, which has CEOs represented on the Partnership.

The linkage must be strongly made between integrated planning and commissioning of services for children and young people – Children's Services Planning – and the proposed Community Planning process.

It is significant to note that in neighbouring UK jurisdictions the statutory processes of Children's Services Planning and Community Planning are specifically linked, with the local Children's and Young People's Plan also being that part of the Community Plan that relates to children and young people.

Clause 69 (2) (d)

Consultation Response 2013

The process which describes community planning only relates to councils and community planning partners, it is essential that both community and voluntary sector bodies are included in the process.

It is imperative that, using the experience of other jurisdictions as a guide, the Children and Young People's Strategic Partnership is also a key partner within the community planning process to reflect local planning work, carried out through the Children and Young People's Strategic Partnership Locality Planning Groups.

We suggest the clause is amended to include both the Children and Young People's Strategic Partnership and community and voluntary bodies in the definition of the process of community planning. It should also include in 'co-operation' and 'conjunction' with both the Children and Young People's Strategic Partnership and the community and voluntary bodies.

Community Planning Partners Clause 70 (1-3)

At the heart of these new arrangements for community planning should be a commitment to ensure the involvement of children, young people, families and communities including the community and voluntary section. A commitment which must be reflected within the legislation which is why we recommend the clauses mentioned above are extended to ensure everyone is included within the consultation stage and as community planning partners.

We agree that it is necessary that community planning legislation should place a requirement on other public bodies to 'participate in' and 'assist' community planning. In respect of public bodies participating and assisting in the process we would highlight the need to ensure this requirement is explicitly detailed.

We therefore recommend that the legislation should list the Community Planning Partners who are under a duty to participate, it should also allow for additional partners to be identified and added as and when required.

Consultation Response 2013

Community Involvement Clause 76 (1-5)

We would advocate that in relation to community involvement and community planning partners that steps are taken to ensure that community planning involves engagement and involvement of children and young people as part of the community engagement process. We would highlight the obligations which exist both internationally and domestically and the imperative for compliance with section 75 of the Northern Ireland Act 1998, article 12 of the United Nations Convention on the Rights of the Child (UNCRC) on Respect for the Views of the Child, and article 7 of the United Nations Convention on the Rights of People with Disabilities on Children with Disabilities.

We suggest the wording is stronger '***councils and its community planning partners MUST SEEK the participation of and encourage people (including children and young people) to express their views and ensure that their views are taken into account.***'

Guidance Clause 77

CiNI believes the experience of other jurisdictions in implementing community planning will be invaluable to Northern Ireland as it takes forward the development of community planning here, while reflecting on the specific needs and circumstances of communities across Northern Ireland.

It is imperative that the Department produces detailed guidance and as we have indicated above, while respecting the need for flexibility, this should outline a set of minimum standards which community plans should be required to meet.

We would also advocate that guidance should include quality standards for community engagement and steps to ensure that community planning structures are fully representative of all voluntary and community bodies, with particular regard to the section 75 equality categories. ***The Councils and its community planning partners must have due regard to any guidance issued.***

Duties of Departments in relation to Community Planning Clause 78

Consultation Response 2013

CiNI notes that it is proposed that government departments should 'aim to promote and encourage community planning.'

We believe that the relationship between central and local government will be critical to ensuring Community Planning can maximise its potential and be the enabler for '*vibrant, healthy, prosperous, safe, sustainable communities and which have the needs of all people at their core*¹'.

Therefore we would advocate that the proposed role of central government with regard to community planning is enhanced and therefore recommend 'aim to' is removed from this sentence.

Change of General Power of Well-Being to General Power of Competence Part 11 Clause 82

We note that the Power of Well-Being has been changed to the Power of Competence and also recognise that in England this power was being legally challenged. We support the development of guidance on the power of competence and would suggest that this must define the core elements of the power. We would advocate that the power of well-being encompass considerations of social, economic and environmental well-being. It is imperative that there is early engagement and involvement of stakeholders in how this will be used.

We believe the power of competence, if harnessed properly, will provide scope and opportunity for innovation and creativity in response to the particular needs and aspirations of local communities.

¹ DOE (2010) Local Government Reform Policy Proposals para 6.1

Consultation Response 2013

Conclusion

CINI trusts that this submission can usefully inform the on-going development of local government reorganisation. If you would like to discuss any aspect of this response please get in touch.

Ellen Finlay
Policy Officer

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Community Places

Written Submission to the Environment Committee in response to the Local Government Bill

Please find attached Community Places written submission to the Environment Committee, on behalf of the **Community Planning Manifesto Group**.

This submission is supported by the organisations listed below.

Northern Ireland Environment Link
 South Antrim Community Network
 Northern Ireland Council for Ethnic Minorities
 Confederation of Community Groups Newry and Mourne
 Causeway Rural and Urban Network
 Rural Community Network
 Supporting Communities Northern Ireland
 National Trust
 Playboard Northern Ireland
 Friends of the Earth
 Rainbow Project
 Armagh Banbridge Craigavon Community Network
 Community Organisations of South Tyrone Area
 Forum in Omagh for Community Understanding and Support
 North Antrim Community Network
 Omagh Forum for Rural Associations
 Children in Northern Ireland
 Ulster Architectural Heritage Society
 Ballymoney Community Resource Centre
 Save the Children
 Bryson Energy
 Women's Support Network
 Ards Development Bureau and Community Network
 Fermanagh Rural Community Network
 North West Community Network
 Community Places

Community Places are happy to discuss in more detail any of the recommendations and proposals contained within the submission, please contact Louise McNeill louise@communityplaces.info Telephone: 028 9023 9444.

Colm Bradley
 Director

November 2013

Community
 Places



Written Submission to the Environment Committee

November 2013



Call for Written Submission to the Environment Committee

We welcome the introduction of the Local Government Bill and the opportunity to engage with the Environment Committee. We support the overall aims and principles which the reform process seeks to achieve. Our comments and recommendations below largely focus on the introduction of the new power of community planning and while we are broadly supportive of the Bill we have identified a number of issues where improvements could be made to enhance and strengthen the Bill for the benefit of local and central government, people and communities.

Our proposals seek to achieve the following objectives:

- (a) To provide a framework for real and meaningful partnership work between councils, statutory agencies and communities;
- (b) To enable community planning to reach out to and engage people in all communities;
- (c) To focus the work of community planning on outcomes which make a meaningful difference and on improving the co-ordination and delivery of public services in communities and constituencies.

Our response includes proposed amendments to the following clauses:

Clause 69: Community planning;
Clause 70: Community planning partners;
Clause 71: Production of community plan;
Clause 73: Review of community plan;
Clause 74: Monitoring;
Clause 76: Community Involvement;
Clause 77: Guidance;
Clause 78: Duties of departments in relation to community planning;
Clause 81: Interpretation;
Clause 82: General Power of Competence;
Clause 90: Consultation on improvement duties;
Clause 92: Performance indicators and performance standards;
Clause 93: Collection of information relating to performance;
Clause 98: Audit and assessment reports; and
Clause 106: Partnership Panel.



Clause 69: Community Planning (definition, partners etc)

Improving Delivery of Public Services

One of the most valuable strengths of effective community planning is its ability to improve the co-ordination and delivery of public services in local areas and constituencies. This is the fundamental aim of Community Planning in Scotland and Wales. However the Bill makes no reference to improving public service provision. Minister Durkan's comments on introducing the Bill and the Explanatory Memorandum do however make specific reference to the aim of improving service provision. The Bill should thus be amended to align with this emphasis.

The equivalent legislation in Scotland describes Community Planning as a process by which the *public services provided in the area of the local authority are provided and the planning of that provision takes place*.

Recommendation: Amend clause to read

69 (2) (c) identify actions to be performed and functions to be exercised including those related to the planning, provision and improvement of public services by the council and its community planning partners for the purpose of meeting the objectives identified under paragraphs (a) and (b).
--

Community Planning Partners

Community and voluntary bodies will be important stakeholders in the delivery of Community Planning. They have experience, knowledge and assets which they can offer, access to resources not available to statutory agencies and experience in providing local projects, services and facilities. It is thus vital that they are active participants in developing and delivering community planning. To facilitate this it will be essential that they are included from the outset of the process. The legislation in Scotland uses the term co-operation to include community bodies. The Bill should do likewise and be amended as follows.

Recommendation: Insert new clause
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69 (2) (d) and in co-operation and conjunction with community and voluntary bodies from the outset of the process.

It is clear that the Community Plan will provide an overarching framework (the 'plan of plans') to set the vision and agenda for the work of the 11 new councils, their community planning partners and representatives from community and voluntary bodies. In order to ensure appropriate commitment to the implementation of the community plan and to achieve improved outcomes long-term objectives and actions should be identified, agreed and performed.

Recommendation: Amend clause to read

69 (2) (a) identify and agree long-term objectives for improving-
69 (2) (c) identify and agree actions to be performed and functions to be exercised by the council and its community planning partners for the purpose of meeting objectives identified under paragraphs (a) and (b).



Linking the Community Plan and the Local Development Plan

We are fully supportive of the introduction of a statutory link between the community plan and the local development plan (plan strategy and local policies plan) in Clause 69 (5). The integration of both processes can help achieve more sustainable and cohesive communities. This statutory link between the two processes should result in a more coherent and responsive approach to the identification of need and delivery of services, evidence based policymaking, improved connections between regional, local and neighbourhood priorities and reduced delay, uncertainty and unnecessary overlap. Opportunities will exist to undertake joint community consultation activities, monitoring, review and to develop a shared evidence base. This will help to minimise consultation fatigue and delay, make best use of resources and more closely align the aims and priorities of both plans. Furthermore, in a society emerging from conflict and which remains deeply segregated along economic, social, and cultural lines it provides a platform to address issues of multiple deprivation, contested space and community cohesion. It is interesting to note that the Republic of Ireland is also highlighting the important connection between spatial and community planning in their reform proposals.

Clause 70: Community Planning Partners

Naming the Partners

In other jurisdictions the statutory partners are listed in the primary legislation along with a provision for changing the list as circumstances require at a later date. In light of the fact that our new councils will have fewer powers than councils elsewhere and that more statutory partners will thus be involved it is all the more important that the primary legislation reflects this. The Bill should list the Community planning partners who are under a duty to participate.

Recommendation: Amend clause

70 (1) List Community planning partners
--

We welcome the requirement that the Department must consult with those it considers “appropriate” when it is determining who the partners should be. In the interest of certainty, consistency and clarity the Bill should specify that this will include community and voluntary bodies. This will ensure that the views of all those who are essential to the practice and implementation of community planning have an opportunity to shape and improve the process.

Recommendation: Amend clause to read

70 (3) (c) such other bodies and persons as the Department considers appropriate, including community and voluntary bodies.
--

In naming (as we suggest) the partners the Bill should also allow for additional partners to be identified and added as required to successfully implement community planning.

Recommendation: Insert new clause
--

70 (5) The Department may by order modify subsection (1) above by adding a reference to any eligible body.



Clause 71: Production of a Community Plan

A specified timeframe should be set for when the first community plan must be published. It will be important that councils and community planning partners are given the necessary time to produce, in conjunction with community and voluntary bodies, a robust and quality community plan. Each of the 11 Councils first community plan will provide the blueprint for further community planning within their district. As such, it is essential that all those involved have the time to produce a robust and comprehensive community plan. At the same time it is also important to ensure that the community plan is produced without unnecessary delay and in a timely fashion. The introduction of a timescale for the production of the first community plan therefore has a twofold role. We recommend that a community plan should be published no later than within three years of the formation of the new councils.

Recommendation: Amend clause to read

71 (4) (a) must be produced as soon as is reasonably practicable after community planning for the district has reached the stage described in subsection (2) and no later than within three years of the formation of the new councils;

Clause 73: Review of Community Plan

We welcome the provision in the Bill (Clause 76) for community involvement in the review of a community plan. It is widely recognised that good practice in consultation includes the provision of feedback which indicates how the views of people have been considered. Thus the council and its community planning partners should report on the means of consultation including a summary of the outcomes of this consultation. It will be essential that community involvement is consistent and robust across the 11 new council areas.

Recommendation: Insert new clause

73 (2) (a) (iii) report on means of consultation with the persons listed in 76 (2) including a summary of the outcomes of consultation.

In order to ensure that a review of a community plan is conducted in a timely fashion a time scale of six months should be introduced for when the plan should be published after a review.

Recommendation: Amend clause to read

73 (6) The council must, as soon as is reasonably practicable after becoming subject to the duty under subsection (4) and within six months, publish an amended community plan.



Clause 74: Monitoring

Making a Difference

Elected representatives, Councils, communities and ratepayers will all wish to ensure that community planning is having an impact at constituency and local area levels. Monitoring of progress in delivering the community plan and reporting on its impacts will be important to all those involved. This should be reflected in the Bill and is a key focus of community planning in Wales and Scotland and increasingly in the Republic of Ireland. An outcomes based approach provides councils and their community planning partners with a framework to both identify and measure progress made towards meeting the objectives of the community plan. It also helps with the better alignment of regional, council and local priorities.

Recommendation: Amend clause to read

74 (3) (a) progress towards meeting the community plan objectives and outcomes for its district.

Clause 76: Community Involvement

Community involvement is a key ingredient in community planning. It is crucial that it reaches out to everyone living in a council area – including those often described as “hard to reach”. Legislative provision elsewhere seeks to ensure this by encouraging a proactive approach to engagement. However Clause 76 (1) simply requires a council and its community planning partners to ensure that “arrangements are made so that persons have the opportunity to express their views and have them taken into account”. The passive and overly bureaucratic language used is unlikely to encourage good practice. More active language should be used to ensure that councils and community planning partners actively seek and encourage participation in the process of community planning.

In Scotland the words used are “take suitable action to encourage” while in England the phrase “seek the participation” is utilised.

Recommendation: Amend clause to read

76 (1): A council and its community planning partners must seek the participation of and encourage persons mentioned in subsection (2) to express their views and ensure that their views are taken into account in connection with:

- | |
|---|
| <ul style="list-style-type: none"> a) Community planning b) The production of a community plan for the district; and c) The review of community plans. |
|---|



Clause 77: Guidance

We welcome that the Department will issue statutory guidance. Guidance will be essential in ensuring that effective and consistent community planning processes are developed across the 11 new council areas.

This guidance should cover:

- The aims and principles of community planning;
- How the community plan 'fits' with other plans – acting as 'the plan of plans'
- How community planning partners from community and voluntary bodies are identified;
- Engagement Quality Standards for Community Planning;
- In line with council's role as a 'facilitator' of community planning: proactive approaches to engaging and reaching out to the 'harder to reach' e.g. low income groups or rural communities;
- The role of community support networks in supporting engagement with communities;
- Implementation of the statutory link between the community plan and the local development plan;
- Developing thematic (issue based) and local Community Plans;
- 'Added value' of community planning;
- Feedback to those who have participated in the community planning process;
- Outcomes based approach to measure progress and improvement;
- How a council determines when a 'degree of consensus' has been reached;
- What community planning partners can do if they feel 'consensus' hasn't been reached;
- Ability for council areas to work together;
- Promoting equal opportunities; and
- General Power of Competence: good practice examples of its use; how it can be implemented to respond to the needs identified through the community planning process and how it can effectively respond to previously unidentified needs or gaps in the community plan.

Additional Advice Notes should be provided to develop a shared understanding and greater consistency in the implementation and practice of community planning and to share learning and good practice. A useful resource is the BIG Lottery Fund supported Community Planning Toolkit available at www.communityplanningtoolkit.org

Preparation of Guidance

The Bill requires that before the Department issues guidance it must consult councils and – (a) such associations or bodies representative of councils; (b) such associations or bodies representative of officers of councils; and (c) such other persons or bodies, as appear to the Department to be appropriate. Specific reference should be included to consulting with community and voluntary bodies to ensure that the views of all those who are essential to the practice and implementation of community planning have an opportunity to shape and improve the process.

Recommendation: Amend clause to read

77 (2) (c) such other persons or bodies, including community and voluntary bodies, as appear to the Department to be appropriate.
--



Clause 78: Duties of Departments in Relation to Community Planning

Departments will play an important role in the success of community planning. They will wish to be active and positive contributors to the implementation of community plans which have been developed by locally elected representatives and others. The wording in the Bill includes the term 'aim to'. This passive and conditional language is unnecessary and unhelpful and should be removed. Ministers will also wish to play an active role in ensuring the public services they are responsible for are, through the community planning process, improving all the time and addressing the priorities in each council area. Like their counterparts in Scotland, England and Wales they will wish to 'promote and encourage' community planning (as the legislation in these jurisdictions allows).

Recommendation: Amend clause to read

78. So far as it is reasonably practicable to do so, every Northern Ireland department and Minister must -
(a) in exercising any function which might affect community planning promote and encourage community planning.

Departments must have regard to the content of a community plan in relation to the exercise of that Department's functions and agree with councils and their community planning partners how the Department can assist in the implementation of the Community Plan.

Recommendation: Amend clause to read

78 (b) must have regard to the content of a community plan in relation to the exercise of that department's functions and agree with councils and their community planning partners how the Department can assist in the implementation of the Community Plan.

Clause 81: Interpretation

This clauses allows for community plans to be referred to by alternative names. If utilised this provision will undoubtedly lead to confusion and loss of identity of the new process. It is unhelpful and unnecessary. The Bill should aim for simplicity and the avoidance of confusion.

Recommendation: Delete clause

81 (4).

Clause 82: General Power of Competence

We support the introduction of the General Power of Competence and recommend that guidance should be provided to aid understanding of the scope and implementation of the power (See Clause 77: Guidance). This could include the contribution of the new power to the achievement of the community plan objectives and outcomes.



Clause 90: Consultation on Improvement Duties

The Contribution of Partners

The Bill requires councils to secure continuous improvements across all of its functions including that of community planning. This is welcome. However the Bill does not recognise that improvements in community planning can only be achieved if the statutory partners play a full and meaningful role. The Bill should enable partners to do so in relation to two aspects of improvement: consultation with service users and provision of information to the councils on progress.

In relation to consultation the Bill requires councils to consult with its own service users when reporting on improvements in community planning etc. In the context of community planning this should extend to the statutory community planning partners.

Recommendation: Amend clause to read

90 (1) (b) persons who use or are likely to use services provided by the council and its community planning partners.
--

In assessing and reporting on improvement issues Councils will wish to consider the views of residents and communities. This will ensure that the views of all those who are essential to the practice and implementation of community planning have an opportunity to shape and improve the process.

Recommendation: Amend clause to read

90 (c) persons appearing to the council to have an interest in the district including those specified under section 76 (2).
--

In order to enable councils to assess improvements in community planning (as required by the Bill at clauses 87 and 89) a council's community planning partners will need to play a supportive role and provide inputs. This should be enabled in the Bill by the insertion of an appropriate new clause:

Recommendation: Insert new clause
--

90 (2) It is the duty of each community planning partner of a council to provide such information as the council may reasonably require in order to enable it to comply with its duty under section 93.
--

Clause 92: Performance Indicators and Performance Standards

This clause enables the department to specify performance indicators and standards. Before doing so the Department will wish to ensure that stakeholders such as community and voluntary bodies are consulted. This will ensure that the views of all those who are contributing to the practice and implementation of community planning have an opportunity to shape and improve the process.



Recommendation: Amend clause to read

92 (2) (c) such other persons or bodies, including community and voluntary bodies, as appear to the Department to be appropriate.

Clause 93: Collection of Information Relating to Performance

In his statement to the Assembly when presenting the Bill the Minister confirmed the Executive's view that council led community planning provides a statutory framework to deliver on the objective of improving outcomes for everyone. It is thus important that this is explicit on the face of the Bill. An outcomes based approach will help councils and all their partners to set clear goals and milestones in order to make a difference. It will also provide a framework to measure progress and join up regional, council and local priorities.

Recommendation: Amend clause to read

93 (c) (i) measure the improvement in the outcomes of its performance during a financial year by reference to those self-imposed performance indicators which are applicable to that year.

Clause 98: Audit and Assessment Reports

While the new power of community planning will be led and facilitated by local councils its effectiveness is a responsibility of all the community plan partners designated under clause 70. Departments will also play an important and supportive role. All will wish to play their role in achieving successful implementation and in contributing to the work of the local government auditor as set out in clause 98. The Bill should be amended to facilitate this.

Recommendation: Insert new clause

98 b (iii) that the community planning partners and Departments have discharged their duties under Part 10 Community Planning.

Clause 106: Partnership Panel

We support the introduction of a partnership panel consisting of Ministers and elected representatives to discuss matters of mutual interest and concern. This will provide an important mechanism for discussion of community planning issues including the inter-dependency of local and regional issues. The Panel would be enriched by extending the membership to include people from local community and voluntary groups who are active participants in community planning at council level.

Recommendation: Amend clause to read

106 (3) (a) councillors appointed by the Department and representatives appointed by the Department of community and voluntary bodies as defined by section 76 (3).



Appendix 1

Minister Durkan's Statement

The Minister refers to: It will also introduce "council-led community planning to provide a statutory framework for ***councils to work in conjunction with other public sector service providers to deliver on our objective of improving outcomes for everyone.*** The delivery of community planning will be supported at council level by the introduction of an updated performance improvement framework that focuses on the delivery of continuous improvement in service delivery against more strategic aspects

Local Government Bill Explanatory and Financial Memorandum Overview Part 10: Community Planning.

This part introduces council-led community planning to provide a framework for councils to work in partnership with other ***public service providers*** in their district to develop and implement a vision for the economic, social and environmental well-being of their district and those living or working within it. Engagement with the community is a key feature of the community planning process.

Community Places work in facilitating the Community Planning Manifesto Group is supported by the Esmée Fairbairn Foundation.

Community
Places



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Construction Employers Federation

11 November 2013

Dear Sheila

Please find below the response from CEF to the consultation on the Local Government Reorganisation Bill. Please note that our comments are specifically restricted to those clauses dealing with the transfer of planning powers.

Clause 69 Community Planning

CEF is seeking details of how community planning is to be implemented and under what circumstances. We would request clarification on how long term objectives for determining economic, social and environmental well-being will be identified.

Clause 70 Community Planning Partners

CEF requires confirmation of which bodies will be identified by the Department as community planning partners of a council.

Clause 71 Production of Community Plan

CEF proposes that the production of a community plan should be within a specific time period and not "as soon as is practicable" as this will allow too much potential for slippage.

Clauses 72 and 73 Review of Community Plan

CEF fully supports the proposal that a community plan should be reviewed every four years. We also support the proposal to identify what actions are to be taken following a review.

Clause 74 Monitoring

CEF fully supports the proposal to monitor progress made on meeting the community planning objectives at least every two years. This will avoid the risk of challenges that the plans are out of date and will reduce potential delays in processing planning applications that may need to take the community planning process into consideration.

Clause 92 Performance Indicators and Performance Standards

CEF welcomes the provision to establish performance indicators but we feel that some form of remedy or sanction should also be available if a council consistently under performs.

Clauses 93 to 95 Improvement Planning

The provision to collect and assess improvements or otherwise must be set against a robust time line in order to prevent consistent under performance from not being addressed quickly. Accountability needs to be introduced for any underperformance with suitable remedies or sanctions.

Clauses 107 and 109 Power of a Department seek reports and Intervene

CEF fully supports the proposal to require councils to make reports on its activities if so directed by any Department and, if considered appropriate, such a Department has the right to intervene in the work of a council to ensure the proper discharge of its duties.

I trust you find this response helpful.

Yours sincerely

Nigel Lucas
Deputy Secretary

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Councillor Brian Wilson

Local Government Bill 2013

As a Councillor for more than 30 years, a former lecturer in public administration and having served as member of the Assembly Committee on Environment I would like to have the opportunity to comment on the proposed Local Government Bill.

Introduction I should point out as I highlighted in a number of Assembly speeches that this Bill will not achieve any of the objectives set out in the RPA. I believe in fact it will reduce local accountability and local democracy and increase the political control of councils.

It will not achieve the primary aim of co-terminosity which was discarded years ago. The Executive has refused to transfer any significant additional powers (I even doubt if planning will be transferred in 2015), there will no influx of new more professional councillors and the PWC report has totally undermined the claim of significant savings. Indeed the £100 million plus start up costs identified by PWC should have persuaded the Executive to drop the legislation. To continue with it as I pointed out in my Assembly speech is merely a face saving exercise.

It is a misnomer to refer to the proposed new councils as “super councils” when in fact they will still have fewer powers than second tier district councils in England. No one would refer to Arun district Council or Ashford District Council as “super councils” but they have more powers at present than our new councils will have after reorganisation (roads, housing etc).

However as the Executive propose to continue with this waste of money I would like to comment on the proposed Bill mainly from my experience as an independent or small party Councillor which I have been for almost 20years.

I therefore strongly support efforts to protect minorities and small parties and welcome provisions on power sharing and the call-in and qualified majority procedures. It is clear that full protection is impossible given the diverse demographic and political composition of the councils but we should try to be as inclusive as possible without creating gridlock in decision making.

Positions of responsibility

One way of protecting minorities is to ensure that STV rather than D’Hondt is used to elect positions of responsibility. D’Hondt discriminates against smaller parties and independents and is inflexible e.g. Take the case of electing the mayors over a four year term (40seat councils). Under D’Hondt it would probably require 8 votes to become mayor and any party not achieving this would be permanently excluded from the highest post on the council.

In my own new council North Down and Ards there is no way a nationalist could ever be elected mayor (1 or Max 2 seats) but there is a possibility that with independent and Alliance support a nationalist or small party councillor could be elected mayor under STV.

While North Down may be an extreme example there are other councils both unionist and nationalist who could see the minority totally excluded from the top posts This is particularly likely if the minority councillors are split between a number of parties or include independents.

In councils like Lisburn/Castlereagh, Mid Antrim and Antrim/Newtownabbey it is unlikely that nationalists could obtain the mayoral post under D’Hondt unless they are all members of one political party. While in Derry /Strabane for example unionists could gain 12/13 seats and not obtain the top post in a four year term if these seats were split between UUP and DUP

In some councils Independent councillors have traditionally played an important role. Even if a council had 3 or 4 Independents elected as is often the case in North Down under D’Hondt

none of these councillors regardless of their talents could ever be appointed to any post of responsibility.

D'Hondt effectively excludes Independent and councillors representing small parties from any role of responsibility.

Therefore the proposal to elect posts of responsibility (including Chair/Mayor) by D'Hondt should be withdrawn and such posts should be filled by STV thereby increasing flexibility and inclusiveness and giving a more accurate reflection of the overall composition of the council.

Call-in and Qualified Majority Procedure Unfortunately I believe that these procedures are necessary given the potential abuse of power by the majority. They are a necessary evil and can of course lead to bureaucracy and delay. It should only be used on extremely rare occasions and there should be sanctions if it is abused.

It is difficult to set a figure for call-in as every council will be different. Again in the North Down / Ards case it would probably have to be 2% in the case of any abuse against the nationalist community .Which is obviously absurd.

On balance I believe these procedures should be included in the Bill and that 15% is about right although the Department should retain the option to amend it.

Executive Cabinet or Committee

I do not believe the Executive option should be included in this Bill. While in the longer term an Executive could possibly lead to more efficient and effective decision making the Councils will have enough problems adapting to the new structure without having to take on a totally new system of government.

I would also be concerned as to how collective responsibility could be exercised on Executive members and fear that each Cabinet member could make decisions which conflict with fellow Cabinet members.

I also believe a Cabinet system would greatly reduce accountability and significantly diminish the role of the non Executive councillor and this option should be withdrawn from the Bill.

Access of Press and Public to Council Meeting I support maximum access to council meetings (including subcommittees). I believe this would lead to greater accountability and transparency and increased public confidence in local government. The provision to exclude press where confidential financial matters e.g. tenders and under discussion is of course necessary but this exemption should be clearly defined and not used to exclude the press when embarrassing issues are being discussed as in often the case in North Down.

For example the press/public were recently excluded from the debate on the council's decision to spend almost half a million pounds on providing a gun club in the basement of a new community centre. The issue was not specifically on the agenda and no press statement was issued after the decision with the result that the vast majority of North Down ratepayers are still not aware that their rates will be spent in this way. Such lack of transparency undermines the public's faith in local government.

Community Planning

I do not believe community planning will achieve very much unless councils are given statutory powers over the other partners. While all partners may discuss and agree objectives each partner will in the end allocate resources in the manner most appropriate to meet its objectives rather than the council.

Code of Conduct

I believe a strong Code of Conduct is essential and must be enforced. I am very concerned that there will be the potential for abuse especially in planning.

I would be grateful if you would consider the comments outlined above

Councillor Brian Wilson,

Equality Commission



15 November 2013

Ms Sheila Mawhinney
Committee Clerk
Room 416
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BT4 3XX

Dear Ms Mawhinney

Re: Local Government Bill – Evidence

The Equality Commission¹ welcomes the opportunity to respond to the call for evidence on the Local Government Bill at Committee Stage. The Commission considers the Review of Public Administration (RPA) as a whole to be a key opportunity to embed equality of opportunity and good relations in public service delivery and this final stage of completion of RPA to be crucial.

As we stated in our response to the Department of the Environment's ('the Department') consultation *Local government Reform: Policy Proposals in 2010 (Policy Proposals)* 'introducing new, inclusive governance arrangements, implementing a code of conduct which extends the principles of public life and establishing community planning arrangements

¹ An outline of the Commission's role and powers is at annex 1

*which provide a sharpened focus for the delivery of public services are the final steps to successful completion’.*²

We have set out below our comments on some specific areas covered by the Bill on which we have previously offered advice or recommendations; including the discharge of functions by councils, decision making processes, a mandatory Code of Conduct for councillors, community planning, a general power of competence and the creation of a Partnership Panel.

Discharge of functions (Part 4)

We understand that the Department intends to introduce subordinate legislation on the functions of devolved decision-making structures and that this will include the specification of those decisions which must be taken by a full council.

The Commission recommends³ that this subordinate legislation makes it clear that key documents associated with the outworking of the equalities duties - such as the council’s equality scheme and disability action plan, which councils are required by equality legislation to produce, should be included in the core issues to be considered by full council. Further, we recommend that other key equality considerations, such as S75 equality action plans recommended as good practice by the Equality Commission, along with Article 55 reviews under the Fair Employment and Treatment (NI) Order 1998 and annual monitoring returns, should also be considered by full council.

Filling positions of responsibility (Section 17)

We note that councils will have a choice of methods by which they can fill positions of responsibility within councils. We welcome the fact that the Bill

² Response to the Department of the Environment’s consultation on Local Government Reform: Policy Proposals, March 2013, paragraph 6 - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

³ Response to the Department of the Environment’s consultation on Local Government Reform: Policy Proposals, March 2013, paragraphs 11-17 - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

sets out the precise method for applying each of these available systems, as this will help to ensure consistency and accuracy of approach across councils.

In accordance with their duties under Section 75, it is important that councils assess and consult on (in terms of screening and possibly equality impact assessing) methods which they propose to adopt in relation to the allocation of key positions both within the council and for representative positions on external bodies as new policies when the councils are established.

If a council proposes to adopt a new method (or change the method which it currently uses) for the allocation of key positions, then these policy decisions should be assessed and consulted on in accordance with Section 75 commitments as set out in its equality scheme.

Code of Conduct (Sections 56-68)

The Commission supports the introduction of a mandatory Code of Conduct for Councillors and asks that consideration is given to placing a duty on the Department to issue a Code of Conduct for councillors rather than providing the Department with a power to do so.⁴

The Commission considers this appropriate in the context that a Code of Conduct is of critical importance in setting and ensuring clear standards for elected representatives in undertaking the important work that councils currently undertake as well as the new functions that will be transferred to them⁵.

⁴ Response to the Department of the Environment's consultation on Local Government Reform: Policy Proposals, March 2013, paragraph 37 -

http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

⁵ Response to the Department of the Environment's consultation on Local Government Reform: Policy Proposals, March 2013, paragraphs 38, 39 -

http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

Further we support the Department's proposal to ensure that the principles to be enshrined in the proposed Code extend beyond the Nolan Principles to embrace the additional concepts of equality and good relations⁶.

We note that the Minister has recently indicated that there will be mandatory training for councillors in some specific areas of responsibility⁷. As made clear in the Commission's final report on the Section 75 Effectiveness Review⁸, the Commission recommends, in order to ensure visible commitment to the principle of good relations by leaders across local government, training on equality and good relations is placed on a mandatory footing for all elected representatives.

We welcome the provision that makes clear that breaches of the Code will be investigated by the Commissioner for Complaints, and that the Commissioner will consider *all* complaints in the first instance. We note that the Department has indicated that only complaints of a serious nature are to be retained by the Commissioner. We raised in our earlier response the difficulties that could arise in relation to establishing what constitutes 'serious' complaints.

We further note that the Commissioner can make recommendations to a council about any matters relating to the exercise of the council's functions or its failure to observe the code of conduct. It also appears from the Bill that these recommendations *must* be sent to the Department concerned and *may* be sent to any other public body. The Committee may wish to give consideration to the greater transparency, openness and learning that may flow from the Commissioner publishing more widely its recommendations.

We have written to the Department in relation to the scope of the Code and offering suggested wording for the Code in relation to the proposed

⁶ The Equality Commission, in its final report on reviewing the effectiveness of Section 75, recommended that adherence to the principles of equality of opportunity and good relations are enshrined in a Code of Conduct - Section 75, *Keeping it Effective: final report*, ECNI, November 2008

<http://www.equalityni.org/archive/pdf/EffectivenessReviewFinalRpt1108.pdf>

⁷ For example, any councillor sitting on a planning committee will be required to undergo mandatory training in the legal framework on which planning decisions are made and in his or her role in the decision making process See NI Assembly debate on Committee stage of Local Government Bill on 1 October 2013

⁸ *Section 75, Keeping it Effective Final Report*, November 2008, ECNI, recommendation page 65 <http://www.equalityni.org/archive/pdf/EffectivenessReviewFinalRpt1108.pdf>

principles on equality and good relations. We will continue to advise as development of the Code progresses.

Community planning (Section 69-81)

We welcome the proposed introduction of community planning as a structure for working across and between agencies with the full participation of area communities and communities of interest delivering equality of opportunity and good relations.

We support the proposed duty on councils to produce a community plan that sets out both long-term objectives and actions; as well as the proposed duties on councils to review, monitor progress and provide a bi-yearly progress statement.

We welcome the proposed requirement to ensure that arrangements are made for individuals and representatives of organisations and voluntary bodies to express their views and to have them taken into account.

In addition, pursuant to commitments in councils' equality schemes, the Commission expects that councils will effectively engage with equality groups covered by the Section 75 duties, in order to ensure better decision making by councils as regards policy and service development and in the setting of priorities for action. In support of clause 74, we recommend that there are also be clear performance indicators for the delivery of councils' community planning functions.

We also welcome the clear duty on community planning partners to participate in the community planning process and assist the council in discharging its community planning duties.

Further, we support the proposed duty on every Northern Ireland Department to promote and encourage community planning, so far as is reasonably practicable. We recommend that consideration is given to introducing a duty on the Department to issue guidance on community planning and consult before issuing that guidance as set out in Section 77 (1) of the Bill. Given the importance of community planning, we consider that a duty is more appropriate than a power in this matter.

General Power of Competence (Section 82-86)

In our earlier response, we welcomed the proposed introduction of a power of well being. We note that the Bill includes provision for the proposed introduction of a general power of competence, which we understand will enable a council to act with similar freedom to an individual unless there is a law to prevent it from doing so.

As we previously raised in our earlier response in relation to the proposed power of wellbeing, we recommend this new general power of competence should be used to maximise opportunities for embedding equality and good relations into local services and governance arrangements. We also stress, as stated in our earlier response⁹ in relation to the power of wellbeing, that the equality implications of any new structures or policy decisions in pursuance of the power of competence must be considered in line with obligations under Section 75 equality schemes.

We note that the Department had indicated that it proposed to issue guidance in relation to the proposed power of well being; a proposal that we supported.¹⁰ Aligned to this, we recommend that consideration is given to introducing a duty on the Department to issue guidance on the general power of competence.

Performance improvement (Section 87-105)

We note that the Bill places a duty on councils to 'have regard in particular to the need to improve the exercise of its functions across seven key areas including 'fairness (equity)'.

We further note that the Bill makes it clear that a council improves the exercise of its functions in terms of fairness if "*disadvantages faced by particular groups in accessing, or taking full advantage of, services are*

⁹ Response to the Department of the Environment's consultation on Local Government Reform: Policy Proposals, March 2013, paragraphs 89-91 on the power of well-being - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

¹⁰ DOE consultation on local government reform, November 2010 http://www.planningni.gov.uk/downloads/local_government_reform_-_consultation_document.pdf

reduced; or social well-being is improved as a result of the provision of services or the way in which functions are otherwise exercised”.

The Bill proposes that a council must set itself improvement objectives and that must be framed to improve the exercise of the function or functions to which it relates in terms of at least one of these seven key areas.

We consider that this proposed duty aligns with existing duties on councils under Section 75 to have due regard to the need to promote equality of opportunity, and have regard to the desirability of promoting good relations, across relevant equality grounds

On the matter of performance indicators, we would reiterate the position set out in our 2011 response, where we recommended that the Department, in its guidance on performance indicators should encourage councils to have measures relating to equality and good relations in their corporate plans and objectives; and performance indicators relating to equality and good relations in a range of other action plans and strategies¹¹.

Partnership Panel (Section 106)

In general we support structures which facilitate more effective relationships between central and local government. We note that the Partnership Panel is primarily an advisory body only and it is not intended to hamper the discretion of the Department or local government.

We are of the view that further clarity on the operation of this panel would be helpful and therefore welcome the Minister’s recent indication that Departmental officials will be working with NILGA (Northern Ireland Local Government Association) to develop the procedures for the operation of the Panel.¹²

¹¹ Response to the Department of the Environment’s consultation on Local Government Reform: Policy Proposals, March 2013, paragraph 37 - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

¹² See NI Assembly debate on Committee stage of Local Government Bill on 1 October 2013

Concluding comments

The Commission notes that there will be a significant body of subordinate legislation and guidance required following the enactment of the Local Government Bill and will offer further advice as this is produced.

Yours sincerely

A handwritten signature in black ink, appearing to read "Darren McKinstry", with a horizontal line underneath.

Darren McKinstry

**Director
Legal, Policy and Research**

E-mail: dmckinstry@equalityni.org

Annex 1: Role and remit of the Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998.

The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, age, sexual orientation and disability. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and the disability duties under the Disability Discrimination (Northern Ireland) Order 2006.

The Commission, along with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the Rights of People with Disabilities as the independent mechanism tasked with promoting, protecting and monitoring implementation of UNCRPD in Northern Ireland.

Local Government Auditor



Louise Mason FCA
Assistant Auditor General

Northern Ireland Audit Office

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Ms Sheila Mawhinney
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BT4 3XX

13 November 2013

Dear Sheila

Local Government Bill

My colleagues spoke briefly to you a few weeks back about the role of the local government auditor and the proposals in the Local Government Bill. I understand the Local Government Bill has been referred to the Committee for the Environment which has responsibility for the Committee Stage of the Bill. Although a deadline for submissions of views from interested parties was yesterday you kindly agreed to a short extension to this date for us.

You also advised that we submit an outline of our issues at this stage and then follow up with a more detailed response in the next few weeks. Therefore please find enclosed an outline submission setting out some comments from NIAO at this point.

Recently my staff have been heavily committed with the completion of our annual programme of audits of local government bodies, which has a statutory deadline of 31 October each year. Going forward, we are in a better position to give more detailed consideration to the Bill. In October we raised with the Department of the Environment a number of issues concerning the Local Government (Northern Ireland) Order 2005 which we felt could be addressed by the Bill. The Department has responded to us earlier this week and we are currently considering that before we give you our more detailed observations.

In the meantime I look forward to meeting you on 27 November. If there are any points you wish to discuss further please contact Rodney Allen (02890 251122) or Laura Murphy (02890 251139).

I am copying this letter to Leo O'Reilly at the Department.

Yours sincerely

A handwritten signature in cursive script that reads "Louise Mason".

Louise Mason
Chief Local Government Auditor

Outline Submission by the Chief Local Government Auditor, Northern Ireland Audit Office (NIAO), on the Local Government Bill – 13 November 2013

This outline submission identifies some points we wish to raise in relation to the Local Government Bill and also some matters in other legislation, such as the Local Government (Northern Ireland) Order 2005, which might be addressed in the Local Government Bill.

1. In principle we agree with the Bill's new proposals for Improvement Reporting and for a role for the Local Government Auditor. We note the proposals are broadly in line with Welsh and Scottish practices which are already established and in operation. However in our opinion it is important to ensure these are proportionate in relation to our local government context in Northern Ireland. We are concerned that the Bill does not provide flexibility for the auditor to consider matters such as a risk assessment of new authorities and determine the extent that reporting is required, rather than reporting on each new authority each year.
2. The principle of the Local Government Auditor's independence is something we consider needs further examination and would suggest the proposals in the Bill undermine the auditor's independence if a Department has the power to direct the auditor to carry out work. In our opinion it is more appropriate for the Local Government Auditor to have discretion to undertake work requested by the Department. The Department could request that the Local Government Auditor takes certain information into account in planning the forward work programme. This point would in principle apply to other legislation such as the Local Government (Northern Ireland) Order 2005.
3. The auditor's role will be more focused on public reporting rather than taking direct action. It occurs to us therefore that the surcharging power for the auditor should be removed and the power to apply for judicial review is unlikely to be required.
4. There may be a duplication of some aspects of the Local Government Auditor's role from the introduction of Improvement Reporting requirements that could now be streamlined.
5. In our opinion the Bill should align the Local Government Auditor's value for money powers with those that exist for the C&AG in the Audit (Northern Ireland) Order 1987.
6. The annual reporting of the Local Government Auditor's exercise of functions is currently an absolute requirement. It would be more helpful if this was at the Local Government Auditor's discretion rather than an annual requirement, particularly given the proposed new Improvement Reporting arrangements for each council.
7. There are issues we have identified in extant legislation affecting the appointment of the Local Government Auditor including:
 - In our opinion, auditor independence would be further strengthened if the C&AG was solely responsible for designating the Local Government Auditor role. The Bill assigns this role to the Department.

- We consider the legislation should allow for some flexibility in how the Local Government Auditor resources the audits. This would include incorporating other NIAO resources such as the use of temporary appointments to carry out this work, or procuring contractors for the work if the Local Government Auditor thinks appropriate.
8. The appointment of the deputy Local Government Auditor is a welcome addition. However it is not clear how the deputy can exercise the powers of the Local Government Auditor in the absence of the Local Government Auditor. A solution would be for the C&AG (or the Department under current wording) to have the power to temporarily designate a Local Government Auditor in the case where there is a prolonged absence.

We will submit a more detailed response in the near future including our consideration of other legislative references that may require updating.

Chief Local Government Auditor

13 November 2013



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Ms Sheila Mawhinney

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2 December 2013

Dear Sheila

Local Government Bill

Following my letter to you on 13 November 2013, I am now in a position to provide a more detailed response to the Local Government Bill. My focus is on those aspects of the Bill which directly impact on or refer to the role of the Local Government Auditor.

As I have indicated previously, this Office agrees in principle with the Bill's proposals for improvement reporting and for a role for the Local Government Auditor. We note the proposals are broadly in line with legislation that exists in Wales. This Office will need to engage in a period of research and development in 2014 and 2015 to put in place methodologies to respond to the new audit responsibilities. We would emphasise the importance of proportionality in relation to the audit of performance improvement given the relative remit of local government in Northern Ireland in comparison to other parts of the United Kingdom.

It is our view that the Bill should allow some flexibility for the auditor and I have suggested amendments below that would allow for this. Flexibility is important as the auditor's judgement plays a key role in determining the nature, scope, scale and duration of audit work to ensure there are sufficient levels of scrutiny. In meeting audit requirements certain information and explanations must be obtained to meet responsibilities. However, an audit is not designed to review all aspects of audited

bodies' arrangements, systems or records; instead it will conclude upon those that could have a significant impact on the audited body.

My comments on specific aspects of the Bill are as follows:

Part 9

Clause 56 (8)

We welcome the provision to consult the Local Government Auditor on the Code of Conduct for councillors.

Part 12

Clause 95 3 (a)

The proposed date for the publication of performance information by councils is 31 October, some seven months after the end of the financial year to which it refers. We consider an earlier date would be more preferable and would better inform the overall process including the scope for timely audit and assessment and informing future improvement planning. We note clause 95 3 (b) provides for the Department to specify a different date.

Clause 95 5 (a)

Similar to the above comment it would be preferable if a specific date were stipulated, and preferably a date that is early in the financial year such as 30 April or 31 May. Ideally, plans should be in place before the year that relate to gets underway. An early date is also important to facilitate timely audit of the information.

Clauses 96, 97 and 98

These clauses set out the requirements for improvement audits and assessments and are fixed that the local government auditor will examine and issue reports on each council each year. We have concerns this does not provide flexibility for the auditor to consider matters such as risk assessments to inform the extent of work and reporting that is necessary. It may be the case, certainly once the new arrangements are embedded, that it is unnecessary for the auditor to report in full and separately on each Council each year and exception reporting may become more appropriate. We would encourage flexibility in the Bill to accommodate this approach in the longer term.

Clause 98 (1) (d).

The assessment on whether Councils are likely to comply with requirements will require the auditor to assess whether proper arrangements are in place to enable the improvement plans to be successful. Satisfying this provision may entail most work for the auditor. We would also suggest the usefulness of audit recommendations will depend upon how quickly they can be communicated and applied. Therefore the availability of improvement plans and timeliness of the audit will be important to making this provision successful in practice.

Fulfilling the performance improvement audit obligations will require looking at proper arrangements and therefore it would appear to be appropriate to remove this aspect

from the Local Government (Northern Ireland) Order 2005. We have discussed this with the Department who has indicated they agree to the amendment in principle.

Clause 98 (3) (a)

This clause requires the auditor to provide copies of audit reports by 30 November. This seems unachievable in the current proposals as Councils will only publish their reports by 31 October. We would suggest a more realistic date for the audit reporting of this information of no later than 31 January. We understand that is the date that has been agreed in the Welsh model. An alternative more proactive approach would be to bring forward the Council's publication date to allow an audit reporting date of 30 November.

Clause 100 (1) and 3 (a)

In the interests of efficient reporting and proportionality it would be useful to have more flexibility in the audit reporting mechanism and the extent of required reporting. For example, over time it may be appropriate to produce a consolidated publication of Annual Improvement Reports rather than producing a separate annual report for each council. As the systems for improvement bed in, the results of each council could be reported within a composite report. Furthermore, if a full separate report is warranted, a reference to this report could be included in the composite report.

Clause 101

The principle of the Local Government Auditor's independence is something we consider needs further examination. We suggest that the proposals in the Bill undermine the auditor's independence if a Department has the power to direct the Auditor to carry out work. Instead, we suggest the legislation provides for the Department to request work to be carried out by the Auditor. This would equally apply to other extant legislation such as the Local Government (Northern Ireland) Order 2005. We are aware that similar provisions have been changed in recent Welsh legislation.

Part 15

Clause 110 (1)

A number of amendments are noted to the 2005 Order. We have raised with the Department a number of other matters which we would ask should be addressed as part of this legislation. This would include:

- a) Alignment of the Local Government Auditor's value for money powers with those that exist for the Comptroller and Auditor General in the Audit (Northern Ireland) Order 1987. This would provide greater independence for the Local Government Auditor to carry out value for money studies without a statutory need to consult other parties.
- b) Flexibility around the use of NIAO resources in exercising the local government auditor's functions.
- c) Discretion to permit the Local Government Auditor to produce a report on the exercise of functions rather than an absolute annual requirement as is currently the case. The new performance improvement reporting arrangements may reduce the need for an annual report.
- d) Allowing the C&AG to appoint the Local Government Auditor, rather than the

Department, again in the interests of auditor independence. We would also prefer that the C&AG had the power to temporarily appoint a Local Government Auditor, should a period of absence arise.

We have written recently to the Department with these and other detailed matters, such as an update of the Local Government (Accounts and Audit) Regulations (Northern Ireland) 2006. The correspondence is attached for your information.

Clause 110 (1) 4.(6)

This provision relates to any liability arising from a breach of duty by the local government auditor (whether arising under a contract or otherwise) incurred in the performance of the local government auditor's functions is charged on the Consolidated Fund. We support this clause but would observe the importance of ensuring it has been agreed with the Department of Finance and Personnel.

Clause 111

We acknowledge the power to repeal the provisions relating to surcharge. However, given the proposed new ethics framework the powers of surcharge will become outdated. Its removal would allow consistency with local government audit arrangement in other UK regions. It would also re-establish the independent role of the auditor which traditionally brings matters to management's attention rather than acting directly upon them. The removal of surcharging would reduce the likelihood for auditor powers being needed in relation to judicial review.

Other

We note in NIGLA's written response to the Committee the suggestion to include statutory provisions for Audit Committee arrangements, including the requirement for independent members. This is an interesting proposal as independent Audit Committees are an important part of good governance arrangements in organisations.

Audit Cost Implications

I am aware of concerns raised in some of the written submissions to the Committee regarding audit capacity and resources to undertake the new responsibilities set out in the Bill. Those are not unreasonable concerns. I have already indicated that we plan some research and development prior to the legislation being effective in order to ensure we are best placed to take forward the associated work. That will also help us finesse the cost implications however even at this stage it is likely the cost of applying the proposed new audit functions will require a significant and dedicated staffing resource.

We are currently basing our plans on the assumption that audit fees will be charged to councils for this work, in the same way as we do for our financial audit work. However, an alternative arrangement could be that performance improvement audits are funded from central government. We would welcome clarification on funding arrangements and

recognition of the additional audit costs that will result from this Bill. We do intend that the flexibility we have proposed in applying the arrangements would allow the most efficient approach to be taken, particularly as systems for improvement become embedded.

Thank you for the opportunity to contribute to the Committee's consideration of the Bill. I apologise that we were unable to provide you with these observations at an earlier point. However, I trust the Committee will still be able to consider them and I can discuss further at the Committee's meeting scheduled for 12 December. In the meantime if there are any points you require clarification on please contact Rodney Allen (02890 251122) or Laura Murphy (02890 251139).

I am copying this letter to Leo O'Reilly and Linda MacHugh at the Department of the Environment.

Yours sincerely

A handwritten signature in black ink that reads "Louise Mason". The signature is written in a cursive, flowing style.

LOUISE MASON
Chief Local Government Auditor

Local Government (Northern Ireland) Order 2005			
	Suggested amendment	DOE Comment	NIAO Response
1	In our view if the power of surcharge is to be removed there is no benefit in retaining the provision for the local government auditor to apply to the High Court for a declaration that an item is unlawful. We would therefore suggest that both Articles 19 and 20 are removed. This will also require the removal of Article 18(1)(a), meaning that the only grounds for an objection would be whether a report could have been made under Article 9. This still provides accountability for objectors and ratepayers. You may however wish to consider the position in other jurisdictions.	Before the Bill was introduced to the Assembly the then Environment Minister indicated that the surcharge provisions should not be removed at this stage. He was content to include an enabling provision to allow the surcharge provisions to be removed, at a future date, by subordinate legislation.	Our view remains that the surcharging power for the auditor conflicts with aspiration of the new Bill to modernise the local government system. The gap would be filled with the introduction of new formal local government ethical standards. Public Audit (Wales) Act 2004 does not contain the surcharging provision.
2	The C&AG is content with the current arrangement for a member of NIAO staff to undertake the role of local government auditor. However there may be a point in the future when the C&AG would wish to undertake the role and it would therefore be helpful if the legislation was drafted to provide for either the C&AG or a member of NIAO staff to undertake the role. We also believe that auditor independence would be further strengthened if the C&AG was solely responsible for designating who undertakes the role of local government auditor and therefore the Department may wish to reconsider its role in Article 4(1).	To be considered when the review of the audit provisions is carried out.	We still believe that auditor independence would be further strengthened if the C&AG was solely responsible for designating who undertakes the role of local government auditor and therefore the Department may wish to reconsider its role in Article 4(1).
3	We note that Article 6(1) requires the auditor to satisfy himself that accounts are prepared in accordance with regulations under Article 24. Under Paragraph 4(2) of the Local Government (Accounts and Audit) Regulations (Northern Ireland) 2006 (hereafter referred to as the 2006 Regulations) the chief financial officer must certify that a local government body's statement of accounts "presents fairly" the financial position of the body at the year end and its income and expenditure for that year. This appears to be slightly at odds with the "true and fair view" that is required by the Department's Accounts Direction and is the basis on which the audit opinion is currently given. It would appear the legislation has been overtaken by financial reporting requirements. Other aspect of the 2006 Regulations may need to be revised in any case to reflect changes proposed to the 2005 Order	To be considered when a review of subordinate legislation is carried out	It would be very helpful for revised subordinate legislation to be in place to complement the timing of the introduction of the Bill.
4	Throughout the legislation we note that the local government auditor is referred to as "he", although the current incumbent is female. Perhaps this is the normal format for legislative drafting. We merely draw it to your attention for your consideration.	Normal drafting convention	

Local Government (Northern Ireland) Order 2005

	Suggested amendment	DOE Comment	NIAO Response
5	Article 4(2) -the current drafting of this Article would suggest that only NIAO staff can be used to undertake local government work. We would suggest that this Article is revised to allow temporary appointments made by NIAO to undertake this work, or indeed for the work to be contracted out if the CLGA considers this appropriate. Perhaps this could be done by the deletion of the words 'members of the staff of'.	Please see suggested amendment	Perhaps the wording could be further revised to: "The local government auditor may make arrangements with the Comptroller and Auditor General for Northern Ireland to make use of the resources available to the Northern Ireland Audit Office in exercising the local government auditor's functions."
6	Article 4(3) -4(4) -These articles allow for a deputy local government auditor to be designated to take over the duties of the local government auditor if she is unavailable. We appreciate this matter was raised by NIAO in 2009 however it is not clear how the deputy could exercise those powers subject to the direction and control of the local government auditor given that she would be unavailable, for example by sudden illness. An alternative approach to having a provision for the designation of a deputy could be for the Department to temporarily designate someone as local government auditor under Article 4(1), which could then be reversed once the circumstances allow. This would mirror DFP's current arrangements when Accounting Officers are unavailable, due to prolonged illness for example.	Please see suggested amendment	We are content with your proposed wording in 4(3) that allows someone to act as Local Government Auditor. However, we again would point out the reduced independence afforded to the C&AG in appointing the LGA. We maintain the view that auditor independence would be further strengthened if the C&AG was solely responsible for designating the LGA.
7	Article 4(5) -We would suggest that "The local government auditor must" be amended to read "The local government auditor may". This would allow some discretion to be exercised over whether value is added in the production of a local government auditor's report for a particular year.	Please see suggested amendment	We are content with the proposed wording.
8	Article 5(3)(d) and 5(7) -We would suggest that the Department reflects on whether this Assembly approval process of the Code of Practice is required. Given the professional Auditing standards which must be complied with and NIAO's practice on central government audits we are uncertain if further value is added with this Assembly approval role	To be considered when the review of the audit provisions is carried out.	The Public Audit (Wales) Act 2013 does not require the Code of Audit Practice to be approved or laid in the Welsh Assembly. It just requires it to be published.
9	Article 6(1)(d) -With the Reorganisation Bill scheduled to include new roles for the auditor, we do not see that this provision is necessary going forward.	To be considered – subject to Minister's agreement, possible amendment at Consideration Stage	The Public Audit (Wales) Act 2004 retains this provision and includes the performance requirements set out in the Local Government (Wales) Measure 2009 legislation.

Local Government (Northern Ireland) Order 2005		
Suggested amendment	DOE Comment	NIAO Response
		However with the introduction of new powers on performance improvement planning, an annual role as exists at 6(1)(d) seems unnecessary and we agree with your proposal.
10	Article 21 - Given that the role of the local government auditor will be more focussed on reporting rather than taking direct action such as surcharging, we would question whether the power to apply for judicial review is still required.	<p>Please see our earlier comments on surcharge.</p> <p>We note the Public Audit (Wales) Act 2004 retains this power but we would still question any necessity for an equivalent provision in Northern Ireland if surcharge powers are removed.</p>
11	Article 22(1) and Article 26(1) - These give the Department the power to direct the local government auditor to undertake certain work. In the case of Article 22 this relates to extraordinary audits and inspections and in Article 26(1) this relates to studies for improving economy, efficiency and effectiveness. A power to direct the auditor undermines the key tenet of auditor independence and could impact on the C&AG since it does not take account of any resourcing impact on the other responsibilities of the Audit Office. We would ask that Articles 22(1) and 26(1) are amended to reflect that the Department could request that auditors take certain information into account in deciding future work. In our view discretion to undertake that work should remain with the auditor. In light of this we would suggest that Article 26(3) is removed, that "Except in the case of a study required by the Department" is removed from Article 26(4), and that Paragraph 15 of the 2006 Regulations is also amended. An alternative would be to amend references to 'direct' and 'if required' with 'ask/request'. As a consequence Article 26(2) could also include a bullet point to consult the Department	<p>We remain of the view this should be reviewed and urgently. The proposed wording in article 26 should be reviewed including removal of the word 'shall'. We still consider the Bill a good opportunity to give the Local Government Auditor the same powers as exist for the C&AG to conduct VFM studies.</p> <p>The Public Audit (Wales) Act 2013 amends the power to direct the Auditor General. The Welsh Act replaces "direct" with "request" in their 2004 Act and the Local Government (Wales) Measure 2009.</p> <p>In our view this is fundamental to auditor independence and should be addressed in the Bill.</p>
12	Article 27(4) - The CLGA is not currently a public authority under the Freedom of Information Act 2000. I would be grateful if you could confirm that information falling under this Article can be disclosed in the circumstances laid out in Paragraph 2(b) without the consent of the body	<p>The Public Audit (Wales) Act 2013 amends the Freedom of Information Act 2000. The 2000 Act should also be amended at 36 (5) to include the Local</p>

Local Government (Northern Ireland) Order 2005			
	Suggested amendment	DOE Comment	NIAO Response
	required in Paragraph 2(a). It is clearly essential for good accountability through public reporting on the local government sector that prior consent to report is not required.		Government Auditor as a qualified person.

Other amendment raised

	Suggested amendment	NIAO
1	Article 23 – we are not aware of any occasions when this article has been used in the past. You may however wish to consult with local government bodies in case they are aware of any such cases, before removing this provision.	We would welcome your comments on this article. Perhaps with the introduction of new ethical provisions the transactions by officers will be at arm's length from the Council and this provision would not be needed. We note the Public Audit (Wales) Act 2004 contains this provision.

Local Government Staff Commission



THE LOCAL GOVERNMENT STAFF COMMISSION FOR NORTHERN IRELAND
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Our Ref: AEK/jh/lgsc/doereview

Your Ref:

Date: 07 November 2013

Ms S Mawhinney
Clerk, Environment Committee
NI Assembly
Room 247, Parliament Buildings
Stormont
Belfast BT4 3XX

Dear Ms Mawhinney

Re: Review of the Local Government Staff Commission and the decision of the Minister of the Environment to wind up the Commission in April 2017

I refer to the letter from the Minister of the Environment to the Vice-Chair of the Commission dated 23 October enclosing a copy of the synopsis of responses to the public consultation on the future of the Commission and Departmental responses. I understand that this paper was scheduled for consideration by your Committee on 07 November 2013.

The Commission have asked me to write to you in relation to two points.

Firstly, members expressed their concern that the majority of responses received in relation to the consultation process would not lead to the logical conclusion that the Commission should be wound up in April 2017. In fact, most responses and the Commission itself, would argue that the Commission has changed significantly since its inception to reflect the changing needs of the local government sector and the advances in equality legislation. There is no reason to believe that such a valuable role, acknowledged by respondents, would not be of value as local government assumes even more responsibility, powers and functions in the future.

Secondly, members asked me to draw your attention to the proposal by the Minister that he 'will insert a clause to wind up the Commission into the Local Government Bill at consideration stage.' Members see this action as an abuse of the legislative process by seeking to introduce a major change to the Bill at consideration stage which may be viewed as an attempt to avoid full examination by the Assembly Committee.

I would be grateful if you would draw my members' concerns to the attention of the Committee as detailed above.

Yours sincerely

ADRIAN E KERR
Chief Executive

Chairman: Mr Brian Hanna CBE FCIEH DSc (Econ) CCMI Chief Executive: Dr Adrian E. Kerr MBE BA MA

Mid and East Antrim Statutory Transition Committee

Mid and East Antrim Statutory Transition Committee

Prepared By: Ms Sheila McClelland
Town Clerk & Chief Executive
Carrickfergus Borough Council

Response to the Committee for the Environment “Local Government Bill”

1.0 Introduction

- 1.1 Mid and East Antrim (MEA) STC welcomes the opportunity to provide a submission to the Committee for the Environment on the ‘Local Government Bill’ and believes that the introduction of the Bill is a further step forward in the local government reform programme.

MEA STC recognises that the Bill is enabling legislation and that much of the detail will be contained in subordinate legislation and guidance which is still in the process of being developed. It is imperative that this legislation (and associated guidance) is developed in partnership with local government prior to its introduction to the Assembly as there will be no opportunity to make amendments once that has occurred.

- 1.2 MEA STC, in considering the Bill, notes many similarities with Welsh and Scottish legislation, in particular regard to Community Planning and Performance Management. Much of the legislation in these jurisdictions has been reviewed and revised to make them more workable and promote a level of partnership working between Central Government and Local Government. This Bill is very prescriptive with Central bureaucratic regulatory and controlling action of Local Government. MEA STC would suggest that the revised approach in Scotland and Wales that have been developed with experience should be considered.

2.0 Key Issues

- 2.1 The following provides a summary of the priority issues as identified by MEA STC.

3.0 Positions of responsibility (Part 3)

- 3.1 MEA STC welcomes the prescriptive nature of the Bill in terms of how Members are selected for positions.

4.0 Qualified Majority Voting (Part 7)

- 4.1 MEA STC would highlight that local government within Northern Ireland has operated for many years on the basis of a simple majority vote. It is accepted that qualified majority voting may be seen to be desirable as a form of protection for political minorities in circumstances where there is a sizeable political majority in a Council area. Where a council is equally divided politically, such a system may have an impact upon the decision making process and ability of councils to get things done in local areas.

MEA STC would recommend that careful consideration is therefore given to the identification and detailed definition, through regulations, of the specific types of decisions to be subject to QMV and that further engagement and detailed discussions should take place with local government in this regards.

MEA STC would be concerned that the use of a rigid percentage which is a very high threshold could make it very difficult for Councils to develop and shape the District for the better.

5.0 Call in (Part 7)

- 5.1 MEA STC does not have any objections to the principle of “call in” being available, however, it would be concerned with the current broad definition of the two circumstances in which call-in can apply (as set out at a Clause 45 (1) of the Bill) and the potential for a high percentage of council decisions being subjected to call-in and thereby making effective decision making more difficult.

MEA STC would therefore urge the Department to liaise with local authorities in order to develop and agree robust and clear definitions around the criteria for each of the two circumstances and to examine and detail the practicalities and process for implementing such procedures (e.g. procedure, format and time limits for any requisition to be submitted)

MEA STC would also recommend that consideration is given to limiting the power to call in a particular decision/recommendation to a single requisition / challenge.

6.0 Conduct of councillors (Part 9)

- 6.2 MEA STC has consistently supported the establishment of a statutory ethical standards framework and a mandatory code of conduct for all Councillors and therefore welcome, in principle, the proposals set out within the Bill.

MEA STC recognises the role that such frameworks provide in reinforcing the trust in councils and in local democracy and that this is particularly important in the context of any future transfer and delivery of new functions by councils. MEA STC would seek further engagement with the Department in developing such frameworks.

MEA STC would be concerned however that the legislation does not contain a specific appeal mechanism, other than through a Judicial Review. MEA STC would therefore recommend that a right of appeal is clearly set out within the Bill.

MEA STC would further recommend that consideration be given to extending or creating a supplementary to the Code of Conduct to cover the role of elected Members on public bodies.

MEA STC would welcome, in principle, the enhanced role of the Commissioner to investigating complaints under the code, as this would ensure independence in the process. However, further detail of the procedures to be adopted by the Commissioner in undertaking any such investigations and the associated capacity and resource requirements around this would be helpful.

7.0 Community Planning (Part 10)

- 7.1 MEA STC would fully support the proposal that local authorities lead and facilitate community planning and would view this as a key enabler for the integration of services to address local needs. Local councils are uniquely and ideally placed to lead and facilitate community planning.

It would appear that the Community Planning model proposed in the legislation is largely similar to the Welsh community planning model. Whilst there is no objection to the adoption of the model, it is vital that the legislation and supporting guidance takes account of the specific circumstances in Northern Ireland. This model has been refined and improved upon and this legislation does not reflect these changes.

In other jurisdictions (e.g. Scotland, Wales etc) there are significant regional support structures in place to support and promote local government improvement and community planning. There are currently no similar support arrangements within Northern Ireland and we would suggest that the establishment of a regional support structure to support improvement and community planning is included in the proposals.

It is also important to note that local authorities within other jurisdictions have larger remits and deliver other key public services such as e.g. health, education, and housing; which are

not the case in Northern Ireland. Furthermore, as noted at Clause 74 of the Bill, the Northern Ireland Departments will remain responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners.

MEA STC would note that the Bill make a clear distinction between what is required between 'community planning partners 'who must 'participate in community planning and 'assist the council', and the NI Departments who will have 'a duty to promote and encourage community planning'.

The effectiveness of the community planning process and the delivery of improved outcomes will be dependent on the strength of relationships between councils, departments and other public bodies. MEA STC would be of the view that the legislative provision in Part 10 should be further strengthened, particularly in relation to the collaborative use of resources and alignment of plans. MEA STC would also suggest that consideration be given to the possible introduction of a statutory duty upon all relevant public bodies (including Gov Departments) and statutory agencies to participate and contribute to the community planning process.

Furthermore, it would appear that there is no mechanism included in the Bill for redress for non-compliance with community planning duty. The Department has advised that this may be a role for the Partnership Panel but the STC would suggest that a more robust accountability mechanism is put in place.

As referred to in Para 1.2, MEA STC believes that this part of the Bill puts a greater onus on Local Government to deliver on a Community Plan with no onus on other public sector bodies or Government departments to deliver on the Plan. The Scottish Assembly has revised Community Planning in Scotland to ensure it is a joint responsibility to deliver on the plan. They now take a more partnership approach with Single Outputs Agreement agreed between the relevant public sector bodies on Local Government.

8.0 Performance Improvement (Part 12)

8.1 MEA STC would firstly highlight that any performance improvement regime should not be bureaucratic. It does support the concept of continual improvement in services and would be supportive of the development of a framework which had community planning at the heart of it.

The current policy shift in neighbouring regions is towards greater self-regulation and away from overly bureaucratic and centralised scrutiny/inspection, subject to the achievement of a set of agreed (with central government) targets or outcomes.

Part 12 of the Bill, relating to Performance Improvement arrangements, appears to mirror much of what is contained in the part 1 of the Local Government (Wales) Measure 2009. It should be noted that in Wales, there is significant regional support structures in place to support and promote local government improvement processes. There are currently no similar support arrangements within Northern Ireland and we would suggest that the establishment of a regional support structure to support continuous improvement and community planning is included in the Bill.

Presently the Local Government (Best Value) Act (Northern Ireland) 2002 states that a council 'shall make continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.' It is noted that the Bill would appear to depart from the Local Government (Best Value) Act (NI) 2002. Clauses 87- 89 of the Bill extend the areas which councils must have regard to in terms of improving the exercise of its functions in terms of: strategic effectiveness; service quality; service availability; fairness (equity); sustainability; efficiency and innovation. These objectives are identical to those specified in the Welsh legislation and do not necessarily reflect the Northern Ireland context.

MEA STC would further highlight that there would appear to be tensions and potential duplication between these provisions and of existing statutory duties of councils such as

those expressed in S75 of the Northern Ireland Act 1998 and S25 of the NI (Miscellaneous Provisions) Act 2006 (duplicating the sustainability requirement). It is therefore recommended that the defined objectives are reviewed and further developed and defined in the context of Northern Ireland.

In the absence of further definition on the performance objectives as set out, the Committee would be concerned that there is now no explicit reference made within the Bill to a key aspect of Best Value - 'economy' - and, therefore potentially removing considerations around cost and value for money.

The STC would point out that in considering each of the performance objectives individually and not collectively; there exist potential tensions between some of the objectives, for example, the interplay and balance between service availability and efficiency.

9.0 Local government auditor (Part 12)

9.1 If the arrangements specified in Part 12 of the Bill are taken forward, MEA STC would have concerns in relation to the capacity and resourcing of the local government auditor, which will need to be enhanced.

MEA STC would also have concerns in relation to the proposed extension of the role of the auditor in terms of the auditing of councils' corporate and/or improvement plans, as this could potentially undermine the democratic process. MEA STC would recommend that the scrutiny of corporate plans should be undertaken by elected members who set the priorities for the organisation and should oversee delivery against these priorities. The auditor could have an interest in assessing from the evidence provided and input from members the attainment of the corporate plan targets.

10.0. A Partnership Panel (Part 13)

10.1 MEA STC would welcome the establishment of the Partnership Panel and believes that this could provide a further mechanism to enhance the engagement between central and local government.

11 Control of councils (Part 14)

11.1 MEA STC would be concerned that the power of intervention, previously provided to the DoE (but rarely used), is now extended to all NI departments. Whilst recognising that specific functions will transfer from central to local government as part of the LGR process, the specific rationale for such provisions would need further clarification.

MEA STC would further recommend that the ability of other NI departments to intervene must be restricted to matters pertaining directly to those departments who have transferred functions but retain the policy responsibility.

12 Conclusion

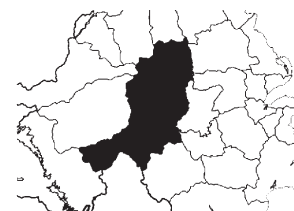
12.1 MEA STC is, in general terms, aware that the Bill will be a defining framework for the future of the Local Government sector in NI and its ability to interconnect with the central Government Departments whose functions are being devolved. The Committee believes that there will be a need and expectation in the sector for explicit and unambiguous guidance from the DoE about the details of much of the bill.

Mid Ulster Statutory Transition Committee

Mid Ulster Transition Committee

shaping local government in mid ulster

Chairman Cllr Seán McPeake | **Vice-Chairman** Cllr Trevor Wilson



11 November 2013

Committee Clerk
Environment Committee
NI Assembly, Room 416
Parliament Buildings
Stormont
BELFAST BT4 3XX

Dear Sir/ Madam

Re Local Government Bill - Committee Stage

I refer to the Environment Committee consideration of the above Bill introduced to the NI Assembly on 23 September.

The Transition Committee has considered the Local Government Bill and supports the bringing forward of this enabling legislation which will provide the foundation essential for the establishment and transaction of business throughout the shadow council period, and within new Councils from April 2015.

Members have reviewed the submissions made by NILGA and Belfast City Council to the Environment Committee and wish to endorse the commentary expressed within. I would ask that the Committee gives close consideration to the views put forward by both organisations as part of its clause by clause deliberation of the Bill.

Whilst the Transition Committee understands and agrees with the need for a thorough review of the Bill to be undertaken, it would urge the Committee to ensure legislation is in place for the convening of shadow councils following the local election scheduled for May 2014.

Yours sincerely

PHILIP MOFFETT
Change Manager, Mid Ulster

Cc Cllr Sean McPeake, Chairman

C/o Dungannon & South Tyrone Borough Council | Circular Road | Dungannon | BT71 6DT
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Ministerial Advisory Group for Architecture



MAG RESPONSE TO NORTHERN IRELAND ENVIRONMENT COMMITTEE ON THE LOCAL GOVERNMENT REORGANISATION BILL

Nov 2013



RAISING EXPECTATIONS

**MINISTERIAL ADVISORY GROUP FOR ARCHITECTURE AND THE BUILT ENVIRONMENT
RESPONSE TO NORTHERN IRELAND ENVIRONMENT COMMITTEE
ON THE LOCAL GOVERNMENT REORGANISATION BILL**

INTRODUCTION

The Ministerial Advisory Group (MAG) advises the Minister for Culture, Arts and Leisure in the role of Design Champion allocated in the Policy for Architecture and the Built Environment, 2006.

INTEREST

MAG's main interests in the Bill are the opportunities to improve people's quality of life through the introduction of **community planning** and the proposed powers to act to promote **well-being** – which it seems is to be known as "**competency**".

WORDING

"Well-being" is descriptive and easily understood. The word "competency" is difficult to understand and does not readily describe the concept. Well-being is better.

"TOO MANY PLANS"

When we introduce Community Plans, we may have "too many plans" unless we know how to turn them from plans into actions – the only way to do this is to make them real and exciting to people.

".....there are too many plans, there are between 70 and 80 recognisable plans for Derry if I was ever to criticise some of the plans in the past in Derry, I think the biggest failing of all is that they never got delivered."

Sir Roy McNulty CBE, Chairman of Ilex URC

Keynote Speech at The Business of Peace, Working for a better future:

Community Relations, Stability and the Economy

Policy Development Conference

Corr's Corner, Newtownabbey

Community Relations Council 30 April 2009

"We have too many strategies, too many policies and too many action plans, many of which refer to work already proposed or under way and do not add real value."

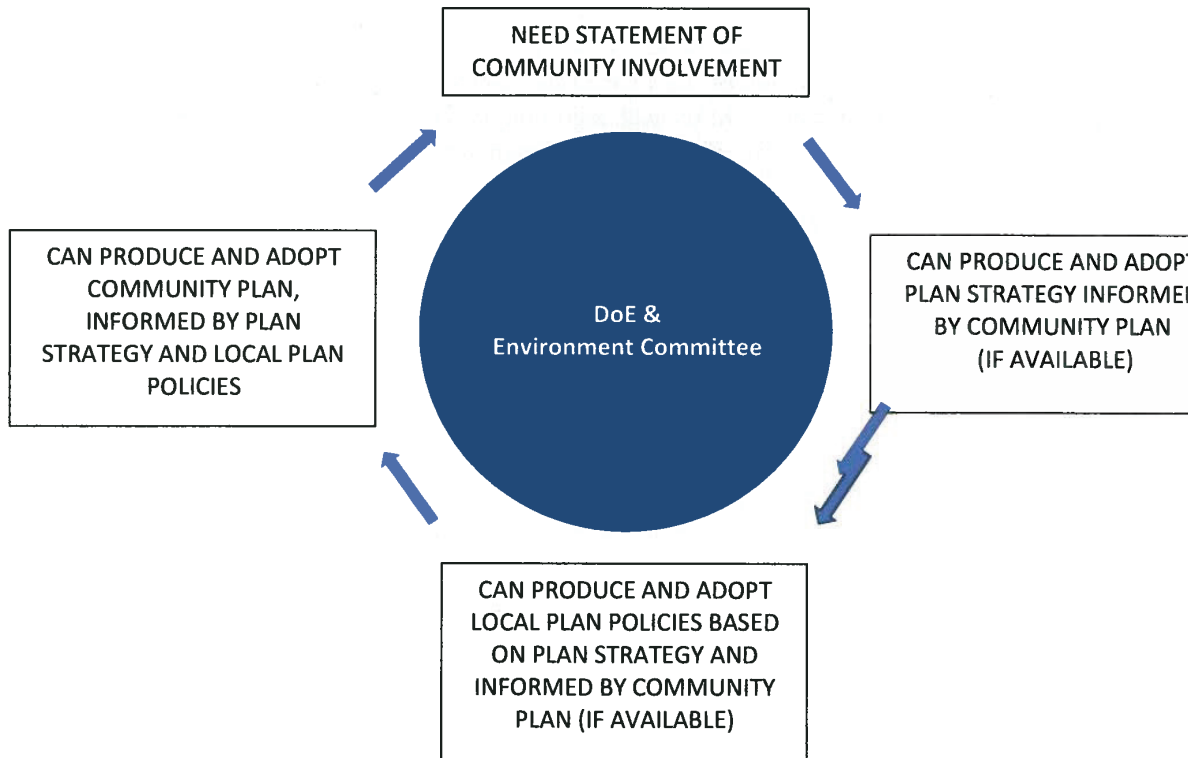
Peter Robinson MLA, First Minister

Launching the Programme for Government,

Northern Ireland Assembly 12 March 2012

THE POTENTIAL PROBLEM OF A “DO NOTHING” CIRCLE?

The new legislation may create a “do nothing” circle where nothing can seem to be done until something else is finished. Planning Legislation has required DoE to prepare a Statement of Community Involvement for many years but it seems that this has never been switched on.



STATEMENT OF COMMUNITY INVOLVEMENT

DoE could set an example now by preparing its Statement of Community Involvement without delay. The DoE Statement of Community Involvement could include guidance on how to genuinely involve people in a real way over the long term – there are proven ways to do this – and have fun doing it.

FRIENDS, NEIGHBOURS and SERIOUS FUN

Community Involvement should not be a chore – it should be a pleasure. We all know good neighbours and good friends of places and of each other. There are many excellent examples internationally and locally of “Friends of” places such as the Grand Opera House, the Belfast Hills, Belmont Park and Bangor Castle Walled Garden. Others will come to mind.

Some of the best neighbours and friends are not the richest or most educated – they are just good at it and love doing it. Introducing a “friends and neighbours” approach to places and to each other will make the Statement of Community Involvement real and practical, increasing genuine involvement of people with places and things for good relations, sharing, well-being and fun as well as environmental and social improvement. And “fun” makes places attractive and worthwhile to be in. That attracts economic development and investment.

CREATIVITY AND DESIGN

Creativity is a natural part of the life of a designer. Design skills are available to all government departments through MAG; some departments already link closely with MAG’s creative approach. Twenty two of the twenty six councils have taken part in days of action-learning during the summer. MAG will continue to provide “follow-up” activities with Councils and looks forward to working with all government departments.

THE FUTURE LOOKS GOOD

MAG looks forward to continuing the work and inspiring the action – the “delivery”, or the implementation, of the plans rather than creating more plans for their own sakes.

Arthur Acheson
Chair of MAG
3 November 2013

Newtownabbey Borough Council



Northern Ireland Assembly
Environment Committee
Room 247
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

12 November 2013

Email: committee.environment@niassembly.gov.uk

Dear Sir/Madam

NEWTOWNABBEY BOROUGH COUNCIL'S RESPONSE TO THE LOCAL GOVERNMENT REORGANISATION BILL

The opportunity to provide evidence to the Environment Committee on the 'Local Government Bill' is welcomed and it is believed that the introduction of the Bill is a further step forward in the reform of local government.

Newtownabbey Borough Council, having discussed the proposals locally and considered views of Members supports the Antrim and Newtownabbey Statutory Transition Committee response and have identified specific Key Issues that require further attention (see attached appendix)

Newtownabbey Borough Council welcomes the opportunity to work closely with the Environment Committee on the further development of all subsequent legislation and guidance.

Yours faithfully

A handwritten signature in cursive script that reads "Jacqui Dixon".

Jacqui Dixon
Chief Executive
Newtownabbey Borough Council

Antrim + Newtownabbey Statutory Transition Committee

“Local Government Bill” Key Issues

Positions of responsibility (Part 3)

There are concerns that the Bill is highly prescriptive in terms of how Members may be selected for positions of responsibility and committee membership.

Whilst the principle of proportionality is firmly supported, it would contend that consideration be given to permitting local solutions which are politically acceptable - perhaps through a requirement for local arrangements to be approved via the quality majority voting procedure.

There are also concerns that the Bill proposes that all ‘positions of responsibility’ will be grouped into one pool and councils will be required to apply the identified proportionality methods in order to fill all of the positions of responsibility for the forthcoming 4 year term.

It is contended that the legislation should not require that the positions of responsibility be grouped together into one pool nor should it specify the period of time of the appointments, but rather it should be left to each individual council to decide how best the application of proportionality should be carried out.

Permitted Forms of Governance (Part 3)

The options of permitted forms of governance are noted and that it will be a matter for the council to determine its own arrangements locally.

Qualified Majority Voting (Part 7)

It was highlighted that local government within Northern Ireland has operated for many years on the basis of a simple majority vote. It is accepted that qualified majority voting may be seen to be desirable as a form of protection for political minorities in circumstances where there is a sizeable political majority in a Council area. Where a council is equally divided politically, such a system may have an impact upon the decision making process and ability of councils to get things done in local areas. The principle of proportionality is supported and we believe that local solutions which are politically acceptable should be permitted – perhaps through a requirement for local arrangements to be approved via the qualified majority voting procedure.

It is recommended that careful consideration is therefore given to the identification and detailed definition, through regulations, of the specific types of decisions to be subject to QMV and that further engagement and detailed discussions should take place with local government in this regards.

Call in (Part 7)

There are no objections to the principle of “call in” being available, however, it would be concerned with the current broad definition of the two circumstances in which call-in can apply (as set out at a Clause 45 (1) of the Bill) and the potential for a high percentage of council decisions being subjected to call-in and thereby making effective decision making more difficult.

The Department is therefore urged to liaise with local authorities in order to develop and agree robust and clear definitions around the criteria for each of the two circumstances and to examine

and detail the practicalities and process for implementing such procedures (e.g. procedure, format and time limits for any requisition to be submitted)

It is also recommend that consideration is given to limiting the power to call in a particular decision/recommendation to a single requisition / challenge.

Conduct of councillors (Part 9)

Council has consistently supported the establishment of a statutory ethical standards framework and a mandatory code of conduct for all Councillors and therefore welcome, in principle, the proposals set out within the Bill.

Thee role that such frameworks provide in reinforcing the trust in councils and in local democracy is recognised and that this is particularly important in the context of any future transfer and delivery of new functions by councils. Further engagement is sought with the Department in developing such frameworks.

There are concerns however that the legislation does not contain a specific appeal mechanism, other than through a Judicial Review. It is therefore recommended that a right of appeal is clearly set out within the Bill.

It is further recommended that consideration be given to extending or creating a supplementary to the Code of Conduct to cover the role of elected Members on public bodies.

The enhanced role of the Commissioner to investigate complaints under the code is welcomed, in principle, as this would ensure independence in the process. However, further detail of the procedures to be adopted by the Commissioner in undertaking any such investigations and the associated capacity and resource requirements around this would be helpful.

Community Planning (Part 10)

Full support is given to the proposal that local authorities lead and facilitate community planning and would view this as a key enabler for the integration of services to address local needs. Local councils are uniquely and ideally placed to lead and facilitate community planning.

It would appear that the Community Planning model proposed in the legislation is largely similar to the Welsh community planning model. Whilst there is no objection to the adoption of the model, it is vital that the legislation and supporting guidance takes account of the specific circumstances in Northern Ireland.

In other jurisdictions (e.g. Scotland, Wales etc) there are significant regional support structures in place to support and promote local government improvement and community planning. There are currently no similar support arrangements within Northern Ireland and we would suggest that the establishment of a regional support structure to support improvement and community planning is included in the proposals.

It is also important to note that local authorities within other jurisdictions have larger remits and deliver other key public services such as e.g. health, education, and housing; which are not the case in Northern Ireland. Furthermore, as noted at Clause 74 of the Bill, the Northern Ireland Departments will remain responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners.

It is noted that the Bill makes a clear distinction as to what is required between 'community planning partners' who must 'participate in community planning and assist the council', and the NI Departments who will have 'a duty to promote and encourage community planning'.

The effectiveness of the community planning process and the delivery of improved outcomes will be dependent on the strength of relationships between councils, departments and other public bodies. It is viewed that the legislative provision in Part 10 should be further strengthened, particularly in relation to the collaborative use of resources and alignment of plans. It is also suggested that consideration be given to the possible introduction of a statutory duty upon all relevant public bodies (including Gov Departments) and statutory agencies to participate and contribute to the community planning process.

Furthermore, it would appear that there is no mechanism included in the Bill for redress for non-compliance with community planning duty. The Department has advised that this may be a role for

the Partnership Panel but it is suggested that a more robust accountability mechanism is put in place.

Performance Improvement (Part 12)

Members would advocate that any performance framework brought forward is not overly bureaucratic, does not depart from existing legislative and statutory obligations of councils and is set within the context of community planning and providing councils with the appropriate flexibility to address local needs.

It is recommended that the Committee should advocate for the ability for local government to have control over its own improvement, through a collaborative agreed approach, rather than having to deal with an outdated top-down legislative arrangement.

The current policy shift in neighbouring regions is towards greater self-regulation and away from overly bureaucratic and centralised scrutiny/inspection, subject to the achievement of a set of agreed (with central government) targets or outcomes.

Presently the Local Government (Best Value) Act (Northern Ireland) 2002 states that a council 'shall make continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.' It is noted that the Bill would appear to depart from the Local Government (Best Value) Act (NI) 2002. Clauses 87- 89 of the Bill extend the areas which councils must have regard to in terms of improving the exercise of its functions in terms of: strategic effectiveness; service quality; service availability; fairness (equity); sustainability; efficiency and innovation. These objectives are identical to those specified in the Welsh legislation and do not necessarily reflect the Northern Ireland context.

It is further highlighted that there would appear to be tensions and potential duplication between these provisions and of existing statutory duties of councils such as those expressed in S75 of the Northern Ireland Act 1998 and S25 of the NI (Miscellaneous Provisions) Act 2006 (duplicating the sustainability requirement). It is therefore recommended that the defined objectives are reviewed and further developed and defined in the context of Northern Ireland.

In the absence of further definition on the performance objectives as set out, there is concern that there is now no explicit reference made within the Bill to a key aspect of Best Value - 'economy' - and, therefore potentially removing considerations around cost and value for money.

It was pointed out that in considering each of the performance objectives individually and not collectively; there exist potential tensions between some of the objectives, for example, the interplay and balance between service availability and efficiency.

Similar to the Best Value Act, it is recommended that the Department ensures that councils are enabled to consider and take into account of a combination of and interplay between the performance objectives.

Local government auditor (Part 12)

If the arrangements specified in Part 12 of the Bill are taken forward, there would be concerns in relation to the capacity and resourcing of the local government auditor, which will need to be enhanced.

Concern was also expressed in relation to the proposed extension of the role of the auditor in terms of the auditing of councils' corporate and/or improvement plans, as this would potentially undermine the democratic process. It is recommended that the scrutiny of corporate plans should be undertaken by elected members who set the priorities for the organisation and should oversee delivery against these priorities.

A Partnership Panel (Part 13)

The establishment of the Partnership Panel is welcomed and it is believed that this would provide a further mechanism to enhance the engagement between central and local government. Members would highlight the importance that the local government representation be nominated by the sector and agreed by the Department and should include representation from each of the new councils at a minimum.

It is also recommended that the Clause adequately ensures the ability of local government to nominate its own representatives, through an agreed appointment process. At present the clause appears to give the Department control of these appointments, with only a requirement to consult local government prior to making its decision.

Control of councils (Part 14)

There are concerns that the power of intervention, previously provided to the DoE (but rarely used), is now extended to all NI departments. Whilst recognising that specific functions will transfer from central to local government as part of the LGR process, the specific rationale for such provisions may need further clarification.

Members consider the language used in these clauses, and the scope of powers conferred on departments to be contradictory to the spirit of fostering a more collaborative working arrangement between central and local government. The Committee is reminded of the comments set out above in relation to Clause 103, and would again note that it will be important for guidance to be produced for government departments to ensure that they don't begin to micro-manage councils and do not place unrealistic reporting expectations on them.

It is particularly noted that under this part of the Bill, there is no requirement to consult, either with local government in general, or with individual local councils.

It is further recommend that the ability of other NI departments to intervene must be restricted to matters pertaining directly to those departments who have transferred functions but retain the policy responsibility.

Northern Ireland Commissioner for Children and Young People (NICCY)

NICCY PROMOTING THE RIGHTS OF CHILDREN & YOUNG PEOPLE

Anna Lo MLA
Chair
Committee for the Environment
Room 416 Parliament Buildings
Stormont
Belfast
BT4 3XX

13 November 2013

Dear Ms Lo

Thank you for your invitation to respond and provide advice, on the Committee Stage of the Local Government Bill.

As you will be aware, as Commissioner I have a duty to promote and safeguard the rights and best interests of children and young people. In this I am guided by the United Nations Convention on the Rights of the Child, of which the UK is a signatory. Article 12 of the Convention clearly states that children must have a say in decisions that affect their lives.

I believe that the Local Government Bill is a unique opportunity for the Northern Ireland Executive to enhance children and young people's participation. Therefore I wish to emphasise two parts of the proposals under the Local Government Bill that are relevant. Firstly I recommend the Committee includes in Article 16, **a specific requirement for the council to appoint a committee of young people resident within the council area to advise on matters affecting children and young people**, including on community planning issues. Several councils currently have such committees, commonly referred to as Youth Councils.

Such a reference would make sure councils include young people's views in an advisory capacity, in the first instance.

I can advise the Committee that the Department of Environment is a signatory to my Participation Policy Statement of Intent, as are currently 10 of the existing councils. This statement of intent is a commitment to ensure that children and young people are given the

opportunity to participate in civic life and decisions that affect them and in this case, as it applies to new council structures. Making the amendment above would reflect within the Local Government Bill a further commitment for the Department of Environment and new councils to fulfil Article 12 of the United Nations Convention on the Rights of the Child, as well as ensuring that the new structures would not be excluding children and young people under Section 75 of the Northern Ireland Act 1998, which specifically requires that no person be discriminated against, on the basis of their age. Secondly, in relation to **Community Planning**, I believe that it is essential that as you aim to make sure the Bill reaches out to local communities, that this must also include a clear reference to reaching out to and **involving children and young people**. This should be followed with clear guidance on how this will be enabled and achieved.

Therefore, within Clause 76, I suggest that a council and its community planning partners must seek the participation of and encourage children and young people to express their views and ensure that their views are taken into account in connection with:

- a) Community planning
- b) The production of a community plan for the district; and
- c) The review of community plans.

As I'm sure the committee will agree it is essential that children and young people have a stake in the development of the area in which they live, therefore I commend to the Committee consideration of the above advice, which will ensure that the Department and new councils will realize the requirements of Article 12 of the United Nations Convention on the Rights of the Child and fulfil the promise they made as signatories to my Participation Policy Statement of Intent.

Yours sincerely



Patricia Lewsley-Mooney
Commissioner

Northern Ireland Environment Link (NIEL)

Local Government Bill Comments by Northern Ireland Environment Link

12 November 2013

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 62 Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are made on behalf of Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be delighted to do so.

Prof Sue Christie, Director
Northern Ireland Environment Link
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Belfast, BT6 9DW
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E: Sue@nienvironmentlink.org
W: www.nienvironmentlink.org

Northern Ireland Environment Link is a Company limited by guarantee No NI034988 and a Charity registered with Inland Revenue No XR19598

NIEL welcomes the opportunity to engage with the Environment Committee on its call for written evidence regarding the Local Government Bill. We welcome the introduction of the Bill, and support the overall aims and principles which the reform process seeks to achieve. Our comments and recommendations largely focus on the introduction of the new power of community planning and while we are broadly supportive of the Bill we have identified a number of issues where improvements could be made to enhance and strengthen the Bill for the benefit of local and central government, people and communities.

Our proposals seek to achieve the following objectives:

- (a) To provide a framework for real and meaningful partnership work between councils, statutory agencies and communities;
- (b) To enable community planning to reach out to and engage people in all communities;
- (c) To focus the work of community planning on outcomes which make a meaningful difference and on improving the co-ordination and delivery of public services in communities and constituencies.

The environment sector would stress the opportunity for the creation of green spaces and wild places in community planning. Links between health and wellbeing and the wider environment are proven and very important, and the natural environment should have full representation in the development of community plans to ensure optimisation of community

benefits (the flow of ecosystem services to local communities). The sector would appreciate being involved in discussion at local government level in the future.

NIEL fully endorses the views of the Community Planning Manifesto Group, submitted by Community Places. For specific comments, please see this document.

Northern Ireland Local Government Association (NILGA)

NILGA Response to the Call for Evidence on the Local Government Bill

11th November 2013

This response recognises the extreme importance of this Bill to local government and the necessity to have key elements of it substantially altered in order to develop, enhance and sustain councils and the communities they support.

NILGA therefore presents constructive, innovative and robust additions, analysis and solutions in this Paper, in keeping with its corporate policies and practices of improving and championing councils as willing partners in government.

The response has been prepared after detailed engagement with members and officers from local councils, statutory transition committees, SOLACE and NILGA. It was unanimously approved after a special joint NILGA Executive/STC Chairs and Vice Chairs meeting on 8th November 2013.

For further information or to discuss any of the issues highlighted, please contact Karen Smyth at the NILGA Offices: Email: k.smyth@nilga.org Tel: 028 9079 8972

Derek McCallan
Chief Executive

11th November 2013

1.0 Introduction

NILGA, the Northern Ireland Local Government Association, is the representative body for the 26 district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities, offers development and improvement initiatives in partnership, and is supported by the political parties as well as independent councillors.

NILGA supports the reform of local government as part of further devolution and as part of wider, long overdue, public sector change. The introduction of the Bill is a step forward in the reform process. It must be stated from the outset that NILGA was proactively involved in the development of many of the proposals prior to 2011 and has been engaged with councils and the Department in refining reform policy and preparatory arrangements throughout the current electoral mandate.

Nevertheless, NILGA members would emphasise that this Bill needs to be improved. Clarity is needed on many of the proposals contained within the Bill, and the Association is aware that there is a very substantial tranche of subordinate legislation and guidance to follow, which will contain the detailed mechanisms for future working. **It is imperative that this subordinate legislation is developed in direct partnership with local government prior to its introduction to the Assembly as there will be no opportunity to make amendments once that has occurred.**

NILGA wishes to avoid a profusion of rigid templates requiring costly processes which grow organically, create an army of box tickers and defeat the objective of simplifying and localising our cost controls and basis of governance.

NILGA would welcome the opportunity to present to the Committee and the Department, options on how local government in NI can finalise its own highly professional, cost effective regional support structures to promote and implement local government improvement and development.

The following response in the first instance sets out a number of **Key Issues** for local government, and is followed by an **Analysis** of the Bill and Schedules.

2.0 Key Issues

The following issues are highlighted as critical issues for local government arising from the Bill, and have been ordered to follow approximately, the Bill Structure. They are utterly critical to local government's ability to represent, service and sustain the communities they serve.

2.1 **Flexibility in selecting positions of responsibility and committee membership (Parts 3 and 4)**

The Bill is highly prescriptive in how Members may be selected for positions of responsibility and committee membership. Whilst there is a little flexibility in terms of the precise method which may be used, there is absolutely no room for any local agreement which would be acceptable to all parties.

NILGA firmly supports the principle of proportionality, but also believes that local solutions which are politically acceptable should be permitted – perhaps through a requirement for local arrangements to be approved via the qualified majority voting procedure. There may, for instance, be a desire to include smaller parties or independent councillors on committees if the chosen process does not provide an effective opportunity for them to be represented. Another alternative would be to provide a mechanism for coalitions to be formed and represented. There may also be councillors with specific interest or expertise in certain areas whose contribution to a committee could be valuable. It is noted that the Partnership Panel is not explicitly considered in relation to positions of responsibility.

2.2 **Executive Arrangements – Role of Chair and Vice Chair of Council (Part 6)**

NILGA fully supports the provision of a choice of methods of governance, which will ultimately be selected by the new Councils.

The Bill states that the Chair and Vice Chair of Council are not entitled to sit on an Executive. NILGA recognises that this is the case in some neighbouring jurisdictions. However, the arrangements there include, in some cases, directly elected Mayors, and in other cases, “Leaders” who tend to be the Leader of the majority party and act throughout the full council term. Neither of these arrangements exists within Northern Ireland, and NILGA is concerned that this requirement will mean that Councils will rule out Executive arrangements without full consideration.

NILGA views this requirement as directly in conflict with the ability of the Chair of Council to not only sit on, but chair and have a casting vote on, the decision making body under a committee system (i.e. Full Council). Moreover, the Chair / Vice Chair, is a key and often first spokesperson for his or her council and therefore must be fully informed and involved in key decisions, as a strategic communicator.

NILGA is therefore of the view that the Chair and Vice Chair of Council should be eligible to sit on an Executive and that this is specified in the Bill.

2.3 **Call-In and Qualified Majority Procedures (Part 7)**

NILGA recognises and supports the intent of the Bill in introducing procedures to protect minorities. However, NILGA believes that a balance must be struck between this and the efficient conduct of Council business.

NILGA recognises and supports the consensus and cross party political agreement that was reached on thresholds through the then Policy Development Panel A and endorsed by the Strategic Leadership Board. There is a critical need to both agree and clarify the definitions of the requirements for call-in, and also to identify formally the range of circumstances to which call-in applies. There is also a requirement to agree and clarify the range of circumstances to

which qualified majority voting will apply. This agreement and clarification will help to ensure that these mechanisms are properly and legitimately applied. NILGA also believes that the Department must be fully open to change these arrangements – through a formal review - if their use is seen to be causing concern in the new Councils.

2.4 Public/Press Access to Meetings (Part 8)

NILGA supports openness and transparency and the attendance of the public and press at Council and committee meetings, except when certain specified items are under discussion.

NILGA is deeply concerned, however, at the proposed extension of these arrangements to sub-committees. Whilst sub-committees are indeed a part of the decision making process, they are often used as a first stage of initial discussions on topics which will, following such informal discussions, be brought to Committees and Council and discussed in the public domain.

This is also about language and interpretation. The workings of councils and the NI Assembly are enabled by informal discussion leading to departmental and corporate decision-taking embedded in good governance. If councils apply different terms of reference to sub-committees to make progress, they should be allowed to continue to do so. One man's sub-committee is another man's working team, and another man's think tank.

The outcomes, not the structure itself, merit public scrutiny and access.

NILGA believes that sub-committees should, therefore, remain outside the new requirements to permit informal discussions to be held through sub-committees. Minutes of sub-committees would, of course, be presented to the parent committees, thus providing the public/press with a record of such discussions. The alternative - involving the creation of working groups which do not have a formal requirement to report to committees - does not represent best governance practice.

2.5 Conduct of Councillors (Part 9)

NILGA supports the proposals in the Bill in relation to Conduct of Councillors. However, the Bill does not contain a **specific appeal mechanism**, thereby leaving the only potential appeal route as Judicial Review. The Judicial Review procedure, however, is limited in its scope and may not be available in some instances.

The right of appeal is a fundamental part of our justice system, and NILGA strongly believes that there should be such a procedure enshrined in the new legislation.

Additionally, NILGA would seek the identification of a procedure for dealing with more minor complaints, as without this the process could be exploited and expensive.

NILGA members are also keen that the Committee explores a wider approach to conduct, for example to utilise / apply this mechanism for Policing and Community Safety Partnership members, and the other formal partnerships prevailing within councils, which are crucial to safer communities and the local economy.

2.6 Community Planning (Part 10)

NILGA believes that the introduction of Community Planning will be of great benefit to councils and the communities they serve, especially taken alongside other existing and transferring powers.

There is, however, widespread concern within the local government sector that the proposed legislation is not strong enough to compel partners to fully participate, ensuring investment of time and budget by senior decision makers in order to fulfil the identified objectives. Whilst Community Planning is, of course, about building relationships and working together, financial resources will inevitably be required to deliver on the full range of necessary actions. Colleagues in Scotland with longstanding experience of operating a council-led community

planning system have identified the omission of **a clear reference to resources as a particular weakness in the Bill.**

NILGA urges that the Bill is strengthened through the insertion of appropriately worded clauses to provide the required reassurance to councils that Partners will have to attend, sending senior officials, and, where may be required, to realign their budgets accordingly. For example, stating that the determination and implementation of a Community Plan requires specified and relevant partners to invest the human and financial resource to achieve a key performance target within the Plan, would be a good approach, and would put plans on a business like footing with the community as custodians, through council, of a local, public purse.

At present, Departments are tucked away under a miscellaneous heading, rather than grouped with Councils and partners who also have duties. The wording of the proposed duties of Departments needs strengthening to ensure that all parties relevant to the success of Community Planning have strong obligations placed upon them.

2.7 Performance Improvement (Part 12)

Whilst NILGA welcomes the introduction of these arrangements in principle, it has a number of concerns about the proposals.

In particular, NILGA notes that the Performance Improvement model proposed in the legislation is largely taken from the Welsh performance improvement model as outlined in part 1 of the Local Government (Wales) Measure 2009, without consideration of the differences in Northern Ireland (in that there are already duties to report on, for example, fairness and sustainability) and without considering an appropriate performance management and improvement framework to complement the proposals. The list of duties **must** be re-examined.

It is disappointing to note the selective approach that has been taken to drafting this part (and other key parts) of the Bill. In the Welsh model, there is a requirement on Directorates to work with the councils prior to intervention in regard to performance improvement. NILGA would strongly encourage the Committee to examine the Welsh legislation, from which Part 12 has been lifted, and to ensure that the more constructive collaborative ethos in situ in Wales is replicated in Northern Ireland.

It is worth noting that the Welsh model has come under a lot of criticism as it has proved overly bureaucratic and costly and ultimately taken resources away from councils. **NILGA has serious concerns that to adopt a system that is perceived to have failed elsewhere will be disastrous for the transformation of local government in Northern Ireland.**

NILGA is able and willing to share the collaborative work developing in Wales, derived from the Directorate for Local Government and Communities and the Welsh Local Government Association, who have, in partnership, reviewed the current performance improvement arrangements for local government and developed an agreed new system.

NILGA requests that the Committee considers the scale of powers provided to Departments in relation to Performance Improvement and to ensure that there is a proportionate approach taken. It is the NILGA view that local government must determine how its own performance improvement is designed and managed, and **NILGA will revert to the Committee with a further paper on this issue.**

NILGA believes that further discussion is needed on this entire Part of the Bill, and especially about the future of performance improvement in Northern Ireland local government. An improvement body for the sector is urgently required and is being dynamically developed, timed to be in place in line with the new councils taking full effect, by April 2015. NILGA seeks to complete the consultation on this - which is presently well developed - and to report to the Committee before or during February 2014 in this regard.

NILGA would also note the proposed substantial increase in powers for the Local Government Auditor, provided in relation to performance improvement. NILGA would seek assurance that the NIAO will be provided with appropriate resources to perform the duties required in relation to an agreed local government designed performance management framework, together with desirable training and development of NIAO staff in this regard. NILGA would also urge that, as mentioned above in respect of Government Departments, the NIAO should in the first instance work with Councils prior to intervening or carrying out special investigations.

2.8 Partnership Panel (Part 13)

NILGA welcomes the introduction of a Partnership Panel, but is concerned that the proposed structure of the Panel makes no reference to strategic, regional, local government membership. It is therefore **strongly recommended** to the Committee that Clause 106 is amended to ensure that the association representative of elected members in district councils is included in the membership and operational arrangements for this Panel – which is the case in Scotland and Wales.

It is also **recommended** that the Clause enshrines the ability of local government to nominate its own representatives, through an agreed appointment process. At present the clause appears to give the Department control of these appointments, with only a requirement to consult local government prior to making its decision.

2.9 Control of Councils by Government Departments (Part 14)

NILGA is strongly opposed to the word “control” in this Part. NILGA believes that government departments should work with councils, alongside the Partnership Panel, rather than attempt to “control”. In particular, NILGA notes that the powers attached to government departments in relation to performance improvement are not restricted to areas related to their own activities. The word “control” could be replaced by the phrase “Policy Scrutiny”.

The Vision for Local Government articulated by the then Environment Minister in 2008 expressed the intent of the Assembly and local government to move towards a local government system of “strong, dynamic, local government creating communities that are vibrant, healthy, prosperous, safe, sustainable and have the needs of all citizens at their core.” It has always been acknowledged that continuous improvement was central to achieving high quality, efficient services, but this was supposed to be done by central and local government working in partnership. The level and widening of control over councils as expressed in this Bill - particularly in Parts 12 and 14 - runs contrary to and could impede the achievement of this Vision. **It is also costly, in terms of time and money, to both parts of government and enshrines a punitive process rather than an enabling outcome.**

It is noted that the performance management and ‘control’ regime proposed to be put in place in Northern Ireland replicates that in other areas, where local government receives significant funding from the centre to fund activities. Our councils are largely self-financing through the district rate, and the Association cannot see why this high level of control is necessary. The outcome would be costly and over-bureaucratic and the antidote will be presented by NILGA with SOLACE if the opportunity is provided.

2.10 Other Key Issues

Substantially increased costs: NILGA is keen to make the Committee aware that an impact of some clauses in the Bill will directly lead to increased costs for the new councils. These should be considered as **New Burdens**, and taken into consideration within the funding package for reform.

They include increased administration costs, for example due to new requirements in relation to provision and storage of information, new Commissioner costs, increased Auditor costs, increased and more formalised community consultation.

These costs, like those already identified and quantifiable costs only being realised because of the legislated for target in the Programme for Government, should not simply be borne by ratepayers. The Association is not won over by the facile notion that “somebody has to pay for it and rates are another form of tax”. This is essentially about reasonableness and the ability to pay, redeploy and review costs by all of government, together with the establishment of the significant potential that local government has - the cost and values of local democracy. Today, councils have nothing like the resources and are not financed in the same manner as Departments; their total budgets are proportionately very small. Yet, they are being asked to pay the lion’s share of a reform programme which will certainly benefit them AND the Departments abovementioned.

NILGA is keen to demonstrate that, over the period 2014 – 2021, unless a New Burdens approach is taken, the reform of councils is highly unlikely to achieve the Vision outlined above. This is why NILGA will develop a Programme for Local Government, in 2014 and 2015, to be positioned within the new overall Programme for Government planned for 2016.

Concerns re preservation of local identity: Our members have expressed some concerns that local identity could be lost in the move to councils covering a larger geographical area, and it is noted that there has been no attempt made in the Bill to look at how to develop effective **area-based working** in Northern Ireland. The Committee may wish to examine this issue in its consideration of the Bill and potential future issues for the Department to develop. NILGA asserts that as NI is the only area that has NOT adopted a **localism agenda** and implementation approach this should be the next stage beyond the development of strong Community Planning in NI.

Planning and Regulatory Committees: Guidance is urgently required as to the application of the governance arrangements expressed in this Bill to planning and other regulatory committees. NILGA is aware that work is currently ongoing in relation to the design and functions of Planning Committees – this should be considered by the Committee in due course.

3.0 Analysis: Clause by Clause evidence

This provides detailed comments on the Bill clauses; the Schedules are included in the views on the clauses to which they relate, rather than separately.

Part 1 – Councils

Clause 1: Names of Councils

NILGA has no objections to this clause, but would highlight the need for the development of a high level of public understanding as to the bodies in relation to which they will be voting.

As the necessary subordinate legislation is unlikely to be in place before the election, it will also be necessary for the councils whilst in shadow form to make a decision on their new name and status. Individual communication will be necessary between the Department and the new councils in this regard, due to the variety of circumstances across the region.

Clause 2: Constitutions of Councils

NILGA has no objections to this clause but would highlight the need for timely production of these documents. If they are not to be available by May 2014, then departmental guidance will be required from the time of the election, until they do become available.

Part 2 – Councillors

Clause 3: Qualifications

NILGA has no objections to this clause.

Clause 4 (and Schedule 1): Disqualifications

Sub-paragraph 2 of Schedule 1 removes the bar on council employees (who do not work directly with or provide advice to a council or one of its committees) from being elected or acting as a councillor. Robust guidance will be necessary in relation to this issue, particularly in relation to potential conflicts of interest as a result of an employee also acting as a councillor.

NILGA would also ask that the possibility of staff being permitted to stand for election only in Councils other than the one by which they are employed should be considered.

Clarity is sought as to when this part of the Bill will be commenced, given the potential timing of Royal Assent for the Bill and the 2014 election.

Clauses 5, 6, 7, 8, 9

NILGA has no objections to these clauses.

Part 3 – Positions of responsibility**Clause 10 (and Schedules 3 and 4): Positions of Responsibility**

This clause outlines those positions within the new councils which are to be determined as 'positions of responsibility'.

It is the view of NILGA that it should be for each individual council to decide how best to apply proportionality at local level, and to which positions. If this is not to be the case, the following issues are highlighted as problematic:

- In the event of a Council choosing to have an Executive model, NILGA notes that all positions on a Cabinet-style executive are to be determined as positions of responsibility and filled in accordance with Schedule 3, whilst only the chair and deputy chair on a streamlined committee executive are to be included in the positions of responsibility. Other positions on a streamlined committee executive will be filled in accordance with Schedule 4.

This can cause issues such as the following potential skewing towards larger parties:

- Cabinet style – membership is a position of responsibility (up to 10 positions of responsibility per year)
- Streamlined committees – e.g. if 2 committees of four people each:
 - Positions would only go to the biggest parties
 - These are not positions of responsibility
 - Only 4 positions of responsibility per year
- Clarification is required in relation to committee chairs, as it would seem impossible to choose a chair of a committee (Schedule 3, Part 3) if the party concerned doesn't already have a place on it under Schedule 4. The logical scheduling of this would seem to indicate that the choice of committees would need to precede the choice of positions of responsibility
- Appointing by running a **new list for each committee skews the arrangements** in favour of the larger political parties.
- Schedule 4, 2 (2) excludes independents. There may be a need to include smaller parties or independent Councillors on committees if the chosen process does not provide an effective opportunity for them to be represented. An alternative would be to provide a mechanism for coalitions to be formed.
- There is no interpretation in Schedule 4. Clarification is required as to whether Schedule 4 is linked to the interpretation in Schedule 3 (part 4).

- There is no mechanism specified for appointments to outside bodies that are not prescribed. The Department has informed NILGA that they intend amending Clause 10(f) to ensure clarity. There is no intention to issue a prescribed 'list' by regulation.
- There appears to be no satisfactory mechanism to support area-based working (which, in the Northern Ireland context, may run the risk of being perceived as raising equality concerns). Guidance will be required to set up satisfactory area-based mechanisms and governance arrangements.
- It is noted that the Partnership Panel is not explicitly considered in relation to positions of responsibility.

Part 4 – Discharge of Functions

Clause 11: Arrangements for discharge of functions of council

NILGA has no objections to this clause, but would suggest that the list of functions reserved for the council is more clearly defined, for example, to exclude minor technical land disposals, way leaves, small loans etc.

Clause 12: Arrangements by one council for discharge of functions by another council

This clause permits a council to have any of its functions carried out by another council, provided that the functions are not the responsibility of an Executive of either council. If the function is the responsibility of an Executive of either council, the Department may issue Regulations under Clause 29 to enable the function to be carried out by another Council.

NILGA strongly supports the ability of a council to have its functions carried out by another council, but is unclear as to why Departmental 'permission' is necessary in some instances, dependant on governance arrangements. This clause seems unnecessarily complicated – the department's intervention would only be welcomed as a position of last resort.

Clause 13: Arrangements for discharge of functions by councils jointly

This clause permits councils to exercise functions jointly and establish, if required, a joint committee for this purpose. Again, if any such functions are the responsibility of the Executive of either council, Clause 30 enables the Department to issue regulations to permit joint exercise of functions, which NILGA would view as an unnecessary complication.

NILGA strongly supports the ability of councils to exercise functions jointly and form joint committees. It will be necessary for councils to review all existing partnership arrangements, to assess where regulations will be necessary, and to ensure that service continuity remains unaffected. However, through mechanisms now being developed as part of the second phase of the Improvement, Collaboration and Efficiency programme (I.C.E.), regulations should be light touch and councils should be enabled to work jointly through their self determination of such matters.

Clause 14: Exercise of functions not prevented by arrangements under this Part

NILGA has no objections to this clause.

Clause 15: Appointment of committees etc for the purpose of discharging functions

NILGA would seek clarification as to why a committee appointed to regulate and control the finance of the council cannot have an external member.

Clause 16: Appointment of committee to advise on discharge of functions

NILGA has no objections to this clause.

Clause 17 and Schedule 4: Appointment of councillors to committees, etc.

This Clause and Schedule govern the means of selection of councillors onto committees, and outlines a prescribed method utilising a formal quota-type arrangement.

NILGA welcomes, in principle, a means of ensuring that committee membership can be arrived at in a way which ensures proportionality. However, NILGA is concerned that the prescription of only this one method is unduly restrictive and does not permit local arrangements which have broad agreement to be utilised as an acceptable alternative. For instance, this method may continue to favour larger parties, and hence mean that councillors from smaller parties or independents, who may have been permitted to sit on committees in the past, will now be excluded.

NILGA would seek the inclusion of alternative methods of selecting committee membership to provide councils with flexibility, notwithstanding the overriding principle of proportionality.

Note: Whilst selection of persons to positions of responsibility is excluded from this Schedule, NILGA notes that the application of the default method for such positions may be applied flexibly through the picking (or otherwise) of positions by parties and by the ability of nominating officers to pass on particular nominations. The prescribed method for selecting committee members may also be applied flexibly by nominating officers deciding to nominate fewer members to committees than they are entitled to, thereby leaving some positions available for alternative parties/independents.

Clause 18: Joint Committees: further provisions**Clause 19: Disqualification for membership of committees****Clause 20 and Schedule 5: Declaration required of persons who are not members of council****Clause 21: Voting rights of persons who are not members of council****Clause 22: Termination of membership on ceasing to be member of council**

NILGA has no objections to Clauses 18 to 22, or Schedule 5. Clarification is sought in relation to Schedule 5, as to whether persons who are not councillors will be subject to the same complaints procedure as elected members.

Other Issues related to Part 4: Audit Committees

The Assembly's Environment Committee has raised on a number of recent occasions the matter of Audit Committees and external members thereon, taking the view that each council should be obliged to appoint an Audit Committee, and must appoint an external, independent person to sit thereon.

NILGA believes that these views represent best practice, and would support the inclusion in the Bill of an appropriate clause which has the effect of ensuring that all Councils must appoint an Audit Committee, and that all Councils must appoint a suitably qualified and experienced external person to sit as a non-voting member of that Committee.

Part 5: Permitted Forms of Governance**Clause 23: Permitted Forms of Governance**

NILGA notes the three systems of governance proposed and would again highlight the concerns expressed in our comments on Clause 10. It is anticipated that the governance system would be a decision for the council whilst in shadow form, but that a large amount of the preparatory work will be required prior to the election.

NILGA would support those councils that wish to operate executive arrangements to do so, and is content that these councils will not be prevented from establishing committees for the discharge of functions such as planning and licensing. More information is still required in relation to those statutory committees which will exist outside of the executive arrangements, and whether such committees will be subject to the same rules in relation to QMV and call-in.

Clause 24: Power to prescribe additional permitted governance arrangements

NILGA would highlight that subsection (6) (c) of Clause 24 is a potentially unnecessary barrier to local agreement on governance.

Part 6: Executive Arrangements

Clause 25: Council Executives

It is noted that via this clause, the Chair and Vice-Chair of a council would not be permitted to be members of an executive. This is in marked contrast to the operation of a traditional committee system where the Chair and Vice-Chair can be part of the decision-making mechanism, with the Chair having a casting vote at council meetings.

NILGA would refer the Committee to our comments in paragraph 2.2 in relation to this matter.

Clause 26: Functions which are the Responsibility of an Executive

Clause 27: Functions of an Executive: further provision

Clause 28: Allocation and Discharge of Functions

Clause 29: Discharge of functions of and by another Council

Clause 30: Joint exercise of functions

NILGA has no objections to these clauses, although we would again highlight that the arrangements required to enable a council to work with the executive of another council seem unnecessarily bureaucratic and unwieldy, as noted in our comments on Clause 13.

Clause 31: Overview and Scrutiny Committees

Time must be built in to the process to allow proper scrutiny, and a register of decisions will be required. Clarity is sought in relation to the definition of 'implemented' as used in clause 31 (3). Council decision-making processes can be lengthy and multi-stage in nature and it will be important to identify more appropriately, at what stage scrutiny will be required to take place.

Clarity is also sought in regard to the relationship between call-in, and overview and scrutiny procedures. Which would take precedence? The department's view on a decision making 'flow' would be most helpful.

Clause 32: Overview and Scrutiny Committees (supplementary provision) and Schedule 6

NILGA supports councils in making their own decisions in relation to voting rights of non-members of overview and scrutiny committees.

Clause 33: Scrutiny Officers

Guidance would be welcomed in relation to where a scrutiny officer would be best placed within the structure of the new council (e.g. director level?).

Clause 34: Reference of matters to overview and scrutiny committee etc.**Clause 35: Dealing with References under section 34(1) (c)****Clause 36: Duty of council or executive to respond to overview and scrutiny committee****Clause 37: Publication etc. of reports, recommendations and responses: confidential and exempt information**

NILGA would propose that the Department is required to work closely with local government to develop appropriate guidance in relation to overview and scrutiny committees. Any changes required (such as recruitment of a scrutiny officer, development of procedures for referring individual decisions, reporting and publication of recommendations and responses) will need to be planned for well in advance of 2015.

Clause 38: Meetings and access to information etc.**Clause 39: Meetings and access to information etc. (further provision and regulations)**

NILGA has no objections to these clauses, although it is noted that departmental regulation is intended. It would be helpful if these regulations were not unnecessarily duplicative of the Freedom of Information legislation.

Part 7: Meetings and Proceedings

Clause 40: Meetings and Proceedings (and Schedule 7)**Clause 41: Standing orders****Clause 42: Regulations about Standing Orders**

NILGA has no objections to these clauses, and is working closely with the Department to develop agreed standing orders.

Decision-making

Clause 43: Simple Majority

Local government in Northern Ireland has operated for many years on the basis of the simple majority vote. NILGA has no objections to this clause.

Clause 44: Qualified Majority

Whilst NILGA recognises the previous consensus reached on thresholds, there is some debate within the sector in relation to the 80% level specified in this clause. The provision for review contained in the Bill is welcomed.

Agreement and clarification is required about the specific decisions to which QMV will automatically apply. Local government will need to work very closely with the Department to develop guidance on the application of this clause, particularly as the Department's intentions (for example as stated in recent speeches to the Assembly) seem to incorporate a wide range of council working, that is separate from the usage to those areas set out in statute.

The Minister has mentioned decisions on capital projects, "programmes that impact across a number of DEAs" and response to a legitimate call-in on adverse impact grounds. Guidance in relation to dealing with these issues will require detailed consideration. In particular, "programmes that impact across a number of DEAs" could be interpreted as relating to many decisions which a Council makes, and therefore it will be necessary for this proposed definition to be explained in clearer terms. NILGA would be opposed to a definition which is expressed in such broad terms.

Clause 45: Power to require decisions to be reconsidered

Again, whilst NILGA recognises and supports the previous consensus reached on thresholds, there is debate within the sector in relation to the 15% figure, and concern in some councils that this system may lead to unnecessary bureaucracy and delay.

There is particular concern in relation to the grounds for call-in detailed at 45 (1) (b) which seems vague. Agreement and detailed clarification of what this actually means in practice will be critically important, as will guidance on the role of the legal advisor stipulated in 45(2).

NILGA will work closely with the Department to ensure that satisfactory standing orders are developed in relation to Part 7 of the Bill.

Part 8: Access to Meetings and Documents

General Comments: This part of the Bill will place a greater administrative burden and cost on councils in respect of the issue of documents and their storage. Capacity building on the new procedural arrangements will also be necessary for members and officers.

Clause 46: Admission to meetings of councils (and Schedule 8)

NILGA has no objections to this clause, but would recommend that 46 (6) (b) is modified to take into account the safe capacity of the council chamber and resultant health and safety issues.

Clause 47: Access to agenda and connected reports

Clause 48: Inspection of minutes and other documents after meetings

Clause 49: Inspection of background papers

NILGA has no objections to these clauses. The potential for duplication/conflict with Freedom of Information requirements should be examined. In addition there seem to be differing time requirements for keeping documents. It might be simpler, for all documents to be kept for the same amount of time, provided that this does not contravene other legislation.

Clause 50: Application to committees and sub-committees

There has been a high level of debate within local government in relation to the application of this part of the Bill to committees and sub-committees.

It is acknowledged that in a modernised system, it is likely that more access will be required at committee level than at present, but there is serious concern about the application of this legislation to sub-committees.

Currently, early member policy discussions take place in sub-committee meetings which are minuted, but to which the public and press do not have access. This allows for freer discussion and debate. It is the view of NILGA that to extend clause 50 to sub-committees would be damaging to the democratic process, with initial debate possibly taking place in unminuted meetings, prior to meetings to which the public and press would have access. It is therefore strongly recommended that clause 50 is applied to committee meetings but not sub-committees.

Clause 51: Additional Rights of access to documents for members of councils**Clause 52: Councils to publish additional information****Clause 53: Supplemental provisions and offences****Clause 54: Exempt information and power to vary Schedule 8****Clause 55: Interpretation and application of this part**

NILGA has no objection to these clauses, but would note the need for staff guidance and training to ensure that this part of the Bill is properly implemented.

It is noted that the references to media in this section of the Bill include news agencies, newspapers and broadcast media, but there is no reference to online media.

Part 9 – Conduct of Councillors

Clause 56: Code of Conduct

NILGA welcomes the issuance of a mandatory code of conduct for councillors which will specify appropriate principles and provisions to govern the conduct of Members. NILGA will play a full part in the consultation specified in Clause 56(8).

Clause 57: Guidance

NILGA notes that the Commissioner may issue guidance under this clause. NILGA would support the issuance of guidance in relation to the conduct of councillors, believing that this will provide useful information to Members as regards the application of the Code.

NILGA would suggest to the Committee that a provision requiring the guidance to be issued for consultation should be inserted into the Bill, in line with other provisions elsewhere in the Bill which require guidance to be issued for consultation. In particular, this would be essential as part of the guidance will relate to Planning matters, which will be a significant new role for Members of the new Councils.

Clarification is also required as to the issuer of guidance, as it is our understanding that the Department intends to issue detailed statutory guidance. Is this the guidance outlined in Clause 57 or is it additional to the Commissioner's guidance?

Clause 58: Investigations

NILGA welcomes the role of the Commissioner in investigating complaints under the code. However, the role of the Commissioner has been expanded since the Department's Policy Proposals were consulted upon. The original proposals had received widespread support, and the Department must fully explain its rationale for making the change.

NILGA notes that the Department has informally indicated that the role of the Commissioner may be reviewed in several years' time, with a potential to introduce Standards Committees. NILGA would support such a review during the 2015-2019 electoral term, and would seek an amendment to the Bill to confirm such a review in law, along with a requirement for future reviews at set intervals.

Members require the Committee to consider the potential for a proportionate approach taken to complaints, similar to the approach taken in Ombudsman investigations, with a preliminary internal consideration of the complaint. NILGA would also seek – and can provide details of – a system which deals with minor complaints. NILGA would support a procedure which would permit speedy resolution of such issues without the need for more formal investigations.

Clause 59: Investigations: Further Provisions

NILGA would assert that the guidance to be issued by the Commissioner should incorporate full details of the procedure to be adopted for investigating complaints.

The clause covers a situation where a councillor has become a member of another council, but does not cover a situation where a Council ceases to be a member of a council prior to, or during, an investigation.

Clause 60: Reports etc

NILGA would contend that Clause 60(1) should compel the Commissioner to issue a report when he decides that there is no case to answer or that he does not intend to take any action, rather than the current version which only says that he “may” issue such a report.

It may be the case that allegations against a Member may be in the public domain, and hence it is important that in cases where there is no case to answer or no action will be taken that a publicly available report must be made.

Clause 61: Interim Reports

Clause 62: Decision following report

Clause 63: Decisions on Interim Reports

Clause 64: Recommendations

NILGA has no objections to these clauses.

Clause 65: Disclosure and registration of councillors’ interests

NILGA would seek the inclusion of appropriate details of all interests to be declared under this clause to be incorporated into the Code and related guidance, to ensure full consistency across Councils.

Clause 66: Extension of 1996 Order

NILGA has no objections to this clause.

Clause 67: Expenditure of Commissioner under this Act

Clause 67(3) requires the cost of the service, as estimated by the Commissioner in accordance with clauses 67(1) and (2), to be apportioned between all Councils in such manner as may be prescribed.

NILGA would seek consultation with the local government sector regarding the apportionment of fees. There are a number of methods by which the apportionment could be carried out, and discussions should be held with the sector in order to agree the most appropriate method.

NILGA would also seek to ensure that the legislation reflects a need for the Commissioner to account to Councils regarding how their contributions have been spent in each financial year.

Clause 68: Interpretation

NILGA has no objections to this clause.

Other Issues in relation to Part 9

The Bill makes no reference to any form of appeal for a Councillor who may be subject to censure, suspension or disqualification as a result of a report of the Commissioner. NILGA views it as extremely important that a right of appeal, other than to a judicial review, is enshrined in the Bill.

Officers in district councils already have a right of appeal in the event of disciplinary action, including dismissal, being taken against them. In wider society, the right of appeal is of course a fundamental part of the justice system.

The Committee will also need to consider to whom appeals should be directed.

Additionally, training will be required to ensure members and officers understand the code and its accompanying guidance.

NILGA members are also keen that the Committee explores a wider approach to conduct, for example, to apply this mechanism to Policing and Community Safety Partnership members and other formal partnerships.

Part 10: Community Planning

General Comments:

The effectiveness of the community planning process and the delivery of improved outcomes will be dependent on the strength of relationships between councils, departments and other public bodies.

NILGA is of the view that the **legislative provision in Part 10 should be further strengthened**, particularly in relation to the collaborative use of resources and alignment of plans. In the experience of our colleagues in other regions, and through local pilot working, it is evident that the community planning process can lead to sizeable efficiency savings at local level. It is vital that, as in other regions, there is a strong statutory duty placed upon relevant public bodies and statutory agencies to participate in and contribute to the community planning process, and a mechanism to utilise the savings made to further the implementation of the community plan.

It would appear that the Community Planning model proposed in the legislation is largely similar to the Welsh community planning model. Whilst there is no objection to the adoption of the key principles of the model, mindful that a comprehensive review of it is being taken to bring in improvements to it, it is vital that the legislation and supporting guidance takes account of the specific circumstances in Northern Ireland.

Clause 69: Community Planning

The alignment of council-led community planning to the development planning system is welcomed, as is the link to sustainable development.

Clause 70: Community Planning Partners

NILGA looks forward to the publication of a proposed list of specified, core, community planning partners for consultation, and prior to an order being made.

It is considered vital to the success of the community planning process that partners are compelled to attend relevant meetings, and align plans and budgets to the community plan, but there is no indication that the forthcoming order will be any more than a specified list of organisations. This is why NILGA asserts that the wording must emphasise the need for human and financial resource investment in a community plan. The success of this key initiative will be dependent upon the sum of the parts. The Bill must therefore offer no ability for partners to avoid their responsibilities or, worse still, suggest that such responsibilities and costs could be borne by others.

Clause 71: Production of Community Plan

Clause 72: Duty to Review Community Plan

Clause 73: Review of Community Plan

NILGA has no objection to these clauses.

Clause 74: Monitoring

While councils will be required to report on progress, it is unclear how accountability will be shared and made possible, particularly as NI Departments are responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners. There may be a risk that the Departments do not provide the appropriate oversight into the contribution of their agencies to the community plan and this could impact on the councils' ability to deliver progress on the ground.

Will there be any sanction for partners who fail to participate adequately? The Environment Committee is encouraged to ensure Community Planning arrangements are as strong as possible, and an instrumental part of this, it is suggested, would be to ensure that a robust accountability mechanism is put in place, linked to the work of the Partnership Panel.

Clause 75: Implementation

It is unclear how community planning "performance" will be assessed. Part 12 of the Bill ensures that councils will be subject to a performance duty which defines a council's strategic objectives as 'the objectives contained in its current community plan'. Further guidance may detail this, but issues regarding accountability will need to be taken into account. Participating Departments must reciprocate and clearly have a performance duty.

Clause 76: Community Involvement

Clear guidance and training will be required to ensure that councils are fully supported to meet the requirements of this Clause.

Clause 77: Guidance

The Department may issue guidance on any aspect relating to community planning, the production and review of community plans and the duties of councils and community planning partners, further to consultation with local government. It will be important that this consultation is a collaborative process between DOE and Local Government. 'One size' is unlikely to 'fit all', – and this will need to be reflected in the guidance and reporting arrangements.

In other jurisdictions (e.g. Scotland, Wales) there are significant regional support structures to support and promote local government improvement and community planning. There are currently no similar support arrangements within Northern Ireland and the Committee is encouraged to ensure that the Department considers this, in partnership with local government.

Clause 78: Duties of Departments in relation to Community Planning

This clause is too weak. The committee is strongly encouraged to consider how to legislate more effectively for the sharing of accountability. As noted at Clause 74, the Northern Ireland Departments are responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners. NILGA is deeply concerned by the prospect that Departments will consider that it is not 'reasonably practicable' to 'aim' to promote and encourage community planning and that they may not provide the appropriate oversight into the contribution of their agencies to the community plan.

It is also concerning that this clause is tucked away in a 'miscellaneous' section of the Bill. It is requested that the Committee proposes to move this clause alongside Clause 70.

Clause 79: Establishment of Bodies Corporate**Clause 80: Amendments of the Planning Act (NI) 2011****Clause 81: Interpretation**

NILGA has no objections to these clauses

Part 11: General Powers of Councils**Clause 82: Council's general power of competence**

NILGA welcomes the introduction of the general power of competence, whilst acknowledging that clear and detailed guidance will be required in relation to the operation of this new power. This guidance must be developed in partnership with local government and it must provide both clarity and protection for councils and local people. Particular guidance may be required in relation to the use of the general power of competence in relation to cross border working.

A capacity and confidence building exercise will be required to ensure that any fears surrounding roll out can be dealt with at an early stage. An agreed approach will be required to ensure that departments do not abdicate their responsibilities and require councils to perform duties in lieu of departmental action.

It will also be necessary to ensure community expectations are managed, since any action to be taken will be subject to resource constraints.

Clarity is sought in relation to Clause 82 (4)(b), as it is not clear why councils should be given the power to do something 'otherwise than for' the benefit of the council, its district or persons resident or present in its district.

Clause 83: Boundaries of the general power**Clause 84: Limits on charging in exercise of general power****Clause 85: Powers to make supplemental provision****Clause 86: Limits on powers conferred by section 85(1)**

NILGA has no objections to these clauses.

Part 12: Performance Improvement

General comment: There is an overreliance within the Bill on 'Best Value' to drive service improvement rather than setting the performance framework within the context of community planning and providing councils with the appropriate flexibility to address local needs.

NILGA proposes that the Committee should advocate for the ability for local government to have control over its own improvement, through a collaborative agreed approach, rather than having to deal with an outdated top-down legislative arrangement. Local government reform was intended to achieve 'strong local government', and the view of NILGA is that the following clauses are not the best way to underpin this principle.

The current policy shift in neighbouring regions is towards greater self-regulation and away from overly bureaucratic and centralised scrutiny/inspection, subject to the achievement of a set of agreed (with central government) targets or outcomes.

NILGA will provide a separate report to the Committee within the next few weeks, proposing an alternative performance management arrangement, and would be grateful for the Committee's consideration of this. This request is made in view of the very real concerns expressed by the scores of contributors to this document.

Clause 87: Improvement: general duty

NILGA notes that these clauses have been lifted from the Welsh legislation, without tailoring to the Northern Ireland situation. It is particularly noted that there is an overlap between and duplication of existing statutory duties such as those expressed in S75 of the Northern Ireland Act 1998 (duplicating the fairness requirement) and S25 of the NI (Miscellaneous Provisions) Act 2006 (duplicating the sustainability requirement).

It is also noted that this Part of the Bill enhances the Local Government (Best Value) Act (NI) 2002, but that the 'Best Value Act' refers to 'continuous improvement in the way in which...functions are exercised, having regard to a combination of economy, efficiency and effectiveness'. NILGA would encourage the Committee to ensure that there is 'read across' between the two pieces of legislation, the Local Government Bill currently making no reference to 'economy'.

Clause 88: Improvement objectives

NILGA would draw the Committee's attention to the reporting that is already in place on these issues, and the requirement, for example in reporting on sustainable development progress to OFMDFM, to demonstrate continuous improvement. We would query whether current reporting arrangements will be satisfactory, or whether a parallel system will be initiated, doubling the administrative burden on councils in some areas.

Clause 89: Improvement: supplementary

Clause 89 (d) (i) refers to 'particular groups', with no further explanation. The Committee is requested to seek clarification on this wording.

Clause 89 (d)(ii) places improvement of social wellbeing under the fairness category, whereas local government would view social well-being as one of the three pillars of sustainable development, which are replicated in the Part 10 community planning clause 69(2)(a). It is recommended that the Committee gives particular scrutiny to the list of improvement objectives and ensures that there are clear definitions for each category.

Clause 89(2) refers to the council's community plan, but there is no reference to its corporate plan. The Committee may wish to consider whether the relationship between the two needs to be further developed within this clause.

Clause 90: Consultation on improvement duties

NILGA has no objections to this clause. It is the view of local government that any performance framework which is implemented should be based on a number of principles, one of which is that councils are accountable to their ratepayers.

Clause 91: Appropriate arrangements under sections 87(1) and 88(2)

NILGA has no objections to this clause, provided a collaborative, partnership approach is taken to the production of departmental guidance.

Performance indicators and performance standards

Clause 92: Performance indicators and performance standards

It is vital that the Department develops, in partnership with local government, an agreed approach to the setting of performance indicators. It would be preferable if the wording of 92 (2) was changed, so that 'specifying' is changed to 'agreeing' and 'consult' is replaced by 'negotiate with'.

Similarly, it would be preferable if the wording of 92(3) was changed, so that 'specify' is changed to 'agree'.

It is also proposed that an agreed, specific guidance should be issued, in relation to the composition and calculation of indicators and standards and those standards/indicators must be reviewed annually by the local government auditor.

Improvement planning and information

Clause 93: Collection of information relating to performance

NILGA is deeply concerned by this clause, which, taken in tandem with Part 14 of the Bill, is likely to place an unnecessarily large administrative burden on councils. Further comments will be made below, in the evidence on Part 14. NILGA is strongly of the view that the burdens of inspection, data collection and reporting should be kept to a minimum.

NILGA would strongly support the development of a performance framework by local government, for local government, and believes that this framework should provide value for money, be affordable, transparent and fair, easily understood and capable of implementation.

Clause 94: Use of performance information

NILGA has no objections to this clause, and is fully supportive of the sharing of good practice between councils.

Clause 95: Improvement planning and publication of improvement information

NILGA has no objections to this clause.

Clause 96: Improvement information and planning

Clause 97: Improvement assessments

Clause 98: Audit and assessment reports

Clause 99: Response to section 98 reports

Clause 100: Annual improvement reports

Clause 101: Special inspections

Clause 102: Reports of special inspections

If the arrangements specified in Part 12 of the Bill are taken forward, NILGA has concerns in relation to the capacity and resourcing of the local government auditor, which will need to be enhanced. This is likely to place an additional cost on councils.

Local government would have concerns in relation to the extension of the role of the auditor to the auditing of councils' corporate and/or improvement plans, as this would potentially undermine the democratic process. It is the NILGA view that the scrutiny of corporate plans should be undertaken by elected members who set the priorities for the organisation and should oversee delivery against these priorities.

It is also noted that the performance management and auditing system specified is designed for a local government system that administers a large amount of grant funding from central government. One of the key strengths of local government in Northern Ireland is that it is largely self-financing, and this strength will not change after transfer of functions, where funding will be allocated through a new rates formula.

NILGA is therefore of the view that such an intricate and bureaucratic top-down performance management and auditing system is wholly unnecessary, and that local government should develop its own improvement system, similar to that currently in place in Scotland, but of course tailored to NI. It is also of concern that the relationships between departments and the Auditor, as outlined in the Bill, seem overly complex and the Committee may wish to explore how this would work in practice.

NILGA has met with representatives of the Northern Ireland Audit Office, immediately prior to this submission, and is keen to work collaboratively with them to agree a self managed performance improvement framework.

Powers of direction etc

Clause 103: Powers of direction etc

NILGA has huge concerns in relation to this Clause, particularly when taken in tandem with Part 14 of the Bill. There is a certain degree of confidence in the powers of direction of the Department of Environment, who are experienced and confident as to how and when this power should be used. It will be necessary to ensure that the other government departments take the same approach and it would be helpful if guidance is produced for government departments to ensure that they don't begin to micro-manage councils and do not place unrealistic reporting expectations on them.

The ability of any NI department to direct must be restricted to matters pertaining directly to the functions of that Department only, and NILGA would seek an amendment to this clause (particularly at subsection (3)) to that effect.

Clause 104: Power to modify statutory provisions and confer new powers

NILGA has no objections to this clause

Clause 105: Application of certain local government audit provision

A serious concern of local government in relation to this Part of the Bill is the likelihood of increased audit and administration costs. NILGA would encourage the Committee to seek evidence from the local government auditor in relation to their plans for implementing this part of the Bill, and estimates of costs to the new councils.

Part 13: Partnership Panel

Clause 106: Partnership Panel

Local government is strongly in agreement that a partnership panel is necessary, but that the local government representation should be "nominated by the sector, agreed with the Department" and should include regional representation from local government (i.e. through the regional representative body for elected members) as well as representation from each of the new councils.

NILGA considers that the spirit of collaboration that a Partnership Panel will facilitate is not echoed throughout the Bill in terms of the statutory requirements for and roles of central and local government. In Wales, for example, the equivalent body is chaired by the Minister responsible for local government, and the Vice Chair is the Chair of the local government association. Therefore, partnership is delivered through shared, political leadership.

Part 14: Control of Councils by Northern Ireland Departments

Clause 107: Power of any Northern Ireland department to direct council to make reports etc.

Clause 108: Inquiries and investigations

Clause 109: Power of any Northern Ireland department to intervene in case of default by council

NILGA considers the language used in these clauses, and the scope of powers conferred on departments to be contradictory to the spirit of fostering a more collaborative working arrangement between central and local government. We would remind the Committee of

our comments in relation to Clause 103, and would again note that it will be important for guidance to be produced for government departments to ensure that they don't begin to micro-manage councils and do not place unrealistic reporting expectations on them.

It is particularly noted that under this part of the Bill, there is no requirement to consult, either with local government in general, or with individual local councils. A clause of this nature must be included in this section.

Part 15 – Amendments of the 2005 Order

Clause 110: The local government auditor

NILGA welcomes the insertion of a provision to the effect that any sums payable by the local government auditor in consequence of any liability for breach of duty incurred in the exercise of his/her functions will be charged on and issued out of the Consolidated Fund.

Clause 111: Power to repeal provisions relating to surcharge etc

NILGA welcomes the provision to the effect that the Department may by Order repeal the relevant legislation relating to the previous ability of the local government auditor to seek a declaration that an item of account is unlawful and to seek the recovery of an amount not accounted for, ie impose a surcharge.

NILGA would urge the Department so to order with effect from the commencement of the new councils on 1 April 2015. It is the NILGA view that maintaining surcharge after the new Ethical Standards regime is put into place is unnecessarily controlling and duplicative.

Clause 112: Minor and consequential amendments

NILGA has no objections to this clause.

Part 16 - Miscellaneous

Clause 113: Guidance

NILGA welcomes the provision which ensures that any guidance to be issued under this legislation will be consulted upon with Councils, NILGA and any other relevant bodies' representative of councils, bodies' representative of officers and such other persons as the Department considers appropriate.

Clause 114: Transitional rate relief in consequence of changes in local government districts

NILGA welcomes the inclusion of the necessary measure to give effect to the proposed transitional rate convergence relief. It is noted that in the current reforms proposed for local government in the Republic of Ireland, transitional support has been recognised as necessary for a period of **up to 10 years**, whereas in Northern Ireland, relief has been mooted for a period of two or three years. NILGA would therefore suggest that the Committee consider making a recommendation to the Department that a longer transitional period be considered.

Clause 115: Commencement of the Local Government (Boundaries) Order (NI) 2012

Clause 116: Exclusion of non-commercial considerations

Clause 117: Control of disposals and contracts of existing councils and their finances

Clause 118: Persons ceasing to hold office

Clause 119: Validity of acts done by unqualified persons

Clause 120: Insurance against accidents to councillors

NILGA has no objections to these clauses, but in relation to clause 120, would query the arrangements for insurance and indemnity for councillors on outside bodies. The Committee may wish to clarify with the Department if a further clause is necessary on that issue.

Clause 121: Schemes for the transfer of assets and liabilities; and Schedule 10

Clause 121 refers only to transfer of assets and liabilities, whilst the Schedule also refers to the transfer of staff.

In relation to Schedule 10, paragraph 2 (4), whilst NILGA understands that the Transfer Schemes will be statutory and therefore must be signed-off by a Department, NILGA also contends that a scheme for transferring local government employees to the appropriate new councils should be prepared by the existing councils and approved by the new councils (in shadow form) prior to submission to the Department for approval. Councils hold the relevant information to facilitate this process, the Department does not. In effect, much of the work will need to be carried out by councils in order to satisfy TUPE requirements. There is a risk of duplication or mixed messages if this is being done twice.

NILGA also notes that Schedule 10, paragraph 2 (4) requires that a scheme made by a Northern Ireland Department is to be consulted upon by that Department. Those to be consulted with include the employees concerned and/ or their representatives. It does not however include councils as the employers of those employees (either in their capacity as transferors or as transferees). It is also the case that TUPE will be applicable as per Schedule 10 (1-3) and as such councils (again as both transferor and transferee employers) will have direct statutory responsibility for consultation with employees and/ or their representatives. There is considerable potential here for error and confusion with two parties acting simultaneously to give effect to similar requirements.

Clause 122 – Compensation for loss of office or diminution of emoluments

NILGA notes that the Department intends to make Regulations which will, in effect, introduce the local government reform staff severance scheme. NILGA is concerned that elected members do not currently have a full understanding of this scheme and the potential financial implications involved. NILGA urges that action should be taken forthwith to address this concern, through the production of guidance.

In addition, NILGA is concerned that the proposed scheme, as it stands, may be in contravention of the Age Regulations, in particular, in its differential implications regarding added years for staff aged under 55 and over 55. NILGA urges that an 'objective justification' exercise be carried out to address this concern.

Clause 123 – Supplementary and transitional provisions for the purposes of this Act and other purposes

Clause 124 – Interpretation

Clause 125 – Regulations and Orders

Clause 126 – Minor and consequential amendments and repeals

Clause 127 – Commencement

Clause 128

NILGA has no objections to these clauses, and would welcome the requirement to consult in Clause 125.

4.0 Conclusion

The Northern Ireland Local Government Association is grateful to the councils, councillors and officers who have constructively addressed the many concerns expressed by the sector in relation to the Bill.

This document serves not only to illustrate the concerns but, also, to demonstrate that self determination, the provision of mutually agreed solutions and the principle of real partnership can be brought into the Bill to make it better and implementable.

NILGA thanks both the Committee and the Department, in anticipation of being asked to assist in the enhancement and delivery of the Bill, in what is clearly the biggest change to local councils and local democracy for over four decades.

The Association looks forward to adding further solutions and evidence to the Committee in a dynamic, responsive manner, if it is enabled to do so.

Local government has a Vision and now aims to develop a Programme for new Local Government during 2014, to inform and enable participation within the next, overall, Programme for Government through the new NI Executive in 2016. In no small part, the finalised Local Government Bill should provide the room to enable this.

With the revisions to the Bill proposed NILGA remains confident that the Vision can be achieved for the public we serve, yet vigilant to ensure that progress is maintained.

A fully defined, demonstrable partnership which is citizen centred and more effective than it is now can create innovative, democratic and productive central / local government for all in Northern Ireland.

Disclaimer

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Northern Ireland Public Service Alliance (NIPSA)



The Leading Public Service Union

Brian Campfield General Secretary

YOUR REF

OUR REF

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5 November 2013

Dear Sheila

RE: LOCAL GOVERNMENT BILL

I am writing as the Trade Union Side Lead for those unions on the Local Government Reform Joint Forum (LGRJF), the body established by the DOE Minister with single authority to deal with RPA industrial relations and employment matters in local government.

The Trade Unions have numerous concerns with the Local Government Bill, other RPA legislation/proposed legislation and the total mishandling of RPA reform by the DOE. The comments here relate to the Bill but Trade Union Side considers it essential that in the scrutiny of the Bill that the Committee adopts a holistic approach to the local government RPA process.

In addition to the points below on the Bill, Trade Union Side needs to highlight the following:

- massive industrial relations problems;
- breach of employment rights on foot of Clause 18 of the Statutory Transition Committee Regulations;
- failure to comply with the Northern Ireland Executive's Guiding Principles, as drafted by the Public Service Commission; and
- the abuse of the legislative process by the Department seeking to introduce a major change to the Bill at consideration stage i.e. clauses to wind-up the Local Government Staff Commission (LGSC) with effect from April 2017. Trade Union Side considers that this is not only a decision that lacks any sustainable grounds and is totally irrational but further exposes the lack of commitment and concern for local government staff, especially those of the LGSC. In addition by planning to introduce it at consideration stage the Department seeks to avoid a full examination of its wholly unjustifiable proposal by the Assembly Committee.

The concerns in respect of the Bill include the following:-

Clause 2 (3) (b): The constitution and associated documents should be free and available on the Council's website. Any aspect of the Constitution/Standing Orders, etc. that have any impact on staff must be subject to consultation with the Trade Unions.

Clause 33 Scrutiny Officers: There has been no discussions with the Trade Unions as to the grade, role, reporting arrangements etc. for such a post.

Clauses 38/39/46/47: Trade Union Side has concerns that such systems have been and will be abused in order to circumvent employment obligations and the industrial relations process. In addition Clause 47 should make provision for web publication.

Clause 56: This is an important issue and one on which the LGRJF Trade Union Side has identified as a key work priority for the LGRJF. A code of practice needs to be established covering the relationship between councillors and employees. It is not appropriate that such a code is left to the Department.

Clause 58/59: Trade Union Side does not consider it appropriate for the Commissioner of Complaints to deal with a complaint about or from a councillor in respect of a staff member. There should be special agreed arrangements with the LGSC handling the administrative process. Such processes must be agreed with the Trade Union Side.

Clause 76: Trade Unions and Trades Councils should be included in the consultee list for "community involvement". This goes beyond the trade unions representative of employees and should include all trade unions and trades councils within the hinterland of the Council.

Clause 79: There is a need to require negotiations with the trade unions representing any affected staff should a body corporate be established.

Clause 90: Again there should be a requirement to consult with the relevant trade unions.

Clause 103: Any direction that potentially has implications for staff must be subject to consultation with the trade unions.

Clauses 107/109: In order to avoid confusion/duplication and potential conflict with the likes of community planning, any Departmental directions etc. should operate via DOE gate keeping arrangements. Also Trade Union Side will need to be consulted on any potential staffing implications.

Clause 121: RPA Staff Transfer Schemes must appear as an agreed schedule to the Bill and be fully compliant with the RPA Guiding Principles.

Clause 122: This is wholly deficient, the previous DOE Minister assured the LGRJF that its severance agreement would appear on the face of the Bill.

From the second reading of the Bill Trade Union Side also picked up the following issues:-

- Provision for Council employees to be elected to the employer Council. There has been no engagement at all with the Trade Unions on this matter.
- Staff morale – this is very low and just not related to the debacle of Clause 18 of the Statutory Transition Committee Regulations. It also relates to the mismanagement of the RPA project and to placing intolerable burdens on staff.
- Need to maintain the political impartiality of Council employees.
- Code of Conduct potential appeals mechanism, this relates to the comments above on Clauses 56/58/59.

In conclusion, I would ask that the Trade Union Side be provided with the opportunity to raise these matters directly with the Committee. I would also refer you to my letter of 27 September to the Committee Chairperson, which was copied to yourself.

Yours sincerely



BUMPER GRAHAM
LGRJF TUS Lead

Enc.

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NIRIG response to Local Government Bill

12th November 2013

The Northern Ireland Renewables Industry Group (NIRIG) is a joint collaboration between the Irish Wind Energy Association and RenewableUK. NIRIG represents the views of the large and small scale renewable electricity industry in Northern Ireland, providing a conduit for knowledge exchange, policy development support and consensus on best practice between all stakeholders in renewable energy. NIRIG welcomes the opportunity to comment on the Local Government Bill as this provides the legislative framework for reorganised local government from April 2015. Specific comments on those elements of the Bill of particular interest to the renewables sector can be found below.

Part 9 Conduct of Councillors

NIRIG welcomes the proposal to establish a mandatory ethical standards framework for Councillors and local government as represented by the Code of Practice.

Part 10 Community Planning

NIRIG believes that community planning will enable sustainable development to take place within the new Council areas. Northern Ireland has considerable renewable energy resources available, ambitious targets to develop these, and the potential to deliver an increasingly more sustainable, diverse and secure energy mix. Given this NIRIG strongly recommends that wind farm applications greater than 5MW continue to be assessed centrally as Major Applications with Strategic importance. Energy is fully devolved in Northern Ireland and, as such, 'national' targets exist as outlined in the Strategic Energy Framework 2010. NIRIG therefore believes that wind farms, offshore renewable energy developments and associated grid infrastructure should be considered nationally significant and decisions on them retained centrally.

By their very nature, wind energy developments are large scale infrastructure projects and are predominantly located in upland areas. As such, many wind farms applications will have effects at a larger than local scale, tending to fall along or close to district council boundaries, and be visible across council areas. The significance of wind energy development goes beyond a single district council area, both in terms of potential impacts and benefits.

Furthermore, NIRIG believes that a centralised approach to wind energy development and associated infrastructure, including grid connections, will continue to ensure that a strategic and consistent approach to the development of energy infrastructure is achieved in Northern Ireland.



NIRIG is a collaboration between the Irish Wind Energy Association and RenewableUK

NIRIG also notes that the Bill provides for community planning partners. We would propose that the renewable electricity sector, as key partners to the long-term objective of contributing to the achievement of sustainable development in Northern Ireland, should be represented on community partnership panels.

NIRIG looks forward to continued engagement with DOE and other stakeholders in developing an appropriate policy framework for the implementation for Local Government Reform.

Meabh Cormacain

NIRIG

Northern Ireland Women's European Platform (NIWEP)



Northern Ireland Women's European Platform

NIWEP response to the Northern Ireland Assembly Committee for the Environment call for evidence on the Local Government Bill – November 2013

The Northern Ireland Women's European Platform (NIWEP) is an umbrella organisation that strives to maximise the effectiveness of international mechanisms in achieving equality between women and men in:

- safety and physical integrity;
- participation in public life
- access to services;
- economic security;
- social protection;
- quality of life.

NIWEP welcomes the opportunity to give evidence to the Committee on the Local Government Bill. We consider the framework for local government to be crucial to creating a society that is just and equal and deals with the inequalities faced by women.

Inequalities remain between women and men. Many women also experience a double jeopardy through their race, age, disability, caring responsibilities, sexual orientation or other factors. As an example women are already under represented in public life but there has been little done to deal with intersectionality and multiple identities such as the representation of minority ethnic women or disabled women to name a few.¹

¹ More information can be found in the NIWEP CEDAW shadow report July 2013 <http://www2.ohchr.org/english/bodies/cedaw/cedaws55.htm> Page 3



Northern Ireland Women's European Platform

International standards and mechanisms refer to the need to include women in decision making roles. The Concluding Observations from the recent examination by the Committee on the Elimination of Discrimination against Women (CEDAW) of the UK Government in July 2013 state:

'Participation in political and public life. While noting the increase in the representation of women in the public sector, the Committee is concerned that women continue to be significantly underrepresented in certain fields, including in parliament, in the judiciary and on public sector boards. The Committee is particularly concerned at the low representation of black and minority ethnic women and women with disabilities in political life.

The Committee further recalls its previous concluding observations and remains concerned at the low representation of women in the post-conflict process in Northern Ireland and the failure to fully implement Security Council Resolution 1325. The Committee calls upon the State party:

- (a) Continue to take concrete targeted measures to improve the representation of women in Parliament and the judiciary, particularly black and ethnic minority women and women with disabilities; and
- (b) Ensure the participation of women in the post-conflict process in Northern Ireland, in line with Security Council Resolution 1325 (2000)²

As mentioned, UN Security Council Resolution 1325 Women, Peace and Security requires participation of women as a key measure in peace building. Lynn Featherstone, in a response to a Parliamentary Question stated:

² CEDAW Concluding Observations of the UK July 2013 can be accessed at <http://www.wrda.net/CEDAW-Concluding-comments-2013.aspx>



Northern Ireland Women's European Platform

'UNSCR 1325 makes provision for the protection of women in armed conflicts and to encourage their participation in conflict resolution and political and public life. Some aspects of UNSCR 1325 such as participation in peace and political processes are relevant to all states and the Government will continue to work towards increasing the representation of women in Northern Ireland in public and political life.'³

This statement was directly echoed in Government's 7th Periodic report to CEDAW in June 2011.

NIWEP's main concern in completion of the Review of Public Administration is that women are fully represented in decision making and structures⁴. This is not currently the case. The Transition Committees have seen a diminution of women's participation⁵. This underlines the fact that it is necessary to take positive action to ensure gendered perspectives in the process⁶.

An excellent model of such positive measures is the 'Women into Local Councils' initiative⁷ which works to increase participation of women at both elected member and officer level. NIWEP is concerned that this work may be neglected if the Minister's recommendation to dissolve the Local Government Staff Commission is agreed.

³ 18 Official report (Hansard) 13 Mar 2012: Column 205W, Minister for Women and Equalities, Lynn Featherstone MP [available at: http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120313/text/120313w0003.htm#120314_100122_8 accessed June 2013

⁴ Hinds, B and Loughlin, J (Nov 2005) The Review of Public Administration in Northern Ireland: Checks, Balances and Safeguards can be accessed at www.doeni.gov.uk/lgrt_gov_checks_balances_safeguards.pdf

⁵ Hinds, B and Gray, AM (Nov 2005) Women and the Review of Public Administration can be found at <http://www.archive.rpani.gov.uk/Women%20and%20the%20RPA.pdf> or incorporated within www.equalityni.org/archive/event_resources/BHinds.doc

⁶ Response to consultation on Transition Committees, 2009 – NIWEP, NIC-ICTU, DemocraShe

⁷ More information can be found at <http://www.lgsc.org.uk/new-initiatives/equality-and-diversity/>



Northern Ireland Women's European Platform

More women in decision making roles such as the transition committees would be beneficial for all citizens (see postscript). It would bring a broader range of skills, experience and talent to policy making, would ensure a greater focus on addressing gender equality issues and on how social policy or the absence of policy impacts on women (which has been very absent from policy making in Northern Ireland over the years), and would contribute to changing the culture of politics in Northern Ireland.

We welcome the fact that completion of RPA takes place parallel with the revision of the Gender Equality Strategy and the development of related action plans and view this as an opportunity to implement measures for the inclusion of women in decision making⁸.

NIWEP welcomes the following elements of the Bill:

- **Code of Conduct:** we support the development of a code of conduct in local government;
- **community planning:** we look forward to community planning measures that are fully inclusive and informed by engagement with all areas of the community;
- **general power of competence:** we support a general power of competence where it allow innovative approaches to problem solving and to meeting the needs of communities;
- **Partnership Panel:** we welcome steps taken to harmonise the vision and strategy at central and local levels.

⁸ Hinds, B and Loughlin, J (Nov 2005) The Review of Public Administration in Northern Ireland: Checks, Balances and Safeguards can be accessed at www.doeni.gov.uk/lgrt_gov_checks_balances_safeguards.pdf



Northern Ireland Women's European Platform

In respect of the wider context, it was the previous Minister's intention to take legal opinion on quotas, as he informed NIWEP at a meeting that also included DemocraShe and WRDA in 2012. The Minister at this time was extremely interested in addressing the gender deficit and we would be interested to know if the Committee have considered this matter.

We look forward to contributing further on the completion stages of the RPA and would be willing to give oral evidence to the Committee in line with this submission.

A handwritten signature in black ink that reads 'Kate M^{rs} Cullough'.

Kate McCullough
Chairwoman NIWEP



Northern Ireland Women's European Platform

POSTSCRIPT ON WOMEN IN DECISION MAKING

Decision making and policy development should be informed by both women and men. Structures and representation should reflect society. This will not happen of its own accord but will require a gender sensitive approach. Such an approach will be developed through assessing equality in all measures. It will include:

- **gender mainstreaming:** consideration of gender issues in all policy and decision making – the Gender Equality Strategy offers a framework for this;
- **positive action:** recognition that achieving women's equality will require specific actions – the diminished representation of women on the temporary Transition Committees demonstrates this and consideration can be given to relevant actions in the Section 75 action plans now being developed;
- **gender budgeting:** using gender budgeting mechanisms to ensure public money is most effectively spent will meet the challenges of public spending in the economic downturn;
- **gender impact assessment:** assessment, strategising including setting timescales, monitoring and review – the Gender Equality Action Plans, including the cross departmental commitment to developing data for women and men will support this.

North Down Borough Council

Submission regarding the Local Government Bill to the Committee of the Environment

1. Introduction

1.1. The Council welcomes the opportunity to make a submission the Committee on the Local Government Bill.

2. General

2.1. In line with the modern governance arrangements the use of terms such as Chief Executive (rather than clerk) and employee (rather than officer) should be considered.

3. Part 1 Councils

3.1. The Council would seek inclusion in the Bill of provisions to allow the granting of City or Borough status along with the titles of 'Mayor' and 'Lord Mayor' as appropriate.

3.2. The council welcomes to need to create and maintain a 'constitution', but considers that Committee & Executive Terms of Reference and the scheme of delegation referred to Clause 10 (4) should also be included.

4. Part 2 Councillors

4.1. Clause 4 & Schedule 1 Paragraph 1(2). The removal of the bar on all employees of a Council could present problems for line managers, who may struggle exercise appropriate authority over an employee who is also a Councillor. This may lead to potential difficulties in the work force, all of which is highly undesirable.

5. Part 3 Positions of Responsibility

5.1. In addition to the three given methods, it would be preferable for Councils to be able to allocate positions of responsibility on their own broadly proportional basis.

5.2. Schedule 3 Part 2 – If vacancies or a new Position of Responsibility are to be filled using STV, it is likely that the largest party will win the election and therefore potentially skew the proportionality principle. It would be preferable to use direct replacement in the case of vacancies and one of the nomination methods for filling additional positions.

5.3. Council at present would use the word 'term' to mean the whole period between local general elections, as opposed to the period between annual meetings. A definition would add clarity.

6. Part 4 Discharge of Functions

6.1. Clause 11(3)(b) – Council would suggest that the list of functions which cannot be delegated is amended to include 'affordable borrowing limit' under Local Government Finance Act (2011) rather than 'borrowing money'.

6.2. Clause 11(3)(c) – Suggest that this is amended to allow delegation of the acquisition or disposal of small or technical corrections of land.

6.3. Clause 15 - Audit Committees currently provide valuable oversight and risk management roles within Councils. Best practice would dictate that these

committees have appropriately qualified external persons as members. Council considers that it would be advantageous to include specific provisions in the Bill to place these Committees on a statutory footing and give Councils the power to allow these members to have voting rights, if they considered that appropriate. This would align provisions for other external members to have voting rights as outlined in Schedule 6 paragraph 1(1) in respect of Overview & Scrutiny Committees.

7. Part 5 Permitted Forms of Governance

7.1. Council welcomes the range of governance arrangements although there may be need for capacity building for other Councillors and Management with regard to the advantages of the new forms of governance.

8. Part 6 Executive Arrangements

- 8.1. Clause 25(2) Simpler terms would be 'cabinet' and 'streamlined committees'.
- 8.2. Guidance regarding the qualification and seniority of the Scrutiny officer would be helpful.
- 8.3. In order to maintain a broad range of responsibility for members who are not members of an Executive Council would consider it advantageous to include provisions to allow the discharge of some Council functions by area committees, similar to those in place in England and Wales.

9. Part 7 Meetings and Procedures

- 9.1. Clause 44 Given the significance or sensitivity of 'Qualified majority' decisions Council suggests that it would be appropriate to include a higher quorum threshold for the making of these decisions, say 50% of council or committee membership must be present and voting. However, in the interests of efficiency of decision making 'qualified majority' decisions should not be the norm.
- 9.2. Clause 45 'Call in' procedures as drafted require greater clarity:
 - (1)(a) – the Bill could better define what 'proper consideration of the facts' means in practice and how significant does a 'fact' have to be before it merits the decision being reconsidered; &
 - (1)(b) – In the interests efficiency of decision making it is suggested that the wording be amended to 'disproportionately affect adversely a significant proportion of the inhabitants...'
- 9.3. Schedule 7 Paragraph 5(1)(b) In order to promote greater efficiency electronic notices should be specifically allowed.

10. Part 8 Access to Meetings and Documents

- 10.1. Clauses 43 – 45 It is not clear if these clauses also apply to executive arrangements.
- 10.2. Clause 48 This clause may become onerous on Councils in terms of resources required to keep physical copies of the range of papers. It would be of benefit if electronic copies would be satisfactory.
- 10.3. Clause 51(6) It would be generally understood that 'accounts' means the 'statement of accounts' as referred to Local Government (Accounts and Audit) Regulations. Clarity regarding this term may be required especially if 'accounting records' is what is intended.

- 10.4. Clause 52(2) This 'list' would possibly better understood as a 'scheme of delegation' and could include the 'terms of reference' for each committee, streamlined committee or executive if these are not included in the constitution.
- 10.5. Clause 52(1)(b)(ii) may have security implications should a member of security forces or allied staff be co-opted members of committees. Clarity is required as to whether these disclosures extend to committees formed under other legislation (eg PCSPs) and to the employees or office holders of community planning partners.

11. Part 9 Conduct of Councillors

- 11.1. Council welcomes the role of the Commissioner, however would feel that a mechanism for dealing with small or trivial complaints outside this, may be speedier and more cost effective. Council would also strongly advocate the need for an appeals mechanism should a complaint be upheld and for this mechanism go beyond simply an appeal on the grounds of a failure in the process.

12. Part 10 Community Planning

- 12.1. It is essential that community plans are integrated into the medium term financial plans of Councils and that expenditure is therefore 'affordable, prudent and sustainable'. This will inevitably mean there will a trade-offs between what is desirable and affordable.
- 12.2. Council supports the proposal for Councils to take the lead, along with Community Planning Partners, in Community Planning at a district level.
- 12.3. Clause 69(3)(b) This clause should include specific reference to making adequate resources available within the Partners' financial plans, in much the same way as should be required for Councils.
- 12.4. Clause 77 – Whilst Guidance in the form of "The Community Planning Foundation Programme" has been made available from the Department, further comprehensive Guidance on the proposed Community Planning Partners, the format of the Plan, proposals for review of performance and accountability are required as a matter of urgency in order for Councils to comply with this duty.
- 12.5. Clause 78 Provisions with regard to Departments should be much stronger – at least to have 'due regard', but it is desirable, in order to maximise the opportunities for success, to have them participate in the community planning process and commit resources to its successful fulfilment, if required.

13. Part 11 General Powers of Councils

- 13.1. These powers are welcomed although it is essential for Councils to have an input into the development of guidance in this area.

14. Part 12 Performance Improvement

- 14.1. Clause 87 There is an overlap in this clause with the Best Value Act, where councils are required to "make arrangements for continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness"?
- 14.2. Clause 96 It is essential that there is a close involvement with the Local Government sector to any guidance developed in this regard.
- 14.3. Clause 98 It is essential that the monitoring regime put in place is of collaborative and constructive nature. It is essential that if the Northern Ireland Audit

Office is to undertake this role that the organisation is appropriately resourced for the task at what is already busy time with regard to finalising annual accounts.

- 14.4. Clause 103 With regard to the powers of direction given to Departments it would be better to frame this in terms of working together before the option to 'direct' would be invoked.

15. Part 13 Partnership Panel

- 15.1. Council welcomes the inclusion of the Partnership Panel in the Bill and believes it will have a significant role to play in the interaction between the Central and Local Government sectors.
- 15.2. For the Panel to work effectively it is essential that it a 'partnership' and therefore it is imperative that there is equality between the Executive and Local Government sides. The tone of the legislation as drafted does not convey this sense of equality and partnership.
- 15.3. Clause 106 (4) Given that the First Minister & Deputy First Minister are to be given the power nominate Ministers, it would seem reasonable for Councils to nominate their members, rather than they be appointed by the Department following consultation. This would naturally be with reference to the principles of proportionality espoused throughout the Bill.
- 15.4. Provision should also be made regarding access of Councils & Departments to information and minutes of meetings.

16. Part 14 Control of Councils by Northern Ireland Departments

- 16.1. Council would have concern that compliance with this clause could be onerous and that there may be duplication of information requests. It may be beneficial for the Department to establish a protocol (in consultation with the Councils) to regulate or co-ordinate these requests.
- 16.2. Clause 108 & 109 – Council notes with concern that Councils will have no form of appeal against a finding of failure nor any requirement of a Department to engage with a Council to rectify the problem prior to such directions being made.

Public Service Commission



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12 November 2013

Environment Committee's consultation on the Local Government Bill.

Thank you for the opportunity to respond to the above consultation. The Public Service Commission (PSC) would make the following comments.

Schedule 10

In order to carry reorganisation through successfully it is essential to enlist the support of the staff. Therefore the Commission welcomes the provisions on the transfer of staff in schedule 10, because, among other things, they ensure consistency of treatment across all staff affected by RPA as promised when RPA was launched.

The RPA Principles are based on best practice and on employment law. Consequently we are disappointed that the procedure set out in the Northern Ireland Executive's Fourth Guiding Principle, as recommended by the PSC (*filling new or substantially new posts in new organisations being created as a result of the review of public administration*) has not been followed in relation to the selection of Chief Executives of the new councils.

Please note that the RPA Principles have been followed in the reorganisations of the health and social care sector and the library sector; and that where the advice of the Commission (PSC) has been followed on the application of the Principles no grievance cases have arisen even though tens of thousands of staff were involved.

Code of Conduct for Councillors

The Commission would welcome the provision in the Bill for a code of conduct for councillors which should contain *provision on the relationship between councillors and their staff*.

I hope these comments are helpful.

Yours truly,

Pat Stringer

Patricia Stringer
Chief Executive PSC

The Rainbow Project



Local Government Bill Committee for the Environment

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Introduction

The Rainbow Project (TRP) is the largest LGB&T organisation in Northern Ireland which seeks to promote the health and well-being of lesbian, gay, bisexual and/or transgender (LGB&/T) people and their families.

We provide a range of services including information and support, education and training, counselling, personal development courses, health promotion, sexual health testing, advocacy and lobbying.

We recently undertook a programme of work, in partnership with local government officials and key stakeholders, which sought to develop working models for local government to begin engaging effectively with local LGB&T communities.

It is important that Councils recognise the needs of LGB&T people within their Council area, particularly when they are carrying out their equality and good relations duties under Section 75 of the Northern Ireland Act 1998.

The requirement to recognise the needs of LGB&T people will become ever more important within and throughout local government in light of the Local Government Bill, which will include the transfer of additional responsibilities to local authorities from central government, the establishment of new functioning structures and the adoption of new standards and ethics.

It is in that context that we offer comment on the Local Government. The priority of The Rainbow Project is to ensure the inclusion of the most marginalised groups and citizens in the new local government structures. It is our view that the best model of community planning will be delivered with a process that seeks to get people around the table that are not normally around the table, to determine the widest and best possible view of what is required in a local community.

In this context, we also endorse the submission of Community Places on behalf of the Community Planning Manifesto. Any comments on clauses in this submission that conflict or are different to comments in the Community Places submission on the same clauses, take precedence and reflect the views of The Rainbow Project. All other comments in the Community Places submission are endorsed. The Community Places response is enclosed in Appendix I.

Comment

For the purposes of this response, The Rainbow Project submits comments on the following clauses:

- Clause 56 – Code of Conduct
- Clause 70 – Community Planning Partners
- Clause 76 – Community Involvement
- Clause 77 – Guidance
- Clause 92 – Performance Indicators and Performance Standards

Clause 56 – Code of Conduct

The Rainbow Project welcomes that there will be a new Code of Conduct for Councillors, along with a framework and role for the Commissioner’s Office.

The Code of Conduct must be underpinned with protections for those designated under Section 75 (1) of the Northern Ireland Act. Any action or decision made by a council official or councillor which impacts negatively, with no attempt at mitigation of those negative impacts, should be considered a breach of the Code of Conduct. It is right and proper in a democratic society that those that are afforded the privilege to represent the people are held to a higher standard and expected to represent all people with respect and show dignity.

Recommended new Clause
56 (3) The principles will be underpinned by fairness and equality, taking account of those categories enumerated in Section 75 (1) of the Northern Ireland Act 1998.

Clause 70 – Community Planning Partners

Community and Voluntary organisations will be important stakeholders in the Community Planning process. While we acknowledge that the local authority and the Departments and Statutory agencies on the community planning partnership will be primarily, but not exclusively, responsible for providing the resources to deliver the Community Plan, the development of the plan is equally as important as delivering the plan and because of this it is important that the community and voluntary sector are listed as community planning partners.

It is also important to ensure that the representatives of the community and voluntary sector on the community planning partnerships reflect communities, including those ‘hard to reach’ or ‘invisible’ communities.

Recommended new clause
69 (2) (d) and act in co-operation and conjunction with community and voluntary bodies from the outset of the process, with consideration for hard to reach groups, as enumerated in Section 75 (1) of the Northern Ireland Act 1998.

Clause 76 – Community Involvement

Community involvement is a key ingredient in community planning. It is crucial that it reaches out to everyone living in a council area – including those often described as “hard to reach”. Legislative provision elsewhere seeks to ensure this by encouraging a proactive approach to engagement. However Clause 76 (1) simply requires a council and its community planning partners to ensure that “arrangements are made so that persons have the opportunity to express their views and have them taken into account”. The passive and

overly bureaucratic language used is unlikely to encourage good practice. More active language should be used to ensure that councils and community planning partners actively seek and encourage participation in the process of community planning.

In Scotland the words used are “take suitable action to encourage” while in England the phrase “seek the participation” is utilised.

Recommended amendment to clause 76 (1)
<p>76 (1): A council and its community planning partners must seek the participation of and encourage persons mentioned in subsection (2) to express their views and ensure that their views are taken into account in connection with:</p> <p>a) Community planning b) The production of a community plan for the district; and c) The review of community plans.</p>

Clause 77 – Guidance

We welcome that the Department will issue statutory guidance. **The Rainbow Project believes that it is necessary for Councils to be legally required to engage with community bodies, individuals and all public and community service providers.** The Departmental guidance for community planning which sets out quality standards for community engagement, provision for local and thematic community plans as well as steps that ensure that the community planning structures must be fully representative of all community bodies.

The community bodies represented within the engagement structures must be underpinned by Section 75 of the Northern Ireland Act 1998, including the LGB&T community. In order for community planning to be effective in delivering for communities, the structures must allow marginalised and hard to reach communities the opportunity to engage and be involved. This opportunity must, in the first instance, be underpinned by the statutory guidance.

This guidance should cover those areas covered in the Community Places submission and from The Rainbow Project’s perspective, particularly the following:

- How community planning partners from community and voluntary bodies are identified;
- Engagement Quality Standards for Community Planning;
- In line with council’s role as a ‘facilitator’ of community planning: **proactive approaches to engaging and reaching out to the ‘harder to reach’** e.g. low income groups, rural communities or LGB&T Communities;
- Developing thematic (issue based) and local Community Plans;
- Outcomes based approach to measure progress and improvement; and
- Promoting equal opportunities; and

Additional Advice Notes should be provided to develop a shared understanding and greater consistency in the implementation and practice of community planning and to share

learning and good practice. A useful resource is the BIG Lottery Fund supported Community Planning Toolkit available at www.communityplanningtoolkit.org

Preparation of Guidance

The Bill requires that before the Department issues guidance it must consult councils and – (a) such associations or bodies representative of councils; (b) such associations or bodies representative of officers of councils; and (c) such other persons or bodies, as appear to the Department to be appropriate. Specific reference should be included to consulting with community and voluntary bodies to ensure that the views of all those who are essential to the practice and implementation of community planning have an opportunity to shape and improve the process.

Recommended amendment to clause 77 (2) (c)

77 (2) (c) such other persons or bodies, including community and voluntary bodies, as appear to the Department to be appropriate.

Clause 92 – Performance Indicators and Performance Standards

We welcome that the Department may introduce factors (“performance indicators”) and standards (“performance standards”) as we believe these are important to the effectively delivery of community planning. We also welcome the performance indicators and standards as (a) strategic effectiveness, (b) service quality, (c) service availability, (d) fairness, (e) efficiency and (f) innovation. This can be more proactive however, rather than ‘may’ the department should (using the term ‘will’).

Recommended amendment to clause 92 (1)

The Department will by order specify – (a) Factors (“performance indicators”) by reference to which a council’s performance in exercising functions can be measured; (b) Standards (“performance standards”) to be met by councils in relation to performance indicators specified under paragraph (a).

However we are unclear as to whether the specification of performance indicators and standards only requires one of the specified areas (a – f) or all of them at least once. The view of The Rainbow Project is that the performance indicators and standards must include all the above areas and community planning partnerships should not be able to for example improve service quality to the detriment of fairness, or make services more available to the detriment of service quality.

It is important that the indicators and standards cover all the listed areas.

Recommend amendment to clause 92 (3)

In deciding whether to specify performance indicators and standards, and in deciding them, the Department must aim to promote improvement of the exercise of the functions of

councils generally and in particular in terms of the following -

- (a) strategic effectiveness;
- (b) service quality;
- (c) service availability;
- (d) fairness;
- (e) efficiency; and
- (f) innovation.

Conclusion

The Rainbow Project welcomes the opportunity to provide comment on the Local Government Bill. We would request the opportunity to provide the committee oral comment about any aspect of the submission.

12 November 2013

Appendix I – Community Places Submission on behalf of the Community Planning Manifesto Group

November 2013

Call for Written Submission to the Environment Committee

We welcome the introduction of the Local Government Bill and the opportunity to engage with the Environment Committee. We support the overall aims and principles which the reform process seeks to achieve. Our comments and recommendations below largely focus on the introduction of the new power of community planning and while we are broadly supportive of the Bill we have identified a number of issues where improvements could be made to enhance and strengthen the Bill for the benefit of local and central government, people and communities.

Our proposals seek to achieve the following objectives:

- (a) To provide a framework for real and meaningful partnership work between councils, statutory agencies and communities;
- (b) To enable community planning to reach out to and engage people in all communities;
- (c) To focus the work of community planning on outcomes which make a meaningful difference and on improving the co-ordination and delivery of public services in communities and constituencies.

Our response includes proposed amendments to the following clauses:

- Clause 69: Community planning;
- Clause 70: Community planning partners;
- Clause 71: Production of community plan;
- Clause 73: Review of community plan;
- Clause 74: Monitoring;
- Clause 76: Community Involvement;
- Clause 77: Guidance;
- Clause 78: Duties of departments in relation to community planning;
- Clause 81: Interpretation;
- Clause 82: General Power of Competence;
- Clause 90: Consultation on improvement duties;
- Clause 92: Performance indicators and performance standards;
- Clause 93: Collection of information relating to performance;
- Clause 98: Audit and assessment reports; and
- Clause 106: Partnership Panel.

Clause 69: Community Planning (definition, partners etc)

Improving Delivery of Public Services

One of the most valuable strengths of effective community planning is its ability to improve the co-ordination and delivery of public services in local areas and constituencies. This is the fundamental aim of Community Planning in Scotland and Wales. However the Bill makes no reference to improving public service provision. Minister Durkan’s comments on introducing the Bill and the Explanatory Memorandum do however make specific reference to the aim of improving service provision. The Bill should thus be amended to align with this emphasis.

The equivalent legislation in Scotland describes Community Planning as a process by which the *public services provided in the area of the local authority are provided and the planning of that provision takes place.*

Recommendation: Amend clause to read
69 (2) (c) identify actions to be performed and functions to be exercised including those related to the planning, provision and improvement of public services by the council and its community planning partners for the purpose of meeting the objectives identified under paragraphs (a) and (b).

Community Planning Partners

Community and voluntary bodies will be important stakeholders in the delivery of Community Planning. They have experience, knowledge and assets which they can offer, access to resources not available to statutory agencies and experience in providing local projects, services and facilities. It is thus vital that they are active participants in developing and delivering community planning. To facilitate this it will be essential that they are included from the outset of the process. The legislation in Scotland uses the term co-operation to include community bodies. The Bill should do likewise and be amended as follows.

Recommendation: Insert new clause
69 (2) (d) and in co-operation and conjunction with community and voluntary bodies from the outset of the process.

It is clear that the Community Plan will provide an overarching framework (the ‘plan of plans’) to set the vision and agenda for the work of the 11 new councils, their community planning partners and representatives from community and voluntary bodies. In order to ensure appropriate commitment to the implementation of the community plan and to achieve improved outcomes long-term objectives and actions should be identified, agreed and performed.

Recommendation: Amend clause to read
<p>69 (2) (a) identify and agree long-term objectives for improving-</p> <p>69 (2) (c) identify and agree actions to be performed and functions to be exercised by the council and its community planning partners for the purpose of meeting objectives identified under paragraphs (a) and (b).</p>

Linking the Community Plan and the Local Development Plan

We are fully supportive of the introduction of a statutory link between the community plan and the local development plan (plan strategy and local policies plan) in Clause 69 (5). The integration of both processes can help achieve more sustainable and cohesive communities. This statutory link between the two processes should result in a more coherent and responsive approach to the identification of need and delivery of services, evidence based policymaking, improved connections between regional, local and neighbourhood priorities and reduced delay, uncertainty and unnecessary overlap. Opportunities will exist to undertake joint community consultation activities, monitoring, review and to develop a shared evidence base. This will help to minimise consultation fatigue and delay, make best use of resources and more closely align the aims and priorities of both plans. Furthermore, in a society emerging from conflict and which remains deeply segregated along economic, social, and cultural lines it provides a platform to address issues of multiple deprivation, contested space and community cohesion. It is interesting to note that the Republic of Ireland is also highlighting the important connection between spatial and community planning in their reform proposals.

Clause 70: Community Planning Partners

Naming the Partners

In other jurisdictions the statutory partners are listed in the primary legislation along with a provision for changing the list as circumstances require at a later date. In light of the fact that our new councils will have fewer powers than councils elsewhere and that more statutory partners will thus be involved it is all the more important that the primary legislation reflects this. The Bill should list the Community planning partners who are under a duty to participate.

Recommendation: Amend clause
70 (1) List Community planning partners

We welcome the requirement that the Department must consult with those it considers “appropriate” when it is determining who the partners should be. In the interest of certainty, consistency and clarity the Bill should specify that this will include community and voluntary bodies.

This will ensure that the views of all those who are essential to the practice and implementation of community planning have an opportunity to shape and improve the process.

Recommendation: Amend clause to read
70 (3) (c) such other bodies and persons as the Department considers appropriate, including community and voluntary bodies.

In naming (as we suggest) the partners the Bill should also allow for additional partners to be identified and added as required to successfully implement community planning.

Recommendation: Insert new clause
70 (5) The Department may by order modify subsection (1) above by adding a reference to any eligible body.

Clause 71: Production of a Community Plan

A specified timeframe should be set for when the first community plan must be published. It will be important that councils and community planning partners are given the necessary time to produce, in conjunction with community and voluntary bodies, a robust and quality community plan. Each of the 11 Councils first community plan will provide the blueprint for further community planning within their district. As such, it is essential that all those involved have the time to produce a robust and comprehensive community plan. At the same time it is also important to ensure that the community plan is produced without unnecessary delay and in a timely fashion. The introduction of a timescale for the production of the first community plan therefore has a twofold role. We recommend that a community plan should be published no later than within three years of the formation of the new councils.

Recommendation: Amend clause to read
71 (4) (a) must be produced as soon as is reasonably practicable after community planning for the district has reached the stage described in subsection (2) and no later than within three years of the formation of the new councils;

Clause 73: Review of Community Plan

We welcome the provision in the Bill (Clause 76) for community involvement in the review of a community plan. It is widely recognised that good practice in consultation includes the provision of feedback which indicates how the views of people have been considered. Thus the council and its community planning partners should report on the means of consultation including a summary of

the outcomes of this consultation. It will be essential that community involvement is consistent and robust across the 11 new council areas.

Recommendation: Insert new clause
73 (2) (a) (iii) report on means of consultation with the persons listed in 76 (2) including a summary of the outcomes of consultation.

In order to ensure that a review of a community plan is conducted in a timely fashion a time scale of six months should be introduced for when the plan should be published after a review.

Recommendation: Amend clause to read
73 (6) The council must, as soon as is reasonably practicable after becoming subject to the duty under subsection (4) and within six months, publish an amended community plan.

Clause 74: Monitoring

Making a Difference

Elected representatives, Councils, communities and ratepayers will all wish to ensure that community planning is having an impact at constituency and local area levels. Monitoring of progress in delivering the community plan and reporting on its impacts will be important to all those involved. This should be reflected in the Bill and is a key focus of community planning in Wales and Scotland and increasingly in the Republic of Ireland. An outcomes based approach provides councils and their community planning partners with a framework to both identify and measure progress made towards meeting the objectives of the community plan. It also helps with the better alignment of regional, council and local priorities.

Recommendation: Amend clause to read
74 (3) (a) progress towards meeting the community plan objectives and outcomes for its district.

Clause 76: Community Involvement

Community involvement is a key ingredient in community planning. It is crucial that it reaches out to everyone living in a council area – including those often described as “hard to reach”. Legislative provision elsewhere seeks to ensure this by encouraging a proactive approach to engagement. However Clause 76 (1) simply requires a council and its community planning partners to ensure that “arrangements are made so that persons have the opportunity to express their views and have them

taken into account”. The passive and overly bureaucratic language used is unlikely to encourage good practice. More active language should be used to ensure that councils and community planning partners actively seek and encourage participation in the process of community planning.

In Scotland the words used are “take suitable action to encourage” while in England the phrase “seek the participation” is utilised.

<p>Recommendation: Amend clause to read</p>
<p>76 (1): A council and its community planning partners must seek the participation of and encourage persons mentioned in subsection (2) to express their views and ensure that their views are taken into account in connection with:</p> <p>d) Community planning e) The production of a community plan for the district; and f) The review of community plans.</p>

Clause 77: Guidance

We welcome that the Department will issue statutory guidance. Guidance will be essential in ensuring that effective and consistent community planning processes are developed across the 11 new council areas.

This guidance should cover:

- The aims and principles of community planning;
- How the community plan ‘fits’ with other plans – acting as ‘the plan of plans’
- How community planning partners from community and voluntary bodies are identified;
- Engagement Quality Standards for Community Planning;
- In line with council’s role as a ‘facilitator’ of community planning: proactive approaches to engaging and reaching out to the ‘harder to reach’ e.g. low income groups or rural communities;
- The role of community support networks in supporting engagement with communities;
- Implementation of the statutory link between the community plan and the local development plan;
- Developing thematic (issue based) and local Community Plans;
- ‘Added value’ of community planning;
- Feedback to those who have participated in the community planning process;
- Outcomes based approach to measure progress and improvement;
- How a council determines when a ‘degree of consensus’ has been reached;
- What community planning partners can do if they feel ‘consensus’ hasn’t been reached;
- Ability for council areas to work together;
- Promoting equal opportunities; and
- General Power of Competence: good practice examples of its use; how it can be implemented to respond to the needs identified through the community planning process and how it can effectively respond to previously unidentified needs or gaps in the community plan.

Additional Advice Notes should be provided to develop a shared understanding and greater consistency in the implementation and practice of community planning and to share learning and

good practice. A useful resource is the BIG Lottery Fund supported Community Planning Toolkit available at www.communityplanningtoolkit.org

Preparation of Guidance

The Bill requires that before the Department issues guidance it must consult councils and – (a) such associations or bodies representative of councils; (b) such associations or bodies representative of officers of councils; and (c) such other persons or bodies, as appear to the Department to be appropriate. Specific reference should be included to consulting with community and voluntary bodies to ensure that the views of all those who are essential to the practice and implementation of community planning have an opportunity to shape and improve the process.

Recommendation: Amend clause to read
77 (2) (c) such other persons or bodies, including community and voluntary bodies, as appear to the Department to be appropriate.

Clause 78: Duties of Departments in Relation to Community Planning

Departments will play an important role in the success of community planning. They will wish to be active and positive contributors to the implementation of community plans which have been developed by locally elected representatives and others. The wording in the Bill includes the term ‘aim to’. This passive and conditional language is unnecessary and unhelpful and should be removed. Ministers will also wish to play an active role in ensuring the public services they are responsible for are, through the community planning process, improving all the time and addressing the priorities in each council area. Like their counterparts in Scotland, England and Wales they will wish to ‘promote and encourage’ community planning (as the legislation in these jurisdictions allows).

Recommendation: Amend clause to read
78. So far as it is reasonably practicable to do so, every Northern Ireland department and Minister must - (a) in exercising any function which might affect community planning promote and encourage community planning.

Departments must have regard to the content of a community plan in relation to the exercise of that Department’s functions and agree with councils and their community planning partners how the Department can assist in the implementation of the Community Plan.

Recommendation: Amend clause to read
78 (b) must have regard to the content of a community plan in relation to the exercise of that department’s functions and agree with councils and their community planning partners how the Department can assist in the implementation of the Community Plan.

Clause 81: Interpretation

This clauses allows for community plans to be referred to by alternative names. If utilised this provision will undoubtedly lead to confusion and loss of identity of the new process. It is unhelpful and unnecessary. The Bill should aim for simplicity and the avoidance of confusion.

Recommendation: Delete clause
81 (4).

Clause 82: General Power of Competence

We support the introduction of the General Power of Competence and recommend that guidance should be provided to aid understanding of the scope and implementation of the power (See Clause 77: Guidance). This could include the contribution of the new power to the achievement of the community plan objectives and outcomes.

Clause 90: Consultation on Improvement Duties

The Contribution of Partners

The Bill requires councils to secure continuous improvements across all of its functions including that of community planning. This is welcome. However the Bill does not recognise that improvements in community planning can only be achieved if the statutory partners play a full and meaningful role. The Bill should enable partners to do so in relation to two aspects of improvement: consultation with service users and provision of information to the councils on progress.

In relation to consultation the Bill requires councils to consult with its own service users when reporting on improvements in community planning etc. In the context of community planning this should extend to the statutory community planning partners.

Recommendation: Amend clause to read
90 (1) (b) persons who use or are likely to use services provided by the council and its community planning partners.

In assessing and reporting on improvement issues Councils will wish to consider the views of residents and communities. This will ensure that the views of all those who are essential to the practice and implementation of community planning have an opportunity to shape and improve the process.

Recommendation: Amend clause to read

90 (c) persons appearing to the council to have an interest in the district including those specified under section 76 (2).
--

In order to enable councils to assess improvements in community planning (as required by the Bill at clauses 87 and 89) a council's community planning partners will need to play a supportive role and provide inputs. This should be enabled in the Bill by the insertion of an appropriate new clause:

Recommendation: Insert new clause
--

90 (2) It is the duty of each community planning partner of a council to provide such information as the council may reasonably require in order to enable it to comply with its duty under section 93.
--

Clause 92: Performance Indicators and Performance Standards

This clause enables the department to specify performance indicators and standards. Before doing so the Department will wish to ensure that stakeholders such as community and voluntary bodies are consulted. This will ensure that the views of all those who are contributing to the practice and implementation of community planning have an opportunity to shape and improve the process.

Recommendation: Amend clause to read

92 (2) (c) such other persons or bodies, including community and voluntary bodies, as appear to the Department to be appropriate.

Clause 93: Collection of Information Relating to Performance

In his statement to the Assembly when presenting the Bill the Minister confirmed the Executive’s view that council led community planning provides a statutory framework to deliver on the objective of improving outcomes for everyone. It is thus important that this is explicit on the face of the Bill. An outcomes based approach will help councils and all their partners to set clear goals and milestones in order to make a difference. It will also provide a framework to measure progress and join up regional, council and local priorities.

Recommendation: Amend clause to read

93 (c) (i) measure the improvement in the outcomes of its performance during a financial year by reference to those self-imposed performance indicators which are applicable to that year.

Clause 98: Audit and Assessment Reports

While the new power of community planning will be led and facilitated by local councils its effectiveness is a responsibility of all the community plan partners designated under clause 70. Departments will also play an important and supportive role. All will wish to play their role in achieving successful implementation and in contributing to the work of the local government auditor as set out in clause 98. The Bill should be amended to facilitate this.

Recommendation: Insert new clause

98 b (iii) that the community planning partners and Departments have discharged their duties under Part 10 Community Planning.

Clause 106: Partnership Panel

We support the introduction of a partnership panel consisting of Ministers and elected representatives to discuss matters of mutual interest and concern. This will provide an important mechanism for discussion of community planning issues including the inter-dependency of local and regional issues. The Panel would be enriched by extending the membership to include people from local community and voluntary groups who are active participants in community planning at council level.

Recommendation: Amend clause to read

106 (3) (a) councillors appointed by the Department and representatives appointed by the Department of community and voluntary bodies as defined by section 76 (3).

Appendix 1**Minister Durkan's Statement**

The Minister refers to: It will also introduce "council-led community planning to provide a statutory framework for *councils to work in conjunction with other public sector service providers to deliver on our objective of improving outcomes for everyone*. The delivery of community planning will be supported at council level by the introduction of an updated performance improvement framework that focuses on the delivery of continuous improvement in service delivery against more strategic aspects

Local Government Bill Explanatory and Financial Memorandum Overview**Part 10: Community Planning.**

This part introduces council-led community planning to provide a framework for councils to work in partnership with other *public service providers* in their district to develop and implement a vision for the economic, social and environmental well-being of their district and those living or working within it. Engagement with the community is a key feature of the community planning process.

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The Committee for the Environment
Room 247
Parliament Buildings
Stormont Estate
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Our ref: DV01-010173

12 November 2013

Dear Sir/Madam,

RE: RES Response to Local Government Reorganisation Bill Consultation

RES is one of the world's leading independent renewable energy project developers with operations across Europe, North America and Asia-Pacific. At the forefront of wind energy development for over 30 years, RES has developed and/or built more than 7,500 MW of wind energy capacity worldwide. In the UK alone, RES currently has more than 1,000 MW of onshore wind energy either constructed, under construction or consented. RES is active in a range of renewable energy technologies including large-scale biomass, solar, offshore wind, wave and tidal and on-site renewable installations.

From our office in Larne, RES has been at the forefront of wind farm development in Northern Ireland since the early 1990s. To date we have developed 20 wind energy projects across Northern Ireland. Our recently extended office in the Willowbank Business Park currently supports 21 staff.

RES welcomes the opportunity to respond to the Local Government Reorganisation Bill as this will provide the legislative framework for the re-organised local Councils from April 2015. RES' specific comments on the Bill are outlined below:

Part 9 Conduct of Councillors – Code of Conduct – RES would be of the opinion that a code of conduct should be issued providing a framework for Councillor responsibilities and proper practices, and that this code of conduct should be in place prior to the implementation of the Reform of Public Administration. RES also believes that the Councillors Code of Conduct should be extended to make provisions for responsibilities and practices pertaining to the planning process.

Part 10 Community Planning – RES believes that community planning provides a welcome opportunity for communities to become involved in sustainable development within their area. We welcome the inclusion of environmental objectives being a core element of Community Plans, as well as the objectives of achieving sustainable development in Northern Ireland. Given the importance of renewable energy in helping to achieve these objectives, as well as the scale of the natural resources available in Northern Ireland, RES suggest that a further long term objective for Community Plans should be "Positively plan for renewable and low carbon energy generation in order to improve the environmental, economic and social well-being of the district".

RES also believes that the renewable energy sector should be represented on community planning partnership panels and that the sector should have an input into the development of the area plan.

Once the Community Plan is produced and published, RES believes that it would be beneficial to allow a period of consultation on the document as the finalised plan will not be subject to review until the end of a 4 year period.

However RES believes that large scale renewable energy projects and associated grid infrastructure should be considered of national significance and as such, decisions on them made centrally. By their very nature, wind energy developments have the potential to go beyond a single district council area, both in terms of potential impacts and benefits.

RES proposes that wind farm applications over 5MW continue to be assessed centrally as Major Applications due to their strategic importance and potential in meeting the ambitious targets for renewable energy as set out in the Strategic Energy Framework 2010.

RES looks forward to the continued engagement with Department of Environment and other stakeholders in developing an appropriate policy framework for the implementation for Local Government Reform.

Yours faithfully,

Lucy Whitford – BY EMAIL

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RSPB



RSPB Northern Ireland comments on the Local Government Bill for the Environment Committee

November 2013

Executive Summary

We welcome the opportunity to comment on the Local Government Bill at the second stage particularly as it will transpose regulation regarding the future of our planning system as it transfers from central to local government as part of the on-going Review of Public Administration (RPA). We support legislation that promotes sustainability within decision-making and believe the Bill will be fundamental for the future well-being of people from all communities across NI.

Introduction

The RSPB is the UK's lead organisation in the BirdLife International network of conservation bodies. The RSPB is Europe's largest voluntary nature conservation organisation with a membership over 1 million, around 13,000 of which live in Northern Ireland. Staff in Northern Ireland work on a wide range of issues, from education and public awareness to agriculture and land use planning. We have considerable expertise as a user of planning systems across the UK, both as applicant and consultee. In Northern Ireland we show our commitment to promoting good planning through the joint RTPI/RSPB Northern Ireland Sustainable Planning Awards, and by involvement with developers and the public on proposed development from windfarms to housing. We therefore welcome the opportunity to comment on the Local Government Bill as it will help shape the future of our planning system as it moves to local Councils with local development plans and community planning with community partners at the core of planning related decision-making.

RSPB recommendations for the Bill

Our comments are numbered by clause and any omission of clause can be interpreted as a no comment.

We are also supportive of the written submission made by Community Places to the Environment Committee and in particular the recommendations made regarding Part 10 Community Planning and Part 13 Partnership Panel.

Positions of responsibility Part 3

- Clause 10 (1) (f): We recommend a list of all external representatives is made public by the Council to help ensure open and transparent decision-making.
- Clause 10 (4): We recommend the reference to "other association" as a source of external representatives is more clearly defined to avoid a conflict of interest within future decision-making.



Code of conduct Part 9

- Clause 56 (1) (6) & (7) – We would support the Department in their issue of a code of conduct for councillors and the provision of draft codes should existing versions be revised or withdrawn. We recommend the code of conduct is made public. We recommend any conflict of interest is avoided within the structure of the code of conduct to help ensure fair decision-making.
- Clause 57 – We would support such guidance and publication of same to the public.

Community planning Part 10

- Clause 69 (2) (b) – We recommend sustainable development (SD) is defined within the clause and recommend the original definition used by the Brundtland Commission be referred to. The original definition was as follows: *“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”*¹
- Clause 69 (5) – We remain supportive of a statutory link between community plans and the local development plan and we remain supportive of spatial planning.
- Clause 70 (3) (c) – We suggest additional clarity regarding bodies and persons that the Department may consider as “appropriate” is provided. (Please see comments below for clauses 76 (2) (e) and 77 (2) (c)).
- Clause 71 (1) – We would support the production of community plans.
- Clause 71 (4) (a) & (b) – We suggest these clauses are tightened with insertion of a timeframe in which community plans should be produced and published. Therefore, in addition to community plans being published as soon as “reasonably practicable” we recommend a long stop date is inserted to ensure plans are published within a specific timeframe.
- Clause 72 – We would support regular reviews of community plans.
- Clause 73 (4) & (5) – We recommend any reviews and potential amendments of the plan and objectives are communicated to all community partners even when the amendments are not obviously directly linked to their function to ensure fair decision-making is maintained.
- Clause 73 (5) – We recommend additional clarity regarding what would constitute “a degree of consensus” to help ensure fair decision-making is maintained amongst the community planning partners when amendments to community plans are being reviewed or authorised.
- Clause 74 (1) & (3) – We would support regular monitoring of plan objectives and monitoring outcomes with publication of progress to the public. We therefore suggest an amended clause to reflect the monitoring of outcomes.
- Clause 76 (1) – We would support the facilitation of input to community plans from the community through the community planning partners but feel this clause needs to be strengthened to ensure

¹ <http://www.un-documents.net/ocf-02.htm>



active participation from the community is encouraged with an assurance that their views will be taken into account and considered.

- Clause 76 (2) (e) – We would be concerned that some people may be excluded from feed-in to community plans/planning and recommend removal of “in the opinion of the council” from this clause to avoid misinterpretation. To help ensure inclusivity across Councils and communities we recommend two additional groups are added to 76 (2) so as non-governmental organisations (NGOs) and action groups are presented. We therefore recommend an amendment to the clause so it reads “other persons who are interested in the improvement of the district’s social, economic or environmental well-being including NGOs and local action groups.”
- Clause 77 (1) – We would support the issue of guidance by the Department on community planning and community plans adhering to best practice guidelines. We would support advice notes on spatial planning, green/blue infrastructure and concepts such as ecosystem services.
- Clause 77 (2) – We would support pre-consultation by the Department with Councils and related associations.
- Clause 77 (2) (c) - We recommend additional clarity is provided to define the persons or bodies that the Department would deem as “appropriate” to consult with. This is to help ensure consultations will occur with NGOs, local action groups and so on across Councils in a fair decision-making process.
- Clause 81 – We question the need for this clause as enabling alternative names for community plans across Councils could lead to confusion. We therefore suggest that this clause be removed.

For further information, please contact Lynne Peoples (RSPB Assistant Conservation Officer) on 028 9049 1547 or email lynne.peoples@rspb.org.uk

Royal Town Planning Institute (RTPI)



RTPI Northern Ireland

mediation of space · making of place

Northern Ireland Assembly
Environment Committee
Room 247
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

Date: 11 November 2013

Dear Sir/Madam

RE: Local Government Reorganisation Bill

The Institute is the largest professional body representing spatial planning and represents over 20,000 professional planners in the public and private sectors. The Institute has over 500 members in Northern Ireland, many of whom are actively involved in developments that cross a number of government departments and are therefore well placed to comment on this paper.

The operation of a planning system relies upon openness, transparency, public faith in the impartiality and fairness of the system, good evidence and timeliness. The RTPI NI commends the Department for its commitment to the reform process and in general supports the production of this Bill as the final piece of legislation in this process. RTPI NI supports the establishment of a code of conduct for councillors to be included within primary legislation and the introduction of a new ethical standards framework for local government.

Much of the Bill relates to the operational functions and arrangements of the newly formed councils, therefore RTPI NI will focus its response around the matters specific to planning, mainly Part 10: Community Planning.

Community Planning

Part 10 of the Bill introduces the legislative basis for community planning, a council-led process to provide a framework for councils to work in partnership with other public service providers in their district to plan and implement a shared community vision for the economic, social and environmental well-being and development of the area. This is to be achieved through the production of a community plan. The council must ensure that community involvement is at the heart of the production of the plan, its implementation and review.

The RTPI NI members involved in preparing this response are encouraged to observe a statutory link between community planning and landuse planning and also, significantly, that Northern Ireland is the first jurisdiction to support the link between these functions in legislation. It was felt that this was an important milestone in the development of the alignment between community and landuse planning.

In light of this the RTPI NI would wish to make the following comments;

- The wording of the Bill identifies the statutory link between the land use and community plan. How will the timing of these plans evolve? There is a preference for them to be developed in conjunction with each other.
- Will a definition be provided as to what is 'well-being'? The Bill refers to the improvement of social, economic and environmental well-being as long term objectives, further clarification as to what these well meaning phrases are is required.
- Community planning partners. Legislation in Scotland and Wales provides details of partner organisations. There is concern that by not providing service partner information in legislation both councils and partners will not be obliged to participate. This is particularly relevant in situations when potential planning partners are outside of the council remit. Consideration should be given to the inclusion of the details of a core of planning partners.
- It was proposed that there should be a more strategic approach to community engagement that considers the overlap between landuse and community planning. Councils should be provided with an engagement framework model that will see the merging of the two plans and the consultation that takes place around them to ensure that engagement is done in a meaningful way that is understood by and means something to the public.
- There was concern that the opportunity should be taken to break down the silo's that currently exist around the separate planning functions of planning, regeneration and community planning and that there should be a statutory link between these three important elements of planning, to create a more 'joined up' approach.

Planning at all stages of the process can be emotive affecting as it does the things that really matter to people, we trust you find these comments useful. Should you require any further clarification do not hesitate to get in contact.

Yours sincerely



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Save the Children

Local government bill Submission to the environment committee



Suggested Amendments to the Local Government Bill

November 2013

Save the Children would recommend the following amendments:

Amendment 1

Clause 69

An amendment should specify the voluntary and community sector and the Children and Young People's Strategic Partnership as partners in community planning.

Amendment 2

Clause 74

An amendment to specify an outcomes-based approach to monitoring.

Amendment 3

Clause 76

An amendment should specify the engagement and involvement of low income children, their parents and carers in community planning.

Rationale

Each Executive Minister has a statutory obligation to meet the targets set by the Child Poverty Act 2010, reiterated in the Programme for Government 2011-15. The Act uses four measures: relative, absolute, persistent poverty and combined low income and material deprivation. The targets are to reduce relative child poverty to less than 10% by 2020, to reduce absolute and combined child poverty to less than 5%, with a target for persistent low income to be prescribed by regulation made before 2015.

The Executive has the duty to produce a Northern Ireland child poverty strategy every three years with the next one due in March 2014. It is also obliged to provide an annual report that shows how each minister's decisions contribute to ending child poverty, improving outcomes for children and fulfilling their rights.

In addition to UK and NI legislative and policy commitments to eradicate child poverty, the NI Executive is bound by the UN Convention on the Rights of the Child (UNCRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Under the UNCRC, Ministers have an obligation to ensure that the best interests of the child is a primary consideration in all decision-making that will affect their lives. Moreover children and young people have the right to have their opinions taken into account and the UNCRC encourages the involvement of children and young people in decisions that affect them.

The Executive also has an obligation to contribute at EU level to the annual National Reform Programme (NRP) process. In 2013 the EC launched the Social Investment Package (SIP) to provide a new social policy element to Europe 2020, which is the overarching European strategy. The SIP includes the EC Recommendation on Investing in Children which adopts a child rights approach and implementation through 3 pillars - access to adequate livelihoods, access to services and children's rights/participation. It is to be implemented through the NRPs and monitored by the EC.

Monitoring

The importance of collecting accurate data is highlighted in the recent Ofmdfm document 'Best Practice in Addressing Child Poverty'.¹ The research cites innovative approaches to tackling poverty led by local authorities. One of the key recommendations about all interventions is the importance of detailed and specific data, including geographic provision, the number of children involved and any associated impacts in order to provide timely information about resource allocation and allow identification of unmet need.

With the on-going work of the Children and Young People's Strategic Partnership and development of the Delivering Social Change framework, including the child poverty outcomes model and the signature programmes such as family support hubs, it would make sense to ensure alignment with community planning.

The reality of child poverty

The latest government figures show that in 2011/12 there were almost 95 thousand children (22%) in relative poverty and 109 thousand children (25%) in absolute poverty before housing costs. The latter represents a 4 percentage point increase from the previous year.

A lot of attention is given to the importance of access to the labour market as the chief way to tackle poverty, but it must be stressed from the outset that more than half of all children in poverty live in families where an adult is working. Child poverty is becoming a problem of working families and a problem of low wages and insecure work.

The official figures bear this out - average (median) income levels in Northern Ireland have decreased in real terms for 3 consecutive years. In 2011/12 the average (median) income was £372 per week before housing costs and £336 after housing costs, both of which are the lowest level in real terms since the introduction of the Family Resources Survey to Northern Ireland, in 2002/03.²

1

http://www.ofmdfmi.gov.uk/best_practice_in_addressing_child_poverty_september_2013.pdf

² http://www.dsdni.gov.uk/ni_hbai_bulletin_2011-12__release_document_.pdf

In Northern Ireland, 21% of children live in persistent child poverty, which is more than double the GB rate and is due largely to the legacy of the conflict.³ More than 12%, or approximately 50,000 children, live in severe poverty.⁴

But there is wide disparity in child poverty rates. According to the most recent HBAI figures, the Local Government District (LGD) with the highest proportion of children in low income households both Before and After Housing costs was Derry, 34% and 41% respectively. Castlereagh had the lowest proportion of children living in low income households both Before and After Housing Costs, 6% and 9% respectively.

When the figures are analysed at ward level they reveal that 43% of children in west Belfast are living in poverty, the second highest level in the UK.⁵

HMRC also provides further detail by recreating the relative child poverty measure as set out in the Child Poverty Act 2010 at Super Output Area as at 31 August each year.

The statistics provide detailed geographical estimates of the number of children in families where the reported family income is less than 60 per cent of median income. These families would either be in receipt of out-of-work (means-tested) benefits, or in receipt of tax credits. The child poverty figures for the 890 Super Output Areas (SOAs) across Northern Ireland range from the lowest at 0.7% in Bluefield 2 (part of Carrickfergus LGD) to the highest levels of child poverty in 4 SOAs in Belfast - **71.5% in Whiterock 2**; 66.7% in Falls2; 64% in Falls1; 63.7% in Ardoyne 3; and 62% Shankill 2.⁶

Predicted levels of child poverty by 2020

Rather than meeting the 2020 statutory targets, the Institute for Fiscal Studies (IFS) predicts that child poverty will increase by around a million children by 2020 across the UK, with the sharpest increase in income poverty among children in Northern Ireland.⁷

According to the IFS, relative child poverty is forecast to increase by 8.3 percentage points to 29.7% and absolute child poverty is predicted to increase to 32.9% in Northern Ireland by 2020. The 2020 statutory targets to end child poverty will be missed by a huge distance unless there is progressive intervention.

But even this dire forecast will need to be revised in light of new findings about the disproportionate impact of welfare cuts on Northern Ireland.

³ Monteith, M., Lloyd, K., McKee, P. (2008) 'Persistent Child Poverty in Northern Ireland', Save the Children, ARK and ESCR

⁴ Save the Children (2012) 'Delivering Change for Children'

⁵ *The child poverty map of the UK 2013*. Compilation and presentation of local data by Matt Padley and Donald Hirsch of the Centre for Research in Social Policy (CRSP), Loughborough University, for the Campaign to End Child Poverty

⁶ <http://www.hmrc.gov.uk/statistics/child-poverty-stats.htm#2>

⁷ Institute for Fiscal Studies, *Child and Working-Age Poverty in Northern Ireland from 2010-2020* <http://www.ofmdfni.gov.uk/child-working-age-poverty-ni-2010-2020.pdf>

In research commissioned by NICVA, it is estimated welfare changes will take £750m a year out of the Northern Ireland economy, equivalent to £650 a year for every adult of working age.⁸ This compares to an average of £470 a year across GB. It also found that Belfast, with an expected loss of £840 per adult of working age, is hit harder than any major city in Britain. Derry and Strabane are also hit very hard.

Ofmdfm expects that an IFS update will see a further increase in child poverty levels as a result of the cumulative impact on family incomes of the welfare cuts, the recession, rising costs and other austerity measures. The scale of the challenge is huge and demands active interventions at all levels of government in partnership with low income families and communities including business and the voluntary sector.

For further information please contact:

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Save the Children works in more than 120 countries. We save children's lives.

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⁸ The Impact of Welfare Reform on Northern Ireland, Sheffield Hallam University, September 2013

SOLACE

SOLACE

Response to the Committee for the Environment “Local Government Bill”

1.0 Introduction

- 1.1 SOLACE welcomes the opportunity to provide evidence to the Committee for the Environment on the ‘Local Government Bill’ and believes that the introduction of the Bill is a further step forward in the local government reform programme.

SOLACE recognises that the Bill is enabling legislation and that much of the detail will be contained in subordinate legislation and guidance which is still in the process of being developed. It is imperative that this legislation (and associated guidance) is developed in partnership with local government prior to its introduction to the Assembly as there will be no opportunity to make amendments once that has occurred.

- 1.2 SOLACE in considering the Bill notes many similarities with Welsh and Scottish legislation, in particular regard to Community Planning and Performance Management. Much of the legislation in these jurisdictions has been reviewed and revised to make it more workable and promote a level of partnership working between Central Government and Local Government. This Bill is very bureaucratic and prescriptive with the Centre regulating and controlling the actions of Local Government. SOLACE would be open to discussing the revised approach in Scotland and Wales in a later submission to the Committee.

2.0 KEY ISSUES

- 2.1 The following provides a summary of the priority issues as identified by SOLACE.

3.0 Positions of responsibility (Part 3)

- 3.1 SOLACE welcomes the prescriptive nature of the Bill in terms of how Members are selected for positions. However it may be beneficial to allow a Council, where all its members are content, to revise the groupings and apply local solutions or arrangements.

4.0 Qualified Majority Voting (Part 7)

- 4.1 SOLACE would highlight that local government within Northern Ireland has operated for many years on the basis of a simple majority vote. It is accepted that qualified majority voting may be seen to be desirable as a form of protection for political minorities in circumstances where there is a sizeable political majority in a Council area. Where a council is equally divided politically, such a system may have an impact upon the decision making process and ability of councils to get things done in local areas.

SOLACE would recommend that careful consideration is therefore given to the identification and detailed definition, through regulations, of the specific types of decisions to be subject to QMV and that further engagement and detailed discussions should take place with local government in this regards.

SOLACE would be concerned that the use of a rigid percentage which is a very high threshold could make it very difficult for Councils to develop and shape the District for the better.

5.0 Call in (Part 7)

- 5.1 SOLACE does not have any objections to the principle of “call in” being available, however, it would be concerned with the current broad definition of the two circumstances in which call-in can apply (as set out at Clause 45 (1) of the Bill) and the potential for a high percentage of council decisions being subjected to call-in and thereby making effective decision making more difficult.

SOLACE would therefore urge the Department to liaise with local authorities in order to develop and agree robust and clear definitions around the criteria for each of the two circumstances and to examine and detail the practicalities and process for implementing such procedures (e.g. procedure, format and time limits for any requisition to be submitted).

SOLACE would also recommend that consideration is given to limiting the power to call in a particular decision/recommendation to a single requisition/challenge.

6.0 Conduct of councillors (Part 9)

- 6.2 SOLACE has consistently supported the establishment of a statutory ethical standards framework and a mandatory code of conduct for all Councillors and therefore welcome, in principle, the proposals set out within the Bill.

SOLACE recognises the role that such frameworks provide in reinforcing the trust in councils and in local democracy and that this is particularly important in the context of any future transfer and delivery of new functions by councils. SOLACE would seek further engagement with the Department in developing such frameworks.

SOLACE would be concerned however that the legislation does not contain a specific appeal mechanism, other than through a Judicial Review. SOLACE would therefore recommend that a right of appeal is clearly set out within the Bill.

SOLACE would further recommend that consideration be given to extending or creating a supplementary guidance to the Code of Conduct to cover the role of elected Members on public bodies.

SOLACE would welcome, in principle, the enhanced role of the Commissioner to investigating complaints under the code, as this would ensure independence in the process. However, further detail of the procedures to be adopted by the Commissioner in undertaking any such investigations and the associated capacity and resource requirements around this would be helpful.

Clause III provides the Department with the power to remove the provisions in relation to surcharge. In light of the mandatory code SOLACE would question why the sector needs a mandatory code of conduct and the power to surcharge.

7.0 Community Planning (Part 10)

- 7.1 SOLACE would fully support the proposal that local authorities lead and facilitate community planning and would view this as a key enabler for the integration of services to address local needs. Local councils are uniquely and ideally placed to lead and facilitate community planning.

It would appear that the Community Planning model proposed in the legislation is largely similar to the Welsh community planning model. Whilst there is no objection to the adoption of the model, it is vital that the legislation and supporting guidance takes account of the specific circumstances in Northern Ireland. This model has been refined and improved upon and this legislation does not reflect these changes.

In other jurisdictions (e.g. Scotland, Wales etc) there are significant regional support structures in place to support and promote local government improvement and community planning. There are currently no similar support arrangements within Northern Ireland and we

would suggest that the establishment of a regional support structure to support improvement and community planning is included in the proposals.

It is also important to note that local authorities within other jurisdictions have larger remits and deliver other key public services such as health, education, and housing; which are not the case in Northern Ireland. Furthermore, as noted at Clause 74 of the Bill, the Northern Ireland Departments will remain responsible for the policy framework, funding and priority setting for many of the agencies who may be community planning partners.

SOLACE notes that the Bill make a clear distinction between what is required between 'community planning partners' who must 'participate in community planning and 'assist the council', and the NI Departments who will have 'a duty to promote and encourage community planning'.

The effectiveness of the community planning process and the delivery of improved outcomes will be dependent on the strength of relationships between councils, departments and other public bodies. SOLACE would be of the view that the legislative provision in Part 10 should be further strengthened, particularly in relation to the collaborative use of resources and alignment of plans. SOLACE would also suggest that consideration be given to the possible introduction of a statutory duty upon all relevant public bodies (including Gov Departments) and statutory agencies to participate and contribute to the community planning process.

Furthermore, it would appear that there is no mechanism included in the Bill for redress for non-compliance with community planning duty. The Department has advised that this may be a role for the Partnership Panel but the Council would suggest that a more robust accountability mechanism is put in place.

As referred to in Paragraph 1.2, SOLACE believes that this part of the Bill puts a greater onus on Local Government to deliver on a Community Plan with no onus on other public sector bodies or Government departments to deliver on the Plan. The Scottish Assembly has revised Community Planning in Scotland to ensure it is a joint responsibility to deliver on the plan. They now take a more partnership approach with Single Outputs Agreement agreed between the relevant public sector bodies on Local Government.

8.0 Performance Improvement (Part 12)

8.1 SOLACE would firstly highlight that any performance improvement regime should not be bureaucratic or take up scarce resources complying with what may be or may not be a useful exercise.

SOLACE would advocate that any performance framework brought forward does not depart from existing legislative and statutory obligations of councils and is set within the context of community planning and providing councils with the appropriate flexibility to address local needs.

SOLACE would recommend that the Committee should advocate for the ability for local government to have control over its own improvement, through a collaborative agreed approach, rather than having to deal with an outdated top-down legislative arrangement.

SOLACE with NILGA, through the 'Case for Change' Report established the ICE Programme (Improvement, Collaboration and Efficiency) which was a methodology to improve the delivery of services in a more collaborative way. We believe this approach is a much more enabling approach to identify improvements and problems in Councils rather than the prescriptive approach in the Bill.

The current policy shift in neighbouring regions is towards greater self-regulation and away from overly bureaucratic and centralised scrutiny/inspection, subject to the achievement of a set of agreed (with central government) targets or outcomes.

Part 12 of the Bill, relating to Performance Improvement arrangements, appears to mirror much of what is contained in Part 1 of the Local Government (Wales) Measure 2009. It should be noted that in Wales there are significant regional support structures in place to

support and promote local government improvement processes. There are currently no similar support arrangements within Northern Ireland and we would suggest that the establishment of a regional support structure to support continuous improvement and community planning is included in the Bill.

Presently the Local Government (Best Value) Act (Northern Ireland) 2002 states that a council 'shall make continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.' It is noted that the Bill would appear to depart from the Local Government (Best Value) Act (NI) 2002. Clauses 87- 89 of the Bill extend the areas which councils must have regard to in terms of improving the exercise of its functions in terms of: strategic effectiveness; service quality; service availability; fairness (equity); sustainability; efficiency and innovation. These objectives are identical to those specified in the Welsh legislation and do not necessarily reflect the Northern Ireland context.

SOLACE would further highlight that there would appear to be tensions and potential duplication between these provisions and existing statutory duties of councils such as those expressed in S75 of the Northern Ireland Act 1998 and S25 of the NI (Miscellaneous Provisions) Act 2006 (duplicating the sustainability requirement). It is therefore recommended that the defined objectives are reviewed and further developed and defined in the context of Northern Ireland.

In the absence of further definition on the performance objectives as set out, SOLACE would be concerned that there is now no explicit reference made within the Bill to a key aspect of Best Value - 'economy' - and, therefore potentially removing considerations around cost and value for money.

SOLACE would point out that in considering each of the performance objectives individually and not collectively; there exist potential tensions between some of the objectives, for example, the interplay and balance between service availability and efficiency.

Similar to the Best Value Act, SOLACE would recommend that the Department ensures that councils are enabled to consider and take into account a combination of and interplay between the performance objectives.

9.0 Local Government Auditor (Part 12)

9.1 If the arrangements specified in Part 12 of the Bill are taken forward, SOLACE would have concerns in relation to the capacity and resourcing of the local government auditor, which will need to be enhanced.

SOLACE would also have concerns in relation to the proposed extension of the role of the auditor in terms of the auditing of councils' corporate and/or improvement plans, as this would potentially undermine the democratic process. SOLACE would recommend that the scrutiny of corporate plans should be undertaken by elected members who set the priorities for the organisation and should oversee delivery against these priorities.

10.0 A Partnership Panel (Part 13)

10.1 SOLACE would welcome the establishment of the Partnership Panel and believe that this would provide a further mechanism to enhance the engagement between central and local government. SOLACE would highlight the importance that the local government representation be nominated by the sector and agreed by the Department and should include representation from each of the new councils at a minimum.

11.0 Control of Councils (Part 14)

11.1 SOLACE would challenge the terminology "Control of Councils" as this seems to run contrary to a partnership approach being advocated by Central Government.

SOLACE would be concerned that the power of intervention, previously provided to the DoE (but rarely used), is now extended to all NI Departments. Whilst recognising that specific functions will transfer from central to local government as part of the LGR process, the specific rationale for such provisions may need further clarification.

SOLACE considers the language used in these clauses, and the scope of powers conferred on Departments to be contradictory to the spirit of fostering a more collaborative working arrangement between central and local government. SOLACE would remind the Committee of the comments set out above in relation to Clause 103, and would again note that it will be important for guidance to be produced for government departments to ensure that they don't begin to micro-manage councils and do not place unrealistic reporting expectations on them.

It is particularly noted that under this part of the Bill, there is no requirement to consult, either with local government in general, or with individual local councils.

SOLACE would further recommend that the ability of other NI Departments to intervene must be restricted to matters pertaining directly to those departments who have transferred functions but retain the policy responsibility.

12.0 Conclusion

12.1 SOLACE would welcome the opportunity to work closely with the Department and the Committee for the Environment on the further development of all subsequent legislation and guidance.

Turley Associates

Briefing Note

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Client N.I. Environment Committee
Project Planning Reform
Date 12 November 2013
File ref BUS DEV
Subject Local Government Bill Consultation

Turley Associates (TA) welcomes the opportunity to comment on the Local Government Bill as this provides the legislative framework for the Reform of Local Government within Northern Ireland from April 2015.

Detailed below we offer specific comments on few parts of the Bill.

Part 9 Conduct of Councillors

- TA welcomes the proposal to establish a mandatory ethical standards framework for Councillors and local government as represented by the Code of Practice.

Part 10 Community Planning

- TA welcomes the focus on partnerships - the legislation will create opportunities for more efficient service delivery.
- The legislation mentions the statutory link between the community and area plans. However, there is no further consideration of how this will work in practice. Will future guidance be provided in relation to the linkages?
- The Bill requires councils and partners to take all reasonable steps to exercise the function of Community Planning; however, there is no provision for the enforcement of measures. In other sections of the Bill the role of independent auditor is outlined. Would this be another function for the Department to exercise?
- Plans may encompass cross-administrative boundaries. Is there a need for guidance to cover this type of working to ensure these areas do not 'fall between the gap'?



Northern Ireland
Assembly

Appendix 4

Departmental Papers

Departmental Briefing 26 September 2013

Background

1. The policies given effect in the Local Government Bill flow from the former Executive's decisions of 13 March 2008 on the future shape of local government. These policies were formulated by the Department following research into the operation of local government in other jurisdictions of the UK and Ireland, and extensive engagement with the local government sector and the main political parties through the operation of the Strategic Leadership Board, chaired by the Minister of the Environment, and its policy development panels.

Consultation

2. A consultation on the policy proposals was launched on 30 November 2010 and this closed on 11 March 2011. A total of 77 responses were received to the consultation from a wide range of stakeholders. A synopsis of the responses was provided to the Committee on 13 June 2011. The final synopsis and Departmental Response to the consultation was subsequently submitted to the Committee on 5 July 2012.

The Local Government Bill

3. **The Bill:**
 - introduces strong, modern statutory governance arrangements that will provide for proportionality in the allocation of positions of responsibility, protections for the interests of minority communities and improve the transparency in the operation of councils and their business;
 - establishes an ethical standards regime, to include a mandatory local government code of conduct for councillors and others appointed to take part in council business supported by mechanisms for the investigation and adjudication of alleged breaches of the code;
 - introduces council-led community planning and a general power of competence for councils;
 - introduces an updated performance improvement regime;
 - extends the supervision powers currently available to the DOE to all Northern Ireland departments;
 - establishes a Partnership Panel between Executive Ministers and elected representatives from councils; and
 - makes provision relating to the transfer of staff, assets and liabilities connected with the reorganisation programme.

Modifications from the consultation proposals.

4. The Bill largely reflects the proposals which were consulted on. A number of changes have been made to the original proposals, following the consideration of the responses to the consultation, subsequent representations from stakeholders and developments in other jurisdictions, and these are reflected in the Bill. Details of these are outlined below:

Ending Dual Mandate

The Local Government Bill contains provisions to prohibit a person who is an MP, MEP or MLA from being elected or acting as a councillor.

Removal of bar on council employees being a councillor

Following the outcome of a case, taken against the UK Government, in the European Court of Human Rights the Department is removing the blanket bar on council employees being elected or being a councillor. The bar will continue to apply to council officers who work directly with and provide advice to a council or one of its committees. Similar provisions are already in place in England and Wales.

Ethical Standards

The Bill simplifies the ethical standards proposals from those which were consulted on. A mandatory code of conduct and the supporting principles will still apply but the investigation and adjudication provisions are modified so that the Office of the Commissioner of Complaints will be responsible for dealing with all cases. The Bill makes provision for the investigation and adjudication processes that should be undertaken by the Commissioner and if applicable, applies existing relevant powers currently contained in the Commissioner for Complaints (Northern Ireland) Order 1996, to the ethical regime provisions.

Where, following an investigation, it is found that a person has failed to comply with the Code of Conduct, the Commissioner may decide to censure, partially suspend, suspend or disqualify the person. In addition, the Commissioner may make recommendations to a council about any matter relating to the exercise of a council's functions.

The reasons for simplifying the ethical standards framework are as follows.

- The revised framework is less bureaucratic than the framework originally proposed.
- The proposed system will be more cost effective than that originally proposed in the consultation. The October 2009 PriceWaterhouseCoopers Economic Appraisal on Local Government Service Delivery had given indicative costs for the proposed new ethical standards framework of £800,000 (ie £50,000 for each of the new councils and £250,000 for additional resources in the Commissioner's office). It is estimated that the cost of the revised framework will be £380,000 in total.
- The Commissioner would be able to draw on the experience of in-house investigation officers, thereby ensuring a uniform approach to all complaints.

It is intended that the ethical standards framework should be reviewed after 3-4 years to consider whether the framework should be retained without any changes, or whether it should be modified to include more involvement from councils.

General power of competence

A general power of competence will be provided for councils in place of the power of well-being originally proposed. This modification will give a council greater legislative freedom to act in its own interest and to develop innovative approaches to addressing issues in its area.

Departmental Letter - Delegated Powers Memorandum

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Telephone: 028 9025 6022
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference: CQ/167/13
Our reference:

Date: 10 December 2013

Sheila Mawhinney
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
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Belfast
BT4 3XX

Dear Sheila,

Local Government Bill

The Committee has requested details of the subordinate legislation that will be needed to give effect to the Local Government Bill together with a list of delegated powers and guidance.

I attach, for your information:

- the Delegated Powers Memorandum for the Local Government Bill (Annex A); and
- a programme of subordinate legislation and guidance needed in support of the Bill (Annex B).

I trust this information is of assistance. Should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO
[by e-mail]

Annex A - Local Government Bill - Delegated Powers Memorandum

Local Government Bill

Delegated Powers Memorandum

Purpose

1. This memorandum identifies provisions for delegated legislation in the Local Government Bill. It explains the purpose of the powers, the reasons why they are left to delegated legislation, the Assembly procedure selected for the exercise of these powers and why that procedure has been chosen. The memorandum should be read in conjunction with the Explanatory and Financial Memorandum which accompanies the Bill.
2. Drafts of the regulations and orders referred to in this document are not yet available. They will, however, be subject to consultation by the Department of the Environment ('the Department') in line with the required procedures.

Outline of Bill Provisions

3. The Local Government Bill modernises the legislative framework for local government and gives effect to the Executive's decisions on the future shape of local government. Decision-making processes will be improved and local politicians will have the opportunity to shape the areas within which they are elected to reflect the needs and aspirations of local communities.
4. The Bill is divided into 16 Parts and in summary provides for the following:
 - **Part 1** makes provision regarding the name of each of the councils. It also requires each council to prepare a constitution.
 - **Part 2** re-enacts provisions of the Local Government Act (Northern Ireland) 1972 which deal with an individual acting as a councillor, and the circumstances in which a vacancy in the office of councillor may occur.
 - **Part 3** puts in place the arrangements necessary to ensure the sharing of positions of responsibility across the political parties and independents represented on a council.
 - **Part 4** re-enacts provisions of the Local Government Act (Northern Ireland) 1972 which provide for a council to arrange for its statutory functions, with certain exceptions, to be discharged by other than the full council.
 - **Part 5** outlines the political management structures available to councils. It provides that a council may adopt a committee system, where all decisions are ultimately the responsibility of the council, or executive arrangements where decisions on a range of matters will be taken by a smaller group of councillors within a policy and financial framework agreed by the council. Provision is also made for alternative arrangements to be introduced by the Department.
 - **Part 6** introduces a new decision-making framework in which there is a separation of decision-making and scrutiny of those decisions. It sets out two broad forms of executive arrangements from which a council may choose. The objective is to deliver greater efficiency, transparency and accountability of councils. The new arrangements are intended to ensure that decisions can be taken more quickly and efficiently than in the committee system, that the bodies responsible for decision-making can be more readily identified by the public, and that those decision-makers can be held to account in public by overview and scrutiny committees.

- **Part 7** re-enacts the provision of the Local Government Act (Northern Ireland) 1972 which deals with the arrangements for the regulation of the proceedings and business of the council. It also introduces a requirement for each council to make standing orders for this purpose and for the Department to specify aspects that must be included in the standing orders.
- **Part 8** introduces new arrangements to ensure transparency in the operation of a council by making provision on the public's right of access to meetings of a council and its committees. It also makes provision on the accessibility of documents prepared for consideration at meetings of the council, or its committees.
- **Part 9** establishes a new ethical standards regime for local government. This includes the introduction of a mandatory code of conduct which will apply to councillors and others appointed to take part in council business. There will be supporting mechanisms of investigation and adjudication for alleged breaches of the code which will be the responsibility of the Commissioner for Complaints for Northern Ireland.
- **Part 10** introduces council-led community planning to provide a framework for councils to work in partnership with other public service providers in their district to develop and implement a vision for the economic, social and environmental well-being of the district and those living or working within it. Engagement with the community will be a key feature of the community planning process.
- **Part 11** provides councils with a general power of competence to enable a council to do anything that individuals generally can do that is not specifically prohibited by other laws. It will provide councils with the ability to act in their own interest and to develop innovative approaches to addressing issues in their area. The availability of this power may support councils in the delivery of improvements in the social, environmental and economic well-being of their district.
- **Part 12** puts in place a new framework to support the continuous improvement in the delivery of council services in the context of strategic objectives and issues that are important to those who receive the services. Councils will be required to gather information to assess improvements in their services and to issue a report annually on their performance against indicators which they have either set themselves or that have been set by Departments.
- **Part 13** provides for the establishment of a Partnership Panel to be made up of Executive Ministers and elected representatives from the councils, to discuss matters of mutual interest and concern.
- **Part 14** provides departments with powers to supervise councils in the exercise of their functions.
- **Part 15** makes amendments to the Local Government (Northern Ireland) Order 2005 to reflect changes to the structure of the Local Government Audit Office.
- **Part 16** makes provision on miscellaneous matters including amendments to rating legislation, controls on contracts and disposals etc., transfer schemes, supplemental and transitional provisions, interpretation, minor and consequential amendments, repeals, commencement provisions and the short title.

Rationale for Subordinate Legislation

5. The Bill contains a number of delegated powers provisions which are explained in more detail below. In deciding whether provision should be made on the face of the Bill or left to subordinate legislation, the Department has carefully considered the importance of each matter against the need to:
 - ensure sufficient flexibility to respond to changing circumstances and to make changes quickly in the light of experience without the need for primary legislation;

- allow detailed administrative arrangement to be kept up to date within the basic structures and principles set out in the primary legislation; and
- ensure that councils are regulated through flexible measures which can be applied in an appropriate manner based upon their operation.

HENRY VIII Powers

6. A number of delegated powers are provided in the Bill for the effective adaption of primary legislation to remove unforeseen administrative or legislative restrictions, which may hinder the intended purpose of the policy. The exercise of the delegated powers provided by clauses 25(6), 44(4), 45(3), 85, 89(5), 104(2), and 111 have either a bearing on the policy intent of the Bill or provide for the modification or repeal of primary statutes. These will be subject to the draft affirmative procedure to provide for appropriate scrutiny by the Assembly. The powers provided by clauses 51(5), 54(2), 55(2), 95(3), 98(3), and Schedule 4, however, relate to administrative arrangements established by the Bill (for example the temporary amendment of the specification of dates by which reports must be prepared) and do not impact on the policy intent of the legislation. These should be subject to the negative resolution procedure.

General Subordinate Legislation Provision

7. Clause 125 contains the general subordinate legislation provisions and provides that before making regulations and orders the Department must consult with specified bodies. Subsection (4) specifies those enabling powers where the regulations and orders will be subject to the draft affirmative procedure. Subsection (5) provides that any other regulations and orders (except for orders made under clauses 70, 109 and 127) are subject to the negative resolution procedure.

Delegated Powers

8. All of the delegated powers, with the exception of the powers provided by clauses 103 and 114, confer the power on the Department of the Environment. Clause 103(5) confers the power on any Northern Ireland department to make the necessary regulations. Clause 114 confers the power on the Department of Finance and Personnel.

Clause by Clause Analysis Of Delegated Powers

Part 1 - Councils

Clause 1 – Names of councils

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

9. This clause makes provision in relation to the name of a council. Subsection (2) provides the Department with the power to change the name of a council as provided for in clause 1(1).
10. Sections 1(2)(a) and 2(7)–2(9) of the Local Government Act (Northern Ireland) 1972 require council names to be the name of the local government district, followed by the words ‘district council’, ‘borough council’ or ‘city council’, depending on the status of the council concerned. Section 51 of the Local Government Act (Northern Ireland) 1972 allows the Department to make an order (by statutory rule subject to negative resolution) changing the name of a

local government district, in response to an application from a council. Orders issued under section 51 still require the final two words of a council's name to be 'district council', 'borough council' or 'city council'.

11. Under the current legislative provision, a council such as the new Lisburn and Castlereagh council would have to be called, for example, 'Lisburn and Castlereagh City Council'. As Castlereagh is not a city, a legislative requirement to name the council in this way would be both inaccurate and confusing.
12. In order to prevent this situation arising, this clause provides the Department with the power to make regulations to change the name of a council and would allow the council the necessary freedom to name itself as it chooses (for example Lisburn City and Castlereagh Council). Any regulations made in this regard would be in response to a request from the council concerned.
13. The Department considers that the negative procedure is appropriate for this purpose as any regulations made using the power will reflect the requirements of the council concerned, as agreed in accordance with its governance arrangements.

Part 4 - Discharge Of Functions

Clause 18 – Joint Committees: Further Provisions

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

14. Subsection (2) provides an enabling power for the Department to constitute a joint committee appointed by two or more councils as a body corporate, to fix the functions of the body and specify the statutory provisions that shall apply to that body. It replicates the enabling power contained in section 19(9) of the Local Government Act (Northern Ireland) 1972 (which is repealed and replaced by the Local Government Bill).
15. Clause 13 of the Local Government Bill provides that two or more councils may discharge any of their functions jointly, subject to specified requirements. In the discharge of a function, the councils that have established the relevant joint committee may consider that the circumstances are such that the function would be better discharged through a body corporate which has the ability to directly employ staff, acquire and hold property, etc. The provision of the power will allow the Department to support the establishment of such bodies within the statutory framework applicable to district councils.
16. The negative resolution procedure is considered appropriate as any orders will be made following an application from the councils which appointed the relevant joint committee and the powers and functions of the body will be those specified in existing statutes.

Part 5 - Permitted Forms of Governance

Clause 24 – Power to Prescribe Additional Permitted Governance Arrangements

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Affirmative Resolution

17. This provision allows the Department to specify additional, alternative, arrangements that councils may operate, for and in connection with the discharge of functions.

18. The introduction of executive arrangements, in addition to a committee structure, provides a new council with a broad spectrum of decision-making structures for the delivery of its functions and responsibilities. Although a range of options is being made available in the Bill it is possible that a council may identify an alternative structure that it considers would better suit its circumstances, whilst continuing to provide for efficient and effective decision-making. Recognising the potential for this to happen, the Department considers it appropriate to include an enabling power to allow for such a structure to be provided for in legislation, to ensure that appropriate checks and balances are built into the structure. It is not anticipated that this power will be used in the near future.
19. Any regulations made under this provision will be subject to affirmative resolution as they will introduce an additional political decision-making structure for councils for the discharge of their functions.

Part 6 - Executive Arrangements

Clause 25 – Council Executives

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

20. The introduction of executive arrangements is designed to support efficient, effective and accountable decision-making in the new councils. The Department considered that this objective could best be achieved through the operation of either a tightly defined executive decision-making committee or executive decision-making committees with restricted membership. In determining the upper limit of the membership of these committees the Department took the view that an upper limit of 10 members, based on 25% of the membership of ten of the eleven new councils, would be appropriate.
21. Subsection (6), however, provides the Department with an enabling power to amend the maximum number of members who may serve on a cabinet-style executive or a streamlined committee executive, under executive arrangements. The provision of this enabling power is in recognition that there may a point in the future where there is a change of policy or where experience showed that the specified restriction was not fully delivering the policy objective and that a lower level of membership may be more appropriate.
22. The Department has selected the affirmative procedure to take account of the implications for any change in the level of membership on the allocation of positions of responsibility across the political parties represented on a council, and the potential cross-party nature of any executive.

Clause 26 – Functions which are the responsibility of an executive Subsection (3)

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

23. This subsection provides an enabling power for the Department to specify those functions which must not be the responsibility of an executive of the council and those that may, but need not, be the responsibility of such an executive.
24. The presumption is that all functions of a council are to be included in executive arrangements unless regulations provide otherwise. The Department anticipates that regulatory and licensing functions, such as the granting or refusing of planning permission, should not be executive functions. These functions will be specified in regulations under

subparagraph 26(3)(a). Regulations under subparagraph 26(3)(b) will specify those functions for which the council will have discretion in relation to their inclusion in executive arrangements.

25. The proposed regulations will also be used to specify functions which must be discharged only by the full council in those councils which are operating executive arrangements. For functions so specified, the regulations will provide that the following activities may be the responsibility of the executive:
- the taking of any steps preparatory to the discharge of the functions;
 - the doing of anything incidental or conducive to the discharge of the function; and
 - the doing of anything expedient in connection with the discharge of the function or any step preparatory to the discharge of the function.
26. The Department's intention is that a cabinet-style executive or, streamlined committees executive, will take decisions within a broad, strategic policy framework agreed by the full council. The enabling power outlined above will be used to specify the council plans and strategies that must be agreed by the full council. Provisions will allow the cabinet-style executive or, streamlined committees executive working together, to prepare drafts of the plans and strategies to propose to the full council for agreement.
27. Taking into account the large number of functions and responsibilities which councils will have, and that these are likely to change over time, the Department takes the view that regulations are the more appropriate method to be used to specify those functions.
28. In view of the largely administrative and technical nature of the provisions the Department considers that the negative procedure is appropriate.

Subsection (6)

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

29. This subsection provides an enabling power for the Department to specify cases or circumstances in which a function is not to be the responsibility of an executive when other provisions specify that it would be its responsibility.
30. The purpose of this power is to allow the Department to restrict an executive's freedom to take decisions in specified circumstances. An example of when regulations may require executive functions to be discharged by the full council is if the executive decision would not be within the council's budget or capital expenditure programme.
31. In view of the largely administrative nature of the provisions, the Department considers that the negative procedure is appropriate.

Clause 27 – Functions of an executive: further provision

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

32. In the operation of executive arrangements, regulations will provide for the allocation of functions between a council and its executive and will specify the functions of a council that must be, and those that may be, the responsibility of that council rather than its executive. Part 4 (Discharge of Functions) provides a range of approaches that a council may adopt for the discharge of those functions where decision-making rests with the council.

33. The Department considers that there may be circumstances, as a result of policy changes, etc. when alternative approaches for the discharge of a function (or functions) by a council operating executive arrangements may be more appropriate. Subsection (5) provides an enabling power for the Department to make provision about the discharge of any function of a council, which operates executive arrangements, which is not the responsibility of executive.
34. Making provision for alternative arrangements to be specified in subordinate legislation provides the Department with the necessary flexibility to take account of changes in policy and circumstances.
35. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical operation of the new governance arrangements provided for in the Bill.

Clause 29(1) and (2) – Discharge of functions of and by another council Subsection (1)

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

36. Part 4 of the Bill imposes certain restrictions on the arrangements for the discharge of a council's functions, if executive arrangements are adopted. Subsection (1) provides the Department with the power to enable the executive of a council to arrange for any functions for which it is responsible to be discharged by another council or the executive of another council.
37. In the delivery of its functions, there is the potential that the executive of a council could take the view that a function in relation to a particular geographic area of the district would be better delivered by another council. Allowing the arrangements that would apply in such circumstances to be specified in subordinate legislation provides the Department with the flexibility to respond to policy changes.
38. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical operation of the new governance arrangements provided for in the Bill.

Subsection (2)

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

39. This subsection provides the Department with an enabling power to allow a council to arrange for the discharge of any of its functions by the executive of another council.
40. The Department recognises that there may be circumstances where a council considers that a function whose discharge it has retained to itself would be better delivered by another council, for example, the delivery of a service to a particular geographic area. Making provision for this to happen when the other council is operating executive arrangements is, in the view of the Department, best achieved through subordinate legislation.
41. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical operation of the new governance arrangements provided for in the Bill.

Subsection (4)

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

42. This subsection sets out what may be included in regulations made using the enabling powers provided for by subsections (1) and (2).

Clause 30 – Joint exercise of functions

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

43. This clause provides the Department with the power to enable the executive of a council to exercise a function jointly with one or more other councils and to specify the circumstances in which this can occur.
44. Part 4 of the Bill applies certain restrictions to the joint discharge of functions by a number of councils where executive arrangements have been adopted by one of the councils concerned, unless provision has been made to the contrary. The Department recognises that there may be circumstances when two or more councils consider that a function would be delivered more effectively through the operation of a joint committee. The enabling power in subsection (1) provides the Department with the flexibility to provide for such arrangements in subordinate legislation.
45. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical operation of the new governance arrangements provided for in the Bill.

Clause 34 – Reference of matters to overview and scrutiny committee etc.

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

46. This clause provides that a council which is operating executive arrangements must make provision for matters to be referred to the associated overview and scrutiny committee. Subsection (4) provides an enabling power for the Department to specify what is an excluded matter for the purposes of referring a matter to an overview and scrutiny committee.
47. Any council which has adopted executive arrangements is required to establish an overview and scrutiny committee. The role of an overview and scrutiny committee is to review and scrutinise decisions or other actions taken in the connection with the discharge of any functions which are either the responsibility of an executive or which have been retained by the council. This is a wide ranging remit and means that all decisions relating to the discharge of a council's duties and responsibilities could be subject to review by an overview and scrutiny committee.
48. The Department, however, takes the view that individual decisions in relation to licensing or regulatory functions should not fall within the remit of an overview and scrutiny committee. Such decisions are themselves subject to separate review or appeal mechanisms. As the licensing and regulatory functions of a council are likely to change over time this enabling power will provide a means to respond to such changes.

49. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical operation of the new governance arrangements provided for in the Bill.

Clause 39 – Meetings and access to information etc.: further provision and regulations

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

50. This provision provides the Department with an enabling power to specify the arrangements that must apply in relation to the public's access to meetings of a council's executive and information connected with the transaction of its business.
51. Part 8 of the Bill introduces new arrangements in relation to access to meetings and documents of a council to ensure transparency and openness in its operation. Whilst these new arrangements will also apply to committees and sub-committees of a council there are features of the decision-making process under executive arrangements, for example the publication of information about prescribed decisions, for which specific provision is required.
52. The enabling powers provided by this clause will enable the Department to respond flexibly to any future policy changes to ensure that there is appropriate transparency in the operation of executive arrangements.
53. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical operation of the new governance arrangements provided for in the Bill.

Part 7 - Meetings And Proceedings

Clause 42 – Regulations about standing orders

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Affirmative Resolution

54. This provision provides the Department with the power to specify provisions that must be contained within a council's standing orders for the regulation of its proceedings and business.
55. It is normal for a publicly elected body to have in place standing orders for the conduct of proceedings and meetings, to support the effective transaction of business. The Department recognises that councils will wish to develop standing orders that best suit their individual circumstances and experiences.
56. There are, however, aspects in relation to the transaction of council business where the Department considers that a consistency of approach is required. This is particularly relevant in relation to the operation of elements of the checks and balances that are being introduced to the decision-making process. The enabling power provided by this clause will enable the Department to ensure that this consistency is in place by providing that certain matters must be included in a council's standing orders.
57. As any standing orders specified in regulations will directly relate to the new framework for the protection of the interests of minority communities, the Department has selected the affirmative procedure.

Clause 44 – Qualified majority

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Affirmative Resolution

58. This clause introduces qualified majority voting whereby certain specified decisions of a council will require the support of 80% of the members of a council, present and voting on a decision, in order for it to be agreed. Subsection (4) provides the Department with the enabling power to amend the specified percentage.
59. The Department considers that the percentage specified for a qualified majority vote strikes the appropriate balance between providing a safeguard for the interests of a minority community within a local government district and ensuring that council business can be transacted effectively. This is, however, a totally new mechanism for local government decision-making. Recognising this, the Department is taking the power to allow the percentage to be amended, should it become apparent in the future that the level set in the Bill is resulting in councils being unable to progress business effectively.
60. The Department has selected the affirmative procedure as this mechanism is a substantive aspect of the new checks and balances framework for the protection of the interests of minority communities and, if used, will amend the percentage specified on the face of the Bill.

Clause 45 – Power to require decisions to be reconsidered

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Affirmative Resolution

61. This clause introduces a procedure to enable 15% of the members of a council to request that a decision is reconsidered, in specified circumstances. Subsection (3) provides the Department with the enabling power to amend the percentage required.
62. The Department considers that the level specified to trigger a request for the reconsideration of a decision (the call-in procedure) strikes the appropriate balance between providing a safeguard for the interests of a minority community within a local government district and ensuring that council business can be transacted effectively. This is, however, a totally new mechanism for local government decision-making. Recognising this, the Department is taking the power to amend the percentage needed to trigger call-in should it become apparent in the future that the percentage provided for in the Bill will result in councils being unable to progress business effectively.
63. The Department has selected the affirmative procedure as this mechanism is a substantive aspect of the new checks and balances framework for the protection of the interests of minority communities and, if used, will amend the percentage specified on the face of the Bill.

Part 8 - Access to Meetings and Documents

Clause 51 – Additional rights of access to documents for members of councils

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

64. This clause ensures that members of a council have access to any document relating to the business of that council, subject to certain specified restrictions. Subsection (5) provides the

Department with the enabling power to amend the provisions which specify the circumstances under which a document is not required to be open for inspection.

65. Clause 51 ensures that all members of a council have access to information relating to the discharge of any of the functions of the council, including information on a matter to be discussed by a committee or sub-committee of which they are not a member. The Department considers that while it is appropriate to provide for the increased availability of information for members, certain descriptions of information should not be open for inspection. Two categories of information are specified. The power provided by subsection (5) will allow the Department to amend these categories in response to changes in policy or, in response to changes to the descriptions of exempt information specified in Part 1 of Schedule 8 to the Bill.
66. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical operation of the new arrangements for openness of council business provided for in the Bill.

Clause 52 – Councils to publish additional information

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

67. This clause sets out the additional information that a council is required to have available for public inspection, including a summary of the rights to attend meetings or inspect documents. Subsection (3) provides the Department with the power to specify additional statutory provisions which confer rights of access to meetings and documents.
68. Clause 52(3) requires a council to have available at its offices a summary of the rights of access to meetings and documents conferred by Part 8 of the Bill. There is the potential that in the future other legislation may make additional provision in relation to such access. This power will enable the Department to respond appropriately in such circumstances.
69. The Department considers that the negative procedure is appropriate as any order made using the power will make provision in relation to the practical aspects of the framework for ensuring openness in the transaction of council business set out in the Bill.

Clause 54 – Exempt information and power to vary Schedule 6

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

70. This clause specifies the descriptions of exempt information which must not be open for inspection. Subsection (2) provides the Department with the power to vary, add or delete any description of information which is exempt for the purposes of making a document of the council open to inspection.
71. In considering this provision the Department took the view that an approach similar to that applying for local authorities in England, Scotland and Wales would be appropriate. The list covers information relating to individuals, employment matters, legal advice and matters that could be regarded as sub-judice. The Department, however, considers that it is prudent to have available the power to amend this list should this become necessary in response to future changes in policy.
72. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical operation of the new arrangements for openness of council business provided for in the Bill.

Clause 55 – Interpretation and application of this Part

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

73. This clause provides interpretation specific to the provisions in relation to access to meetings and documents and the application of those provisions. In particular, subsection (2) provides the Department with the power to amend the period of notice required for a council meeting or to vary the period for inspection of a document before a meeting, except where a meeting is convened at shorter notice or an item is added to an agenda.
74. In determining the period before a meeting of the council when notification of the meeting must be given and specified documents must be made available to the public, the Department took the view that 5 days provides the appropriate balance between giving suitable advance notice and allowing the papers to be prepared. The Department, however, considers it prudent to take a power to amend this period by subordinate legislation in the light of either future policy changes or experience of the operation of the new framework.
75. The Department considers that the negative procedure is appropriate as any order made using the power will relate to the practical operation of the new arrangements for openness of council business provided for in the Bill and not impact on the overall principles.

Part 9 - Conduct of Councillors

Clause 56 – Code of Conduct

Power exercisable by: Statutory Code

Assembly Procedure: Affirmative Resolution

76. This provision allows the Department to issue, revise, or withdraw a mandatory code of the conduct which is expected of councillors (to be known as the Northern Ireland Local Government Code of Conduct for Councillors).
77. The mandatory code of conduct is integral to the successful implementation of the new ethical framework. In addition, clause 56(2) provides that the code must specify principles which are intended to provide a guide for councillors' behaviour in the execution of their duties, and these will underpin the code.
78. Clause 56 provides that a code or an amendment to the code cannot come into operation until they have been approved by the Assembly. The Department considers that, given the nature of the provisions, the affirmative procedure is appropriate.

Clause 67 – Expenditure of Commissioner under this Act

Power exercisable by: Statutory Rule (Regulations)

Assembly Procedure: Negative Resolution

79. Clause 67(3) provides for the apportionment of the expenditure of the Commissioner for Complaints in connection with the new ethical standards framework between all district councils in Northern Ireland in the manner prescribed in regulations.
80. This will permit the Department to specify the amount attributable to the overall costs of the Commissioner, to all or to individual councils. As this is mainly an administrative matter, the Department considers the negative resolution procedure as the most appropriate.

Part 10 - Community Planning

Clause 70 – Community planning partners

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution except where the name of a specified body changes or it ceases to exist when the negative resolution procedure will apply

81. Community planning is about councils and the other organisations delivering public services in the local government district, working together to deliver improved outcomes. It is in essence about the key individuals in each of those organisations developing and maintaining interpersonal relationships that enable each organisation to identify how they can add to the process for the overall benefit of everyone in the district.
82. Subsection (1) provides the Department with the power to specify those bodies and individuals that will be the community planning partners of a council.
83. The Department recognises the challenges inherent in developing an effective approach to community planning at a local level and the potential changes that will be required to how organisations operate. The power to specify those bodies and individuals that are required to participate in and support community planning provides a statutory underpinning to the development of the necessary relationships.
84. Given the importance of ensuring that the determination of those bodies and individuals that are to play a critical role in the delivery of community planning is as comprehensive as possible, the Department has selected the affirmative procedure. On this basis the Department considers that the affirmative procedure should also be used when additional new bodies are being specified. The negative procedure is considered to be appropriate for any subsequent changes to the bodies specified as a result a change in name or were a body ceases to exist.

Clause 79 – Establishment of bodies corporate

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

85. Experience in Scotland and Wales, where community planning has been in operation for a number of years, indicates that the process can be best taken forward at a local level through the establishment of a strategic community planning partnership. This provides a more formalised structure for the various community planning partners to discuss matters related to the plan, and its delivery on a collective basis.
86. Subsection (1) provides the Department with the power to establish a community planning partnership as a corporate body at the request of a council and its partners.
87. As the operation of community planning beds in over the coming years, there is the potential that a council and its community planning partners may take the view that the development and co-ordinated delivery of a plan's objectives could be taken forward more effectively through a body corporate, with the ability to directly employ staff, acquire and hold property, etc. The Department recognises the overall benefits which could result from such an arrangement and the provision of this power will allow the Department to support this approach.

88. Given the implications for the organisations that would be involved in the proposed body and the functions for which it will have responsibility, the Department has selected the affirmative procedure.

Part 11 - General Powers of Councils

Clause 85 – Powers to make supplemental provisions

Subsection (1) – statutory provisions preventing or restricting councils exercising the general power.

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

89. Part 11 of the Bill introduces a general power of competence to enable a council to take any action provided it is not prohibited by statute. This subsection provides the Department with the enabling power to amend, repeal, revoke or disapply statutory provisions that prevent or restrict the use of the general power.
90. Whilst the purpose of the general power of competence is to enable councils to act in innovative ways, it does not allow them to bypass existing statutory restrictions (as provided for in clause 83). This is to ensure a sensible transition to the new freedoms. The Department recognises that there may always be a need to have some restrictions in place, but is committed to removing those restrictions that are no longer necessary or appropriate.
91. Taking account of the complexity of the existing framework of powers and associated restrictions that councils operate under, it is not feasible to rely solely on primary legislation to bring about these changes. Furthermore, as the purpose of the general power of competence is to encourage innovation, it is not possible to say at this stage what these restrictions might be.
92. As the enabling power would be used to amend or revoke statutory provisions, the Department considers that the affirmative procedure is appropriate.

Subsection (2) – statutory provisions that overlap the general power

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

93. This subsection provides an enabling power for the Department to amend, repeal, revoke or disapply any statutory provision that the Department considers overlaps the general power of competence.
94. This enabling power will allow for the simplification of the legislative framework for councils, by allowing for the removal of overlaps between the general power and more specific powers. As indicated above, the complexity of the underlying legislation means that it is not possible to identify all such powers at the outset. It is anticipated that overlaps will become apparent as legislation is reviewed. It is likely, therefore, that this enabling power may often be used in conjunction with the subsection (1) enabling power.
95. As the use of the enabling power could result in changes to statutory provisions, the Department consider the affirmative procedure to be appropriate.

Subsection (3) and (4) – prevention of certain activities and imposition of conditions

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

96. Subsection (3) provides an enabling power for the Department to prevent a council from doing things in exercise of the general power. Subsection (4) provides for the exercise of the general power to be subject to conditions.
97. The general power of competence is an extremely wide power, designed to promote innovation by councils. It is subject to only those inherent limitations that apply to the powers of individuals and is subject to few express constraints. While the Department is committed to preserving the freedom of councils to act that will be given by the new general power of competence, there may be circumstances where it will be necessary to restrict its use or to impose conditions.
98. This enabling power will not be used lightly, and it is expected that it will not be used frequently. However, as its use will be to restrict the use of a power agreed by the Assembly, the affirmative procedure has been selected.

Part 12 - Performance Improvement

Clause 89 – Improvement: supplementary

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

99. This clause sets out definitions of how a council may demonstrate improvement in the exercise of its functions in the context of the aspects specified in clause 87 of the Bill. Subsection (5) provides the Department with the enabling power to amend, omit or add to, or make other amendments to the specification of improvement functions or exercise of them.
100. The current Best Value oriented continuous improvement duty on councils (provided in the Local Government (Best Value) Act (Northern Ireland) 2002) is specifically related to the issues of economy, efficiency and effectiveness. In moving the performance improvement regime forward from this regime the Department considers that the aspects specified in clause 87(2) represent a comprehensive set of broad characteristics that capture most of the things that a council might want to do in improving its service to people. The Department, however, recognises that in the future, policies may change and other aspects may become more significant in terms of service delivery. The enabling power in this subsection will provide the flexibility necessary to respond to such circumstances.
101. Taking account of the significance of these aspects and any subsequent changes to the delivery of improved services by councils to the public, the Department has selected the draft affirmative procedure.

Clause 92 – Performance indicators and performance standards

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

102. This clause provides the Department with the power to specify, by order, performance indicators and performance standards in respect of these indicators in relation to the delivery of continuous improvement in council services.

103. In developing the policy, the Department has adopted the following definitions:
- *performance indicators* are a measure of a council's performance
 - where appropriate, *performance standards* would set out the minimum acceptable level of service provision.
104. In delivering continuous improvement, councils will need to establish where improvements are most needed. To do this they will need to be able to assess their performance, know what local people think of that performance, and show how performance compares to that of other councils.
105. Under the new framework, a council will be required to monitor its performance against objectives and performance indicators that it has set for itself. In addition the Department will have the power to set regional performance indicators for the main functions, particularly those that have transferred from departments, reflecting the regional interest in local services. The Department anticipates that the suite of performance indicators specified in the order will be high level and limited in number.
106. The Department believes that an order-making power is the most appropriate method of putting this system in place. As it is anticipated that the indicators and standards will change over time, it would not be practicable to place them on the face of the Bill. Equally, the use of guidance would not be sufficient. Whilst it would provide flexibility, it would not have the same force in ensuring a consistent approach across councils.
107. In view of the largely administrative nature of the provisions, the Department considers that the negative procedure is appropriate.

Clause 95 – Improvement planning and publication of improvement information

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

108. Improvement plans are a key output from the performance improvement process, as they will be the principal means by which councils are held accountable to local people for the delivery of continuous improvement in service delivery. The improvement plan is designed to be a readily accessible, transparent document which provides an accurate picture of what the council has achieved, the extent to which it has met its targets, its future plans for improvement and how its performance compares with that of others.
109. This clause specifies the arrangements that a council must put in place in relation to the publication of its improvement plan and its assessment of its performance against that plan.

Subsection (3)(b) – Assessment of performance

110. Subsection (3)(a), provides that improvement information must be published by a council before 31 October each year for the preceding financial year. The Department considers that this provides a council with sufficient time to gather information and make an assessment of its performance in the preceding year.
111. This subsection provides the Department with the power to specify an alternate date for publication of a council's improvement information.

Subsection (5)(b) – Improvement planning

112. Subsection (5)(a) provides that a council's improvement plan must be published as soon as reasonably practicable after the start of the financial year to which it must relate. Subsection (5)(b) provides the Department with the enabling power to specify an alternate date for the publication of the plan.
113. The Department, however, recognises that there may be circumstances when it might be appropriate to vary either the date specified in subsection (3)(a) or separately the date specified in subsection (5)(a). This could be as a result of a need to adjust the timetable for reviewing functions, collecting performance information, etc., in the light of practical experience, or because of a significant unforeseen external factor. The ability to vary either date by order is viewed as a prudent measure which ensures that the legislative framework is sufficiently flexible to accommodate such circumstances.
114. The Department considers that the negative procedure is appropriate as any order made using the enabling power in either subsection (3)(b) or (5)(b) will relate to the practical outworking of the new performance improvement regime provided for in the Bill, and may be of a temporary nature.

Clause 98 – Audit and assessment reports

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

115. Clause 96 of the Bill specifies a role for the local government auditor in relation to a council's preparation of its improvement plan while clause 97 specifies the auditor's role in relation to the council's assessment of its performance against that plan. Clause 98 places a duty on the local government auditor to issue a report on that audit. Subsection (3)(b) provides the Department with the power to amend the date by which copies of the local government auditor's report must be sent to a council.
116. Subsection (3)(a) specifies that the local government auditor should send a copy of his/her report on the improvement information and assessment published by a council to that council by 30 November following the publication of the information in question (which has to be done by 31 October).
117. The Bill specifies 30 November as the date by which the audit and assessment must be completed in order to balance the need for a prompt commentary on the information published with the need to allow the auditor sufficient time to make an objective assessment of it. It seems prudent, however, to allow for the possibility of the date being varied for a number of reasons. For example, the date needs to have regard to the date of publication of the performance information and assessment by a council, which could also be varied by order under clause 95.
118. There may in the future be changes to the way in which the assessments are prepared or accounts audited which would make an earlier or later date preferable for the publication of an informative commentary. The Department, therefore, wishes to retain the flexibility inherent in these delegated powers and believes that the negative resolution procedure is the more appropriate approach in this case.

Clause 103 – Powers of direction etc.

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

119. This clause makes provision for the action(s) that may be taken by a department, if it considers that a council is failing, or likely to fail to comply with its performance improvement duties. Subsection (5) provides a power for a relevant Northern Ireland Department to establish an appropriate alternative appeals mechanism where that department has intervened and assumed responsibility for a function for which it acted as the appeal mechanism on a decision taken by a council.
120. Clause 103 provides the Department and any other relevant Northern Ireland department with powers to intervene if a council is failing to comply with its duties under Part 12 of the Bill. It provides a range of measures to allow for flexible and constructive intervention with the possible measures being cast so that the form and nature of the intervention can be matched against the seriousness of the failure.
121. Where a serious failure has been identified and the council has not taken the required action to remedy the situation, subsection (4)(a) provides an enabling power for a department, if it considers it appropriate, to exercise a function of a council, where that department has policy responsibility for the function. If the legislation providing for the discharge of that function by a council confers, for example, a statutory right of appeal to the department by an applicant, subsection (5) provides the power for that department by regulations to make provision for alternative arrangements, if that department assumes responsibility for the discharge of the function.
122. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical outworking of the intervention powers, and are anticipated to be of a temporary, time bound nature.

Clause 104 – Power to modify statutory provisions and confer new powers

Subsection (1) – statutory provisions preventing or obstructing compliance

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

Subsection (2) – conferring new powers

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

123. Subsection (1) provides the Department with the enabling power to modify or exclude the application of a statutory provision to a council if that provision prevents or obstructs compliance by the council with its performance improvement duty.
124. Subsection (2) provides the Department with the enabling power to confer on councils any power necessary or expedient to permit the council's compliance with its improvement duty.
125. The Department will have the power to impose conditions on the way councils exercise any power which has been modified or any new power conferred using the enabling powers in subsections (1) and (2).
126. The purpose of the enabling powers is to ensure that councils, notwithstanding the introduction of a general power of competence, are able to consider as wide a range of service delivery options as possible in meeting their performance improvement

responsibilities. Taking account of the pace of change in technology and other matters, the Department wishes to be in a position to respond quickly and flexibly to enable councils to secure potential benefits for local people.

127. Councils have accumulated their powers and responsibilities gradually over the years. Ancillary powers have generally been conferred in an ad hoc manner to support new functions, taking account of past methods and current practice. The new performance improvement regime, coupled with the general power of competence, is intended to encourage innovation, for example, by promoting new methods of service delivery which are more responsive to the needs of the user.
128. Given that these are powers to amend statutory provisions, the Department considers it appropriate that the draft affirmative procedure should be used.

Part 15 - Amendments of the 2005 Order

Clause 111 – Power to repeal provisions relating to surcharge etc

Power exercisable by: Statutory Rule

Assembly procedure: Affirmative Resolution

129. Articles 19 (declaration that an item of account is unlawful) and 20 (recovery of amount not accounted for, etc) of the Local Government (Northern Ireland) Order 2005 provide the local government auditor with powers (commonly known as “surcharge”) to recover financial losses from individuals who have been responsible for their councils incurring unlawful expenditure or who have caused losses to their councils through misconduct.
130. With the introduction of the new ethical standards framework and mandatory code of conduct (Part 9 of the Bill), the Department considers that the surcharge provisions may no longer prove to be required. Clause 111 provides an enabling power for the Department to repeal the surcharge powers by order. The Department, however, has concluded that time should be given for councils to become familiar with this process before this power is removed. The removal by subordinate legislation permits this to be done in a timely matter.
131. The Department considers it the draft affirmative procedure should be used as the power permits the Department to amend primary legislation.

Part 16 - Miscellaneous

Clause 114 – Transitional rate relief in consequence of changes in local government districts

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Negative Resolution

132. This clause amends the Rates (Northern Ireland) Order 1977 to make provision for a transitional rate relief scheme as a consequence of the reorganisation of local government districts. The amended provision provides an enabling power for the Department of Finance and Personnel to specify the features of any such scheme.
133. The Department of Finance and Personnel consider that the negative procedure is appropriate as any order will relate to the outworking of the rating system.

Clause 116 – Exclusion on non-commercial considerations

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

134. As a consequence of introducing a new performance improvement framework, the Bill will repeal the Local Government (Best Value) Act (Northern Ireland) 2002.
135. Section 2 of the 2002 Act contains an enabling power for the Department to provide for a matter to cease to be a non-commercial matter for the purposes of Article 19 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992.
136. Clause 116 re-enacts the provisions of section 2 of the 2002 Act by providing a similar power to that which is being repealed.
137. The Department considers that as the use of this power would amend primary legislation it is appropriate that its use should be subject to the draft affirmative procedure.

Clause 122 – Compensation for loss of office or diminution of emoluments

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

138. This clause provides for compensation to be paid to a person who suffers loss of employment or diminution of emoluments as a result of the reorganisation of local government and the transfer of functions from departments to a local government body. Subsection (4) provides the enabling power for the Department to make provision for the scheme of compensation, in accordance with Article 19 of the Superannuation (Northern Ireland) Order 1972.
139. The Department considers that the negative procedure is appropriate as any regulations will relate to the practical application of the compensation system.

Clause 123 – Supplementary and transitional provisions

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Dependent upon the purpose of the Order

140. This clause provides the Department with the power to make such incidental, consequential, transitional or supplemental provisions as appear necessary for the purposes of reorganisation or reform.
141. The purpose of this power is to enable the Department, as well as any other Department responsible for functions transferring to local government, to make by order provisions which are consequential on the provisions in the Bill. Such an order can be used to amend, repeal or revoke any provision made in primary legislation in consequence of the provisions in this Bill. It may also include transitional, transitory or saving provision. This power is by its nature consequential and limited by the provisions of this Bill, the Local Government (Boundaries) Act (NI) 2008 and any statutory provisions relating to the transfer of functions to a local government body which come into operation on or before 1st April 2015. For example, this power will permit the Department to make an order conferring functions on the new councils to be carried out during the transitional period, i.e. following the local government election until 1 April 2015.

142. The power also allows Departments to deal with any incidental, consequential or supplemental issues that may arise as a consequence of changes to local government district boundaries or the reduction in the number of councils.
143. The Assembly procedure adopted depends on the nature of the Order. Where the order amends or repeals a statutory provision, the affirmative procedure applies. Where the order does not amend or repeal such a provision, it is the negative procedure that is to be followed. This approach ensures that Assembly involvement in the process of making the order is set at a level appropriate to the purpose of the legislation.

Clause 127 – Commencement

Power exercisable by: Statutory Rule (Order)

Assembly procedure: None

144. This clause makes provision for the commencement of the provisions in the Bill, some of which come into force on such day or days as the Department may by order appoint (clause 127(1)). This is a power which is commonly provided in primary legislation of this type.
145. Since clause 127 concerns commencement orders, no Assembly procedure applies where the powers in the clause are exercised.

Schedules

Schedule 1 – Disqualification for being elected or acting as a councillor

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Affirmative Resolution

146. Schedule 1 specifies the conditions that would disqualify a person from being a councillor. Paragraph 1(2) provides the Department with the power to prescribe the posts or offices held by employees of a council that would disqualify the individual concerned from being a councillor.
147. In response to legal advice and a European Court of Human Rights judgment, the Department is removing the blanket prohibition on council employees being councillors. In taking this step the Department, however, recognises that issues in relation to political impartiality could arise if an individual holding a senior or sensitive position was also a councillor. The taking of this enabling power will enable the Department to specify those individuals, by reference to the position held, who would continue to be prohibited from being a councillor, under any circumstances.
148. The Department considers that any regulations made using the power should be subject to the draft affirmative procedure given their significance, and human rights implications.

Schedule 3 – Positions of responsibility

Part 2 – Method of election

Power exercisable by: Statutory Rule (Order)

Assembly procedure: Affirmative Resolution

149. Part 2 of Schedule 3 to the Bill provides for positions of responsibility on a council to be filled by election using the single transferrable vote method. The procedure for the counting of votes in a single transferrable vote election is specified in Part IV (Counting of Votes) of Schedule 5 to the Electoral Law Act (Northern Ireland) 1962.
150. Paragraph 11(3) provides the Department with the power to make provisions about elections to fill positions of responsibility or any matter relating to them.
151. The Department has selected the affirmative procedure as any provisions made using the enabling power will relate to the new framework for the protection of the interests of minority communities.

Schedule 4 – Appointment of councillors to committees, etc.

Paragraph 4 – Vacancies

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

152. This paragraph provides the Department with the enabling power to make provisions in relation to the filling of vacancies on committees.
153. Where a vacancy occurs on a committee the Department anticipates that this will be filled by a member of the political party to which the committee position was allocated, as provided for by Schedule 4 to the Bill. This power enables the Department to make provision to deal with the circumstance were that political party is either unable to appoint a replacement because of other positions held, or it no longer has a representative on the council.
154. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical outworking of the arrangements for ensuring political balance in the membership of committees.

Paragraph 5 – Joint committees

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

155. This paragraph provides the Department with the power to apply provisions on appointment of members of committees to membership of joint committees, subject to any prescribed modifications.
156. The Department takes the view that a council, that has established a joint committee with other councils, should determine its membership of that committee in accordance with paragraphs 2 and 3 of this Schedule. The Department, however, considers it appropriate to have an enabling power available to make provision for alternative arrangements to apply, for example to ensure as far as is practicable that there is political balance on the joint committee.

157. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical outworking of the arrangements for ensure political balance in the membership of committees.

Schedule 6 – Overview and scrutiny committees: Voting rights of co-opted members

Power exercisable by: Statutory Rule (Regulations)

Assembly procedure: Negative Resolution

158. Paragraph 1 of Schedule 6 permits a council to make a scheme to allow co-opted members of an overview and scrutiny committee to vote at meetings. The power provided by paragraph 2(1) will enable the Department to make provision to ensure that there is a consistent approach to the development of such schemes by councils.
159. Paragraph 2(1) provides the Department with the power to provide for the features of voting rights schemes, including the specification of the circumstances under which a co-opted member may vote and the requirement for notification by a council of any variation to or revocation of a scheme.
160. The Department considers that the negative procedure is appropriate as any regulations made using the power will relate to the practical outworking of the arrangements for effective overview and scrutiny under executive arrangement.

Annex B - Local Government Bill - Subordinate legislation and guidance

Local Government Reform - Subordinate Legislation And Guidance

Title	Description	Type	Enabling power	Assembly procedure	Proposed dates for consultation	Operative Date	Note
Local Government (Boundaries) (2008 Act)(Commencement, Transitional Provision and Savings) Order (NI) 2013	Order to bring the new local government districts into effect for the purposes of <ul style="list-style-type: none"> holding the next local government elections, and specifying the role of the successor councils during the shadow period re drawing up a budget and striking a rate; and from 1 April 2015, for all other purposes. 	Statutory Rule	s5(3) & (4) of the Local Government (Boundaries) Act (NI) 2008	None	No	03-Oct-13	Came into operation on 3 October 2013 SR 2013 No. 238 (C. 15)
Local Government Legislation (Modification) Regulations (NI) 2014	Regulations to modify local government legislation for the purposes of preparing for, or giving effect to, local government reorganisation (ie to apply to shadow period).	Statutory Rule	s20 of the Local Government (Miscellaneous Provisions) Act (NI) 2010	Affirmative	Jan – mid-Mar 14	May-2014	
Local Government (Transitional and Supplementary Provisions) Order (NI) 2014	Order to specify the functions, powers and duties of successor councils during the shadow period.	Statutory Rule	s123 of the Local Government Bill	Affirmative	Jan – mid-Mar 14	May-2014	
Guidance on Positions of Responsibility	Guidance on the application of d'Hondt, Sainte-Lagué and the Single Transferrable Vote methods for filling positions of responsibility	Guidance	s113 of the Local Government Bill	None	Jan – mid-Mar 14	May-2014	

Title	Description	Type	Enabling power	Assembly procedure	Proposed dates for consultation	Operative Date	Note
Local Government (Executive Arrangements) Regulations (NI) 2014	<p>Regulations to make provision about executive arrangements, including:</p> <ul style="list-style-type: none"> • specifying how council functions will be allocated between the council and the executive; • enabling an executive or council to arrange for the discharge of a function by another council or its executive (if one or other of the councils is operating executive arrangements); • prescribing the arrangements for the access to meetings and documents of an executive. 	Statutory Rule	s26(3) & (6.), s29(1), (2) & (4), s30(1) & (2) and s39 of the Local Government Bill	Negative	Jan – mid-Mar 14	May-2014	
Guidance on Executive Arrangements	<p>Guidance on:</p> <ul style="list-style-type: none"> • executive arrangements; and • overview and scrutiny committees 	Guidance	s32(10), s34(3) and s113 of the Local Government Bill	None	Jan – mid-Mar 14	May-2014	
Executive Procedure Rules	Procedures for the conduct of meetings of the Executive and the transaction of its business - similar to the Standing Orders for the council.	Guidance	s113 of the Local Government Bill	None	Jan – mid-Mar 14	May-2014	
Overview and Scrutiny Committee Procedure Rules	Procedures for the conduct of meetings of an overview and scrutiny committee and the transaction of its business - similar to the Standing Orders for the council.	Guidance	s113 of the Local Government Bill	None	Jan – mid-Mar 14	May-2014	

Title	Description	Type	Enabling power	Assembly procedure	Proposed dates for consultation	Operative Date	Note
Local Government (Executive Arrangements) Regulations (NI) 2014	<p>Regulations to make provision about executive arrangements, including:</p> <ul style="list-style-type: none"> specifying how council functions will be allocated between the council and the executive; enabling an executive or council to arrange for the discharge of a function by another council or its executive (if one or other of the councils is operating executive arrangements); prescribing the arrangements for the access to meetings and documents of an executive. 	Statutory Rule	s26(3) & (6.), s29(1), (2) & (4), s30(1) & (2) and s39 of the Local Government Bill	Negative	Jan – mid-Mar 14	May-2014	
Guidance on Executive Arrangements	<p>Guidance on:</p> <ul style="list-style-type: none"> executive arrangements; and overview and scrutiny committees 	Guidance	s32(10), s34(3) and s113 of the Local Government Bill	None	Jan – mid-Mar 14	May-2014	
Executive Procedure Rules	Procedures for the conduct of meetings of the Executive and the transaction of its business - similar to the Standing Orders for the council.	Guidance	s113 of the Local Government Bill	None	Jan – mid-Mar 14	May-2014	
Overview and Scrutiny Committee Procedure Rules	Procedures for the conduct of meetings of an overview and scrutiny committee and the transaction of its business - similar to the Standing Orders for the council.	Guidance	s113 of the Local Government Bill	None	Jan – mid-Mar 14	May-2014	
Local Government (Standing Orders) Regulations (NI) 2014	Regulations to require councils to incorporate in their standing orders prescribed provisions for regulating their proceedings and business, and to make any modification to the standing orders as may be required.	Statutory Rule	s42 of the Local Government Bill	Affirmative	Jan – mid-Mar 14	May-2014	

Title	Description	Type	Enabling power	Assembly procedure	Proposed dates for consultation	Operative Date	Note
Model Standing Orders	Model Standing Orders to incorporate both those matters to be prescribed by order under s42 of the Local Government Bill and any other matters which are considered appropriate	Model Standing Order	N/A	None	Jan – mid-Mar 14	May-2014	
Call-in Rules of Procedure	Procedures to be followed for the practical operation of the call-in and the review of decisions.	Guidance	s113 of the Local Government Bill	None	Jan – mid-Mar 14	May-2014	
Northern Ireland Local Government Code of Conduct for Councillors	Mandatory Code of Conduct for councillors (including the principles which will govern the conduct of councillors).	Code	s56 of the Local Government Bill	Affirmative	Jan – mid-Mar 14	May-2014	
Local Government (Designation of Disqualified Employments) Regulations	Regulations to prescribe any office or employment made by a council that will disqualify the holder from being a councillor.	Statutory Rule	Sch 1 para 1(2) of the Local Government Bill	Affirmative	Jan – mid-Mar 14	May-2014	
Local Government (2014 Act) (Commencement No 1) Order (NI) 2015	Commencement	Statutory Rule	s127 of the Local Government Bill	None	No	May-2014	
Model Constitution	Model Constitution to incorporate both those matters set out in a Departmental direction under s2 of the Local Government Bill and any other matters which are considered appropriate	Model Constitution	N/A	None	Jun - Jul 14	Apr-2015	
Local Government (Appointment to Committees) Regulations (NI) 2014	Regulations to provide for: <ul style="list-style-type: none"> • the filling of vacancies on committees; and • appointments to, the quota to apply to, and the filling of vacancies on joint committees 	Statutory Rule	Sch 4 para 4 & 5 of the Local Government Bill	Negative	Jun - Jul 14	Apr-2015	

Title	Description	Type	Enabling power	Assembly procedure	Proposed dates for consultation	Operative Date	Note
Local Government (Community Planning Partners) Order (NI) 2014	Order to specify the bodies or persons to be the community planning partners of a council.	Statutory Rule	s70(1) - (3) of the Local Government Bill	Affirmative	Sep - Nov 14	Apr-2015	
Guidance on Community Planning	Departmental guidance about community planning, the production and review of community plans and the duties of a council and its community planning partners	Guidance	s77 of the Local Government Bill	None	Sep - Nov 14	Apr-2015	
Local Government (Performance Indicators and Performance Standards) Order (NI) 2014	Order to specify factors (performance indicators) and standards for councils.	Statutory Rule	s92(1) of the Local Government Bill	Negative	Sep - Nov 14	Apr-2015	
Guidance on Performance Improvement	<p>Departmental guidance to councils on Performance Improvement to include:</p> <ul style="list-style-type: none"> • s91(2) - the content of and arrangements for its general performance improvement duty and improvement objectives; • s94(3) - the use of information; • s95(6) - how performance assessments are to be carried out, on improvement planning and the procedure to follow for making the improvement plan; and • s104(3) - powers conferred on councils to facilitate compliance with their general duty of improvement. 	Guidance	s113 of the Local Government Bill	None	Sep - Nov 14	Apr-2015	

Title	Description	Type	Enabling power	Assembly procedure	Proposed dates for consultation	Operative Date	Note
Local Government Reorganisation (Compensation for Redundancy) Regulations (NI) 2014	Compensation for loss of office or diminution or emoluments	Statutory Rule	Art 19 of the Superannuation (NI) Order 1972 (See s 122 of the Local Government Bill)	Negative	TBC	Apr-2015	
Local Government (2014 Act) (Commencement No 2) Order (NI) 2015	Commencement	Statutory Rule	s127 of the Local Government Bill	None	No	Apr-2015	

Departmental Briefing 23 January 2014

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Our reference: BR/29/12

Date: 22 January 2014

Sheila Mawhinney
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Sheila,

I refer to the request made by the Environment Committee seeking a briefing on the draft Local Government Bill. Officials are scheduled to brief the Committee on Thursday 23 January 2014.

I attach briefing papers on the following:

- removing the blanket prohibition on council officers being councillors;
- positions of responsibility
- executive arrangements
- call-in and qualified majority voting
- ethical standards
- community planning – duties on departments and statutory partners
- performance improvement framework.

These can be discussed in more detail at the meeting.

I trust this information is of assistance. Should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO
[by e-mail]

Briefing Note for the Environment Committee

Call-In and Qualified Majority Voting

Background

1. The Executive is committed to governance arrangements that provide for the protection of the interests of minorities in council decision-making.
2. Following the statement on the Executive's decisions on the future shape of local government on 31 March 2008, a policy development panel considered, amongst other governance issues, how this could best be achieved. The panel comprised of elected representatives from the five main political parties. The members were supported by chief officers from a number of councils and a joint secretariat comprised of officers from NILGA and departmental officials.

The call-in procedure

3. The consideration of this issue by the panel was initially in the context of the proposal for the introduction of the option for a council to adopt executive arrangements for its decision-making. Research of the governance arrangements in the other jurisdictions where executive arrangements operated indicated that the ability of members of a local authority – who were not members of the executive - to request the reconsideration of a decision (call-in) by the executive formed a key aspect of the governance arrangements in that authority.
4. The members of the panel agreed that provision should be made for a similar procedure to operate as part of the governance arrangements in the new councils. Members also agreed that the call-in procedure should not just apply where executive arrangements operated but that it should also apply to recommendations coming from a committee for ratification by the council.
5. Considering the operation of the call-in procedure in the other jurisdictions and, the requirement to provide protections for the interests of minorities, panel members agreed that the call-in procedure, in both contexts outlined in paragraph 4, would be available for procedural matters in relation to the decision (or recommendation) and issues in relation to the protection of minorities. Members also agreed that an independent validation mechanism would be required when the call-in is used to protect the interest of minorities, in order to avoid the potential for internal disputes.
6. The research on the operation of the call-in procedure in local authorities in England and Wales indicated that different approaches were adopted by individual authorities in relation to the number of members required to initiate the procedure. The panel members agreed that the proposed call-in procedure for councils should operate in a similar manner to the 'petition of concern' in the Assembly. Members acknowledged that it would be problematic to provide protections for those sections of the community with limited representation on a council but that any system had to strike a balance across all the new councils. Accordingly, members agreed that the trigger for the call-in should be set at 15% of the total council membership, irrespective of the political balance on the council. This recommendation was endorsed by the Strategic Leadership Board and was subsequently agreed by the then Minister of the Environment and the Executive.
7. The Department is currently working with senior officers from local government to develop the criteria and the practical procedures for the operation of the call-in procedure. The Minister has indicated that these will be a mandatory element of a council's standing orders and will be specified in the regulations using the power provided by clause 42 of the Local Government Bill.

Qualified Majority Voting

8. In addition to the call-in procedure, panel members considered that qualified majority voting should be made available within the governance arrangements of the new councils to provide a further protection for the interest of minority communities in council decision-making. The use of qualified majority voting would, however, only apply to a limited number of specified strategic council decisions and in response to a valid call-in on the grounds of disproportionate adverse impact.
9. In considering the proposed use of qualified majority voting, there was no support for the introduction of a system of cross-community voting, as operates within the Assembly. It was argued that designation would work against the council being able to provide united, though diverse, civic leadership. As with call-in, members acknowledged the problems associated with providing a balance between providing protections for sections of the community with limited representation on the council whilst allowing for council business to proceed on an efficient and effective basis. Taking these factors into account, panel members recommended that the threshold should be set at 80% of council members present and voting on the specified issue.
10. This recommendation was endorsed by the Strategic Leadership Board and was subsequently agreed by the then Minister of the Environment and the Executive.
11. The Department is working with senior officers from local government to refine the list of issues that will require the support of a qualified majority vote for consideration by the Minister.

Local Government Policy Division 1
January 2014

Briefing Note for the Environment Committee

Community Planning – Duty on Departments and Statutory Bodies

Background

1. Following the statement on the Executive's decisions on the future shape of local government on 31 March 2008, a policy development panel considered, amongst other issues, community planning. The panel comprised of elected representatives from the five main political parties. The members were supported by chief officers from a number of councils and a joint secretariat comprised of officers from NILGA and departmental officials.
2. In developing the proposals for the community planning framework, the Department recognised that the framework needed to include a duty on:
 - specified statutory bodies, given their responsibility for the delivery of services within a council's district, and
 - departments, to take account of their responsibility for the delivery of certain services and the policy framework within which services are delivered.

The need for these duties was fully endorsed by the members of the policy development panel.

Duty on Statutory bodies

3. The proposed duty on statutory bodies, as a council's community planning partners, is similar to that provided for in relation to community planning in Wales as this was used as a basis for the drafting of Part 10 of the Local Government Bill. The proposed duty goes further than the provision in Scotland.
4. In Wales the Local Government (Wales) Measure 2009 (the 2009 Measure) provides, in section 37, that

“Every community planning partner of a local authority-

- (a) must participate in community planning for the authority's area to the extent that such planning is connected with the partner's functions; and
- (b) must assist the authority in the discharge of its duties under subsection (1).”

Subsection 1 specifies a local authority's duties in relation to community planning.

Section 37 goes on to provide that

“For the purposes of this section, a reference to an action to be performed or a function to be exercised by a local authority or one of its community planning partners is a reference to an action or function within the powers of the authority or partner.”

5. In Scotland the Local Government in Scotland Act 2003 (the 2003 Act), section 16, provides that

“It is the duty of the bodies, office-holders and other persons specified to assist the local authority in the discharge of its duties under section 15”

Section 15 specifies the local authority's community planning duty.

6. In England the Local Government Act 2000, section 4, requires a local authority to prepare a community strategy for promoting or improving the economic, social and environmental well-

being of their area and contributing to the achievement of sustainable development in the United Kingdom. There are no duties placed on other bodies or organisations in relation to the development of the community strategies.

Duty on departments

7. The proposed duty on departments is stronger than the comparable duty on Ministers in both Scotland and Wales. Clause 78 of the Local Government Bill provides that
- “So far as it is reasonably practicable to do so, every Northern Ireland department must-
- (a) in exercising any function which might affect community planning, aim to promote and encourage community planning;
 - (b) have regard to any implications of a community plan for the exercise of that department’s functions.”
8. In Scotland the 2003 Act provides that
- “The Scottish Ministers shall, when discharging any function of theirs which might affect-
- (a) community planning; or
 - (b) any authority or body which or office-holder or person who must or might participate or is participating in it,
- promote and encourage the use of community planning.
9. In Wales the 2009 Measure provides that
- “The Welsh Ministers must, in exercising any function which might affect community planning aim, so far as is reasonably practicable to do so, promote and encourage community planning.”

Statutory link with development planning

10. The Local Government Bill, by providing a statutory link with development planning, goes further than the equivalent legislation in other jurisdictions by ensuring a link between spatial planning and community planning.

The duties

11. In addition to recognising the need for statutory bodies and departments to be active participants in community planning, the Department also recognised that the respective duties needed to be framed in the context of the separate and distinct accountability arrangements that apply. Statutory bodies are accountable to their respective Boards of Directors and, in prescribed circumstances, to the responsible Minister within an agreed legislative framework for the delivery of their functions. Departments are accountable to their respective Ministers and ultimately to the Assembly for the delivery of their functions and responsibilities.
12. The effectiveness of community planning will be grounded in the development of relationships between elected representatives and senior officers of councils and, the boards and senior officers of the relevant bodies and individuals specified as community planning partners of a council.
13. The interface between departments and, to a certain degree, statutory bodies in relation to the exercise of their community planning duties will be supported by the operation of the

proposed Partnership Panel. This Panel will provide a forum for discussion on matters of mutual interest and concern between Executive Ministers and elected representatives from the new councils.

Local Government Policy Division 1
January 2014

Council Employees Being Councillors – Removal of Blanket Prohibition

Background

1. The Local Government Act (Northern Ireland) 1972 (the 1972 Act), section 4(1)(a), provides that :

“a person shall be disqualified for being elected or being a councillor if

- (a) *he holds any paid office or other place of profit (not being that of Chairman or Sheriff) in the gift or disposal of that or any other council”.*

2. In July 2005 the Department of the Environment received correspondence from a solicitor acting on behalf of a council employee alleging that section 4(1)(a) of the 1972 Act violates Article 10 of the European Convention on Human Rights. Article 10 provides the right to freedom of expression:

“Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

3. At that time, advice was sought from the Departmental Solicitor’s Office on the matter. The subsequent advice from DSO indicated that there is a very strong argument that s4(1)(a) of the 1972 Act is disproportionate to the legitimate aim pursued. The advice went on to indicate that it could convincingly be argued that the provision is “indiscriminate” and poses as a “...general, automatic and indiscriminate restriction on a vitally important Convention right...”. The advice pointed to the possibility of a successful legal challenge to the provision on the ground that it violates Article 10 of the European Convention on Human Rights.

4. The case law quoted in support of this advice is the case of *Hirst v The United Kingdom* (No. 2) 2005 (74025/01). In this case the ECHR held that s.3 of the Representation of the People Act 1983, which barred Mr Hirst, and others, from voting in parliament and local elections, was incompatible with the European Convention on Human Rights. In its judgment the ECHR held:

“... s.3 of the 1983 Act remains a blunt instrument. It strips of their Convention right to vote a significant category of persons and it does so in a way which is indiscriminate. The provision imposes a blanket restriction on all convicted prisoners in prison. It applies automatically to such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1”

5. At that time it was concluded that the necessary amendment to the provision would be brought forward as part of the legislation associated with the local government reform programme.

[This position was confirmed in 2009 by the then Minister of the Environment, Sammy Wilson, in response to correspondence from Eddie McGrady MP]

Position in other jurisdictions

England, Scotland & Wales

6. The Department carried out research to identify how best to amend the legislation to remove the blanket prohibition, by reviewing the relevant legislative provisions on this matter in other jurisdictions.
7. In England and Wales, prior to 1989, an employee of a local authority was disqualified from being a member of that local authority by virtue of s80 of the Local Government Act 1972. The equivalent provision in Scotland is s31 of the Local Government (Scotland) Act 1972. These provisions permitted a local authority employee to become a member of another local authority – this was known as ‘twin-tracking’.
8. In response to adverse publicity in relation to this ‘twin-tracking’ in 1985, the UK Government established a Committee of Inquiry into the Conduct of Local Authority Business chaired by Mr David Widdicombe QC. This committee considered inter alia the issue of local authority employees also being members of a local authority. Three arguments against ‘twin-tracking’ were considered:
 - conflict of loyalty;
 - excessive paid leave; and,
 - political impartiality.
9. The Committee rejected the first and concluded that the second could be dealt with by separate rules for remuneration and time-off. The third argument led to the recommendation that “senior officers should not be politically active, and as a consequence should not be councillors”.
10. The UK Government in its response, Cm 433 of 1988, accepted this recommendation. Subsequently, provisions in relation to disqualification and political restriction of certain officers and staff were introduced in the Local Government and Housing Act 1989 (the 1989 Act). Section 1(1) of the 1989 Act provides that:

“A person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of a local authority if he holds a politically restricted post under that local authority or any other local authority in Great Britain”
11. Section 2 of the 1989 Act sets out the persons that are to be regarded as holding politically restricted posts for the purposes of section 1.
12. Subsequently a number of senior local authority employees took a case to the European Court of Human Rights on the basis that Regulations made under section 1 of the 1989 Act interfered with their rights under Article 10 of the Charter. In its judgment, the Court found that the restrictions were not open to challenge on the grounds that “Regulations only applied to carefully defined categories of senior officers ... who perform duties in respect of which political impartiality vis-a-vis council members and public is paramount...”.

Republic of Ireland

1. 13. In the Republic of Ireland the Local Government Act 2001, section 13(1)(i), provides that persons employed by a local authority are not eligible to be elected members unless they belong to a class, description or grade that may be specified in subordinate legislation. The Local Government Act 2001 (Section 161) Order 2004 specified two classes of employee who were excluded from the restriction:

-
- a) every class, description or grade of employment the maximum remuneration for which on the last date for receipt of nominations at a local election does not exceed the maximum remuneration for the grade of Clerical Officer;
 - b) every other class, description or grade of employment which would have been, on 31 December 2001, a class, description or grade of employment as a servant, subject to the condition that such designation shall cease to apply and have effect on the next ordinary day of retirement in the year in which local elections are next held after those to be held in 2004.

Departmental Position

14. Against the background of the above, provision has been included in the Local Government Bill to remove the blanket prohibition on council employees being councillors. The enabling power provided by paragraph 1(2) of Schedule 1 to the Bill will allow the Department to specify in regulations those offices and employments, to which individuals are appointed by a council that will disqualify that individual from being a councillor.
15. The Department recognises the concerns expressed in relation to permitting a council employee to be a councillor on his or her employing council. Advice is currently being sought from the Departmental Solicitor's Office on whether the provision as introduced would allow the Department to specify in regulations that employment on the council to which election is sought could be included as a disqualifying employment.

Local Government Policy Division 1
January 2014

Ethical standards framework

Appeal Mechanism in other jurisdictions

Background

1. The ethical standards frameworks in other jurisdictions differ from one another, with different arrangements for investigating and adjudicating on cases. The procedures for challenging decisions of the adjudicating body also differ across the various jurisdictions.

England

2. The ethical standards framework in England changed as a result of the Localism Act 2011. Each authority must adopt its own code and put in place arrangements for the investigation of allegations and for decisions on allegations to be made. These arrangements must include the appointment of an independent person whose views must be sought and taken into account before a decision can be taken on any allegation that a local authority has decided to investigate.
3. The Localism Act also makes it a criminal offence if a local authority member fails without reasonable excuse to notify disclosable pecuniary interests. Provision is also made to empower the magistrates' court, upon conviction, to impose fines of up to £5,000 and/or to disqualify the person from being a member of a local authority for up to 5 years. This new approach means that local authorities no longer have a single body of law to refer to for dealing with councillor conduct but will, instead, be able to call upon a range of remedies, including existing criminal and civil law provisions as well as those in the Act.
4. Ethical complaints can be made to the council's monitoring officer, who makes initial findings on whether to proceed. If so, investigation can be undertaken by an officer of the council or an independent investigator, who will provide a written report to the monitoring officer. A sub-committee of the relevant committee of the local authority with responsibility for ethical standards (this could be the audit and governance committee or a standards committee) will hold a determination hearing to determine the complaint. The independent person will be invited and may advise both the committee and the member.
5. On hearing all evidence, the committee withdraws to consider its decision and the independent member may also be consulted. If a breach is determined, the committee must decide whether to take action in relation to the member and what action to take. The action that can be taken is not prescribed and the question of sanctions is open to the lawful discretion of local authorities.
6. The legislation makes no provision to put in place an appeals mechanism against such decisions. The decision would be open to challenge by judicial review (e.g. if it was patently unreasonable, if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose).

Wales

7. The ethical standards procedure in Wales is the responsibility of the Public Services Ombudsman for Wales, and cases are either investigated by the Ombudsman or referred to a council's standards committee for action/consideration.
8. The role of a standards committee is to promote and advise on standards issues in the council and to deal with any matters referred to it by the Ombudsman. This can include:
 - consideration of case investigation reports by the Ombudsman where the Ombudsman has referred the case to the standards committee for determination;
 - cases referred to the council for investigation by the council monitoring officer and adjudication by the standards committee, or

- cases referred to the council for local resolution and which may or may not require a sanction.
9. The committee, in assessing any report on an alleged breach, must decide if the code of conduct has been broken and, if so, what penalty to give the member concerned.
 10. In cases which are retained for investigation by the Ombudsman, following his investigation, the Ombudsman will prepare a report for the Adjudication Panel for Wales. This Panel is an independent body set up under Part III of the Local Government Act 2000.
 11. The Panel's role is to form case and interim case tribunals to consider whether members of county, county borough and community councils, police, fire and national park authorities in Wales have breached their authority's statutory code of conduct.
 12. In those cases on which the Adjudication Panel has adjudicated, the person who is the subject of the complaint may seek the permission of the High Court to appeal against the decision.
 13. In cases where an authority's standards committee has adjudicated, a member may appeal against a decision of the committee to the Adjudication Panel. In these appeal cases, the tribunal of the Panel will decide whether to uphold or overturn the determination of a standards committee. Where it upholds the decision of the standards committee, it will either endorse the sanction imposed or refer the matter back to the committee with a recommendation that a different sanction be imposed, up to a maximum suspension of 6 months.
 14. There is no right of appeal against the decision of a tribunal formed to consider an appeal against the decision of a standards committee.

Scotland

15. The position of Commissioner for Ethical Standards in Public Life in Scotland was established in July 2013. The Commissioner is an independent officeholder with responsibility for investigating complaints about councillors, MSPs and members of devolved public bodies.

If appropriate, the Commissioner will report on the outcome of his investigation to the Standards Commission for Scotland. The Commission is an independent body that works with councils to promote high standards of conduct, issues guidance to councils and makes determination on the Commissioner's reports. If a breach has occurred, any sanction applied is in accordance with section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the 2000 Act"). This includes:

- censure;
 - partial suspension/suspension (not exceeding one year); or
 - disqualification (not exceeding 5 years).
16. The Commission may decide to hold a hearing, direct the Commissioner to carry out further investigations or take no action. Should the Standards Commission decide to hold a hearing, a Panel consisting of members of the Commission will determine whether a breach has occurred and, if so, what sanction to apply.
 17. An appeal against a decision of the Commission is made to the Sheriff Principal within 21 days.

Ireland

18. In Ireland, if an Ethics Registrar of the local authority becomes aware of a possible breach, he/she will refer it to the manager and the Cathaoirleach (Mayor) of the local authority who will consider what action should be taken i.e. any investigative or disciplinary procedures;

whether the matter should be referred to the Director of Public Prosecutions; or any other action deemed appropriate.

19. Referral can be made to the Standards in Public Office Commission should there be a conflict of interest, etc. In this instance an inquiry officer of the Commission conducts a preliminary enquiry and reports to the Commission with a recommendation. If the Commission decides, an investigation is conducted.
20. The legislation which sets out the ethical framework – Part 15 of the Local Government Act 2001 – makes no reference to a mandatory code and deals mainly with declarations of interests.
21. The publication “Local Government and the Elected Member” issued by the Department of the Environment, Heritage and Local Government states that the codes of conduct for councillors and employees “supplement and go beyond the specific requirements of the Act”.
22. To date, there appears to be no evidence of any investigated breaches that have warranted further action and no information on provision of appeals.

Minor Complaints

23. Under the ethical standards framework provided in the Bill, all complaints which are in writing are referred to the Commissioner for Complaints for consideration.
24. Concerns have been raised that the Bill does not provide a means for dealing with minor complaints.
25. The ethical framework would not preclude a council from dealing with minor complaints which have arisen in the council by seeking local resolution or mediation before the matter reaches the stage of a written complaint being forwarded to the Commissioner.
26. If an issue arose between two councillors or between a councillor and officer, the council could try to resolve the dispute “in house”, should all parties be in agreement. The matter will only be considered by the Commissioner if the complainant makes a written complaint.
27. However, it may be harder to obtain local resolution if a member of the public was complaining.
28. The Department recognises the concerns expressed in connection with addressing minor complaints.
29. Officials have been researching the issue of how complaints of a minor nature are dealt with in other jurisdictions and will be putting a paper to the Minister in the next few days for consideration.

Extent of the Code of Conduct

30. The Local Government Bill makes provision that councillors (i.e. those elected to the 11 councils) and those persons appointed to council committees who are not elected persons (see clauses 15, 16 and 32(4)) will be subject to the requirements of the mandatory code.
31. The intention is to bring the mandatory code and new ethical standards framework into effect from May 2014.
32. The Local Government (Transitional Provisions and Modification) Regulations, which will make arrangements for the shadow period, and will apply the code to councillors from the 26 current councils.

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33. Councillors are frequently appointed or nominated to represent their council on other bodies. The draft mandatory code specifies that:
- where a body has a code of conduct relating to its members, a councillor must comply with that code when acting on behalf of that body; and
 - where that body does not have a code of conduct relating to its members, a councillor, when acting on behalf of that other body, must comply with the Councillors' Code of Conduct except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
34. The issue of whether the Code could be applied to non-elected representatives on local working groups (such as community and policing partnerships) to which councillors may be appointed has been raised. Extending the Code and the role of the Commissioner to non-councillors (otherwise than when they are acting as a member of a council committee) would be outside the scope of the Bill

Local Government Policy Division 1
January 2014

Briefing Note for The Environment Committee council Political Governance Structures

Background

1. The overarching objective for the proposals for the political governance is to provide for effective, efficient and transparent decision-making by councils with appropriate checks and balances, taking account of councils' additional service delivery and community planning responsibilities.
2. In response to the then Minister of the Environment's statement to the Assembly of 31 March 2008 on the future shape of local government, a policy development panel was established to develop policy and implementation proposals in relation to, amongst other issues, the governance arrangements for the new councils. The membership of this panel comprised elected representatives from the five main political parties. The members were supported by chief officers from a number of councils and a joint secretariat comprised of officers from NILGA and departmental officials.

Decision-making structures

3. In developing the proposals, the panel considered the changes to processes and structures in Northern Ireland and in other jurisdictions over recent years to improve the efficiency of decision-making, enhance the strategic management and accountability of councils, promote transparency and strengthen civic leadership. At that time, in England, Scotland and Wales, it was no longer the norm that all decisions were either taken or ratified by the council.
4. Associated with this move towards more efficient and effective decision-making had been a change in the political management structures within councils. Details are set out in subsequent paragraphs.

Scotland

5. The decision-making structures operating in Scottish councils flow from the Report of the McIntosh Commission. This Commission was appointed in 1998 by the then Secretary of State for Scotland to examine the implications that the Scottish Parliament would have for Scottish local government.
6. Based on evidence the Commission received, it concluded that decision-making structures should be reviewed across all councils with a view to modernising current systems. At that time, however, it was recognised that a number of councils were already taking steps to move away from traditional committee structures towards a more open and transparent process. Given the diversity of Scottish local government, the McIntosh report recommended that councils themselves should address reform in ways which would best respond to local circumstances.
7. In response to the Commission's Report, the Scottish Government established a Leadership Advisory Panel (LAP) to work with all councils on the review of their decision-making and policy development processes and working practices.
8. Using the flexibility of the provisions in the Local Government (Scotland) Act 1973, three new council management structures emerged as a result of the reviews:
 - streamlined committee structures
 - executives
 - devolved and partially devolved structures

England and Wales

9. In England and Wales, the Local Government Act 2000 (the 2000 Act) required a local authority to adopt executive arrangements and to select its structure from a range of prescribed models. However, a local authority could apply to the Secretary of State for approval of an executive arrangement that did not correspond to one of the three models specified.
10. The first model involved a directly elected mayor with council manager. The mayor was directly elected to give a political lead to an officer or 'manager' to whom both strategic policy and day to day decision-making were delegated. The mayor's role is primarily one of influence, guidance and leadership rather than direct decision-taking. The mayor might resemble a non-executive chairman of a company and the council manager its chief executive. This could be separate from the traditional ceremonial mayor.
11. The second model involved a directly elected mayor who appointed a cabinet. The mayor, once elected, selected a cabinet from among the councillors. The cabinet could be drawn from a single party or a coalition. These cabinet members had portfolios for which they took executive decisions acting alone. The mayor is the political leader for the community, proposing policy for approval by the council and steering implementation by the cabinet through council officers. The office of directly elected mayor is separate from the traditional ceremonial mayor.
12. The third model involves a council-appointed leader and cabinet. The leader is elected by the council and the cabinet is made up of councillors, either appointed by the leader or elected by the council. As above (see para 11), the cabinet could be drawn from a single party or a coalition. This is similar to the directly elected mayor and cabinet system except the leader relies on the support of members of the council rather than the electorate for his or her authority and can be replaced by the council. While the leader could have similar executive powers to a directly elected mayor, in practice, the leader's powers are not as broad as there is no direct mandate from the electorate for the leader's programme.
13. In addition to the variations of the executive models set out above, certain councils in England could select an alternative type of system known as streamlined committee system. This was only available to district councils in a two-tier authority with a higher level county council and where the population is less than 85,000. This option did not involve the creation of an executive and the number of committees was expected to be kept to a minimum.
14. Subsequently, in the Localism Act 2011(the 2011 Act), the Coalition Government made provision for a local authority to adopt a committee system, i.e. permitting a local authority to return to pre-2000 Act arrangements for the discharge of functions. The mayor and council manager form of executive was also removed as an option by the 2011 Act.

Policy proposals

15. Following its consideration of the arrangements in the other jurisdictions, the policy development panel agreed that a list of options for a council's governance structure should be provided in legislation. This would provide a council with the flexibility to adopt a structure that is most appropriate to its circumstances. The options proposed were:
 - the traditional committee system;
 - a streamlined committee system; or
 - a cabinet-style executive.

It was also proposed that provision should be made for a council to adopt an alternative model if this was more appropriate.

Executive arrangements

16. The Bill makes provision for two types of executive arrangements. A cabinet-style executive and the streamlined committee structure represent variations of executive arrangements whereby decision-making on a range of specified issues is devolved from the council. In the cabinet-style executive, decision-making on all the specified duties and responsibilities becomes the responsibility of the members of that executive. In the streamlined committee executive the specified duties and responsibilities that have been devolved from the council are allocated across a number of committees. In this model the decision-making becomes the responsibility of the members of the committee to which the specific duty or responsibility has been allocated.
17. In both models, decision-making would be within a policy and budgetary framework agreed by the council. Executive arrangements also require the provision of overview and scrutiny arrangements, irrespective of whether the cabinet-style or streamlined committee executive model has been adopted.

Regulatory and quasi-judicial duties and responsibilities

18. The introduction of executive arrangements will not mean that decision-making on all a council's duties and responsibilities will be devolved to either the cabinet-style or streamlined committee executive. A range of duties and responsibilities will remain the responsibility of the council and it will be for members to determine how these should be discharged. For example, in England and Wales duties and responsibilities of a regulatory or quasi-judicial nature are specified in subordinate legislation as not being the responsibility of a local authority's executive. The Department is currently working with local government to develop proposals in relation to these matters for Northern Ireland to be brought forward by subordinate legislation.
19. The discharge of a specified function, which is not the responsibility of the executive, could be by either a committee which refers a recommendation to the council for ratification, or alternatively a committee could be given the authority by the council to take the required actions without the need for further ratification by the council.

Local Government Policy Division 1
January 2014

Briefing Note for the Environment Committee

Performance Improvement

Background

1. Following the statement on the Executive's decisions on the future shape of local government on 31 March 2008 a policy development panel was established to develop policy and implementation proposals in relation to service delivery by the new councils. The panel comprised of elected representatives from the five main political parties. The members were supported by chief officers from a number of councils and a joint secretariat comprised of officers from NILGA and departmental officials.

Options considered

2. In its consideration of the issue the members examined the performance improvement frameworks operating in the other jurisdictions at that time. Members subsequently recommended that a new service delivery and performance improvement framework should be introduced to replace the duty prescribed in the Local Government (Best Value) Act (Northern Ireland) 2002. Members considered that the new framework should comprise the following key elements:
 - an updated statement of a council's duty to secure continuous improvement in the delivery of its services;
 - the establishment of a regime of performance indicators and standards – these should be outcome and citizen-centred – regional indicators should be agreed through the proposed Partnership Panel;
 - councils should prepare and publish a Corporate Plan that includes an Improvement Plan;
 - appropriate monitoring and support mechanisms should be in place to provide accountability to the citizen;
 - a facility for the external assurance of a council's Improvement Plan should be provided.
3. These proposals were endorsed by the Strategic Leadership Board.
4. Subsequently, at the request of the then Minister, officials examined options in relation to which organisation would be most appropriate to provide the external assurance of a council's Improvement Plan. The research undertaken at that time highlighted that the comparable external assurance role was undertaken in the other jurisdictions by the relevant local government audit body. Consideration was given to whether it would be appropriate for the Department or a local government based body to undertake this role but neither were considered suitable to provide Ministers and the public with the necessary independent assurance that a council's Improvement Plan satisfied specified requirements.

The proposed framework

5. The provisions in Part 12 of the Bill give legislative effect to the framework supported by the policy development panel and subsequently the then Environment Minister and Executive colleagues. Part 12 sets the delivery of continuous improvement in the context of the strategic issues that will be of importance to councillors and the citizens they represent, and the council's responsibility for community planning. This is a significant move from the current requirement in relation to delivering Best Value.
6. The framework provides a clear role for councillors to set the performance targets and indicators against which they wish to assess improvement in the delivery of their services. In addition, the Bill provides a link between a council's community planning duties and its

performance improvement duties, particularly in relation to setting improvement targets. The Bill's provisions do not prevent local government, as a sector, agreeing performance indicators and standards against which each council will assess its performance.

7. Provision is made for the Department, acting on behalf of the other Executive departments, particularly those that are either transferring functions to councils or who have placed duties on councils, to specify performance indicators and standards of a regional nature. The intention is that these will be limited in number and be considered in partnership with local government, through the operation of the proposed Partnership Panel.
8. The provisions in relation to reporting and the assurance role for the local government auditor provide accountability for improvements in service delivery to local residents, Ministers and the Assembly.
9. Whilst the Bill provides intervention powers for Ministers, these have been framed to cover as wide a range of circumstances as possible. The most significant power, would allow a Minister to arrange for the delivery of a service to be undertaken by a body other than the council. This is only designed to be used in the circumstances where all the other available approaches have failed to deliver the required improvements.

The role of the auditor

10. As indicated above (see para 4) the role specified for the local government auditor is designed to provide an independent external assurance of a council's improvement plan and the steps a council is taking to deliver the identified improvements. The external assurance of each council's Improvement Plan, particularly during the early years, will be important to ensuring the overall effectiveness of the framework.
11. The duties being placed on the local government auditor are also in the context of the Department having the statutory responsibilities for the provision and oversight of local government functions, including the provision of a local government audit function. As such, the Department requires an assurance that adequate provision is made for the audit and general management of local government expenditure. The Department also needs to have access to audit support where required to provide assurance on a range of issues including that grants paid by the Department to councils are spent and managed in ways consistent with the purpose of the grants etc.
12. The Local Government Act (Northern Ireland) 1972, section 74, made provision for the Department of the Environment to appoint local government auditors to audit the accounts of local government bodies specified in statute. They were employees of the Department for all purposes. The statutory and other arrangements for the provision of audit services in respect of the local government sector have evolved since then.
13. This process involved a transition from a position where local government audit staff were employed by the Department, to the present arrangements where the services are provided by staff employed by the Northern Ireland Audit Office and designated to perform local government audit functions by the Department, with the consent of the Comptroller and Auditor General (C&AG). This transfer was effected by the Audit and Accountability (Northern Ireland) Order 2003 (2003 Order) which provided, inter alia, for the reorganisation of local government audit. The provisions contained in the 2003 Order, in relation to local government auditors, were subsequently amended by the Local Government (Northern Ireland) Order 2005, however, this did not alter the Department's statutory responsibility for designating local government auditors.
14. While this transfer resulted in the C&AG having a more direct responsibility for the provision of staff to deliver local government audit services, the Department of the Environment (on behalf of the Executive) remains legally responsible for designating members of the C&AGs

staff to support the Department in its responsibility for ensuring that local government's financial responsibilities are exercised appropriately. The functions of the Local Government Auditor are separate and distinct from those of the C&AG and the NIAO.

15. The Department's power of direction in relation to requiring the Local Government Auditor to undertake an audit investigation or inspection in respect of bodies for which it has a legitimate and statutory interest does not compromise the independence of the Local Government Auditor in conducting individual audit investigations and inspections. These remain at all times under the control of the Local Government Auditor and his/her staff in line with the standards set by the Financial Reporting Council. The conduct of the requested audit or inspection, and the results and conclusions are a matter for the Local Government Auditor.

Local Government Policy Division 1
January 2014

Briefing Note for the Environment Committee Positions Of Responsibility

Background

1. The Executive is committed to governance arrangements in the new councils that provide for the sharing of positions of responsibility across the political parties and independents represented on a council.
2. Following the statement on the Executive's decisions on the future shape of local government on 31 March 2008, a policy development panel considered, amongst other governance issues, how this could best be achieved. The panel comprised of elected representatives from the five main political parties. The members were supported by chief officers from a number of councils and a joint secretariat comprised of officers from NILGA and departmental officials.

Options considered

3. In its consideration of the issue, the members expressed the view that the system for ensuring proportionality needed to provide for flexibility whilst at the same time ensuring equality. Members also acknowledged that, at that time, there was no consistent approach across the councils for determining the holders of positions of responsibility.
4. A briefing paper outlining the methodologies that could be used for ensuring proportionality was prepared by the joint secretariat. This paper highlighted that the methodologies fall into two broad categories – divisor systems and quota systems. D'Hondt and Sainte-Laguë are the more widely recognised divisor systems, while Quota Greatest Remainder and Droop Quota are forms of quota systems.
5. The disadvantages associated with the use of a divisor method (ie the favouring of the larger political parties), particularly if applied on an annual basis, and the potential benefits of the Single Transferrable Vote approach, were highlighted by the Alliance Party representatives on the panel.
6. Following the consideration of the various aspects of the potential approaches, the members agreed that flexibility for councils should be provided by allowing a council to select its approach to achieving proportionality from a specified list of methodologies. Members agreed that these would be:
 - D'Hondt;
 - Sainte-Laguë; or
 - Single Transferrable Vote.
7. The members also agreed that flexibility should be provided for the political parties represented on a council by not specifying an order in which the positions of responsibility must be selected. The selection should be a matter for each political party, taking account of its priorities. For example, the political party with the largest level of representation on a council, and therefore the opportunity to make the first selection, would have the flexibility to decide whether it wished to hold the council chairperson position in year 1 of the council term or a subsequent year, or one of the other positions of responsibility.
8. In order to mitigate the perceived disadvantages of the divisor methodologies, it was also agreed that the allocation process would be run following the local government election for all positions of responsibility across the full four year council term. Each position would be held for a single year, unless the appointment to a position on an external body required the holder to be appointed for a longer term.

-
9. The proposals from the policy development panel were endorsed by the Strategic Leadership Board, to which it was accountable, and they have subsequently been endorsed by the Executive.

Flexibility

10. The provision of alternative methods for achieving proportionality provides the opportunity for members of a council to agree an approach that they wish to adopt to suit their particular circumstances, within a consistent framework across all the councils. It is only if a council, through a Qualified Majority Vote, cannot reach agreement that a council will be required to use the default d'Hondt divisor method.
11. The members of the policy development panel also agreed that, although flexibility would be provided by prescribing three methods, the application of each of the methods would be specified in legislation. The Department will issue guidance to supplement the legislation by setting out the practical steps to be followed in applying a particular method.
12. Flexibility for councils to determine the approach to be adopted for the sharing of the membership of committees across the political parties and independents is also provided through the provision in the Bill of alternative quota based methodologies.

Local Government Policy Division 1
January 2014

Departmental briefing 11th February



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Your reference:

Our reference:

Sheila Mawhinney
Clerk to the Environment Committee
Northern Ireland Assembly
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BT4 3XX

Date: February 2014

Dear Sheila,

I refer to the requests made by the Environment Committee seeking additional briefing on the draft Local Government Bill following the briefing by officials on 23 January and the informal clause by clause consideration on 30 January.

I attach a briefing paper on a number of the issues raised at the sessions. Research is ongoing in relation to a number of the other issues identified by the Committee and briefing on these will be provided at the earliest opportunity.

I trust this information is of assistance. Should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO

[by e-mail]

Local Government Bill – Committee Stage – Additional Briefing

Issues raised during Departmental briefing on 23 January 2014

1. During the briefing on the removal of the blanket ban on council employees being elected or being a councillor, members requested the full wording of the European Court of Human Rights judgment in the case of Ahmed & others v the United Kingdom. This is attached at Annex A.
2. Members also requested information on how the issue of council staff becoming councillors is dealt with in other European countries and how the system is operating in the Republic of Ireland. A briefing note is attached at Annex B.
3. In response to the Examiner of Statutory Rules recommendation that a super-affirmative procedure should apply in relation to clause 85 officials identified a previous use of such a procedure. A briefing note on the matter is attached at Annex C.

Issues raised during the informal clause by clause

4. Clause 2 – officials also agreed to provide an outline of the Model Constitution. This is attached at Annex D.
5. Clause 7 – officials agreed to provide a paper on the current use of co-option to councils. This is attached at Annex E
6. Clause 8 – officials agreed to provide a paper clarifying the exceptional circumstances in which an exemption could be made in relation to vacation of office in the event of non-attendance. This is attached at Annex F.
7. Officials agreed to provide a summary of the latest drafts of the subordinate legislation needed to implement to Bill. This is attached at Annex G.



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

CASE OF AHMED AND OTHERS v. THE UNITED KINGDOM

(65/1997/849/1056)

JUDGMENT

STRASBOURG

2 September 1998

The present judgment is subject to editorial revision before its reproduction in final form in *Reports of Judgments and Decisions* 1998. These reports are obtainable from the publisher Carl Heymanns Verlag KG (Luxemburger Straße 449, D-50939 Köln), who will also arrange for their distribution in association with the agents for certain countries as listed overleaf.

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SUMMARY¹

Judgment delivered by a Chamber

United Kingdom – restrictions on the involvement of senior local government officers in certain types of political activity (Local Government Officers (Political Restrictions) Regulations 1990)

I. ARTICLE 10 OF THE CONVENTION

A. Whether there had been an interference

Not disputed that applicants as public servants could rely on guarantees in Article 10 and that there had been an interference with their rights under that Article.

B. Whether the interference was justified

1. *“Prescribed by law”*

Regulations designed to lay down rules for a large number of local government officers restricting their participation in certain forms of political activity which could impair their impartiality – inevitable that conduct which might lead third parties to question an officer’s impartiality cannot be defined with absolute precision – open to an officer to seek advice if uncertain as to whether a particular action might infringe Regulations – furthermore, scope and application of allegedly vague provisions had to be seen in light of vice which parent Act sought to avoid.

2. *Legitimate aim*

Interferences which resulted from application of Regulations to applicants pursued legitimate aim: to protect rights of others, council members and electorate, to effective political democracy at the local level.

3. *“Necessary in a democratic society”*

Reiteration of basic principles contained in Court’s judgments on Article 10.

Regulations adopted in light of findings of official inquiry into impact of involvement of senior local government officers in political activities on their duty of political impartiality – findings pointed to specific instances of abuse of power by certain officers and potential for increased abuse in view of trend towards confrontational politics in local government – Court considers that Regulations addressed an identified pressing social need: to strengthen tradition of senior officers’ political neutrality – addressing that need through adoption of Regulations restricting participation of senior officers in defined forms of political activity which might call into question their duty of political impartiality well within margin of appreciation of respondent State in this sector.

1. This summary by the registry does not bind the Court.

AHMED AND OTHERS JUDGMENT OF 2 SEPTEMBER 1998

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In view of Court, restrictions imposed on applicants not open to challenge on grounds of lack of proportionality – Regulations only applied to carefully defined categories of senior officers like applicants who perform duties in respect of which political impartiality *vis-à-vis* council members and public is paramount consideration – restrictions only concern speech or writing of a politically partisan nature or activities within political parties which would be likely to link senior officers in eyes of public with a particular party political line – recent government review of continuing need for restrictions concluded that their maintenance in force justified.

Conclusion: no violation (six votes to three).

II. ARTICLE 11 OF THE CONVENTION

Court's reasoning in support of its conclusion that no violation of Article 10 equally valid to support a finding of no violation of Article 11: restrictions on applicants' activities within political parties prescribed by law, pursued legitimate aim and constituted a proportionate response to a pressing need.

Conclusion: no violation (six votes to three).

III. ARTICLE 3 OF PROTOCOL No. 1

Aim of Regulations was to secure political impartiality of senior officers such as applicants – that aim also legitimate for purposes of restricting applicants' rights to stand for election – essence of rights under this Article not impaired – for example, restrictions only apply for as long as applicants occupy politically restricted posts.

Conclusion: no violation (unanimously).

COURT'S CASE-LAW REFERRED TO

26.9.1995, Vogt v. Germany; 30.1.1998, United Communist Party of Turkey and Others v. Turkey

In the case of Ahmed and Others v. the United Kingdom¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mr A. SPIELMANN,

Mr J. DE MEYER,

Mr R. PEKKANEN,

Sir John FREELAND,

Mr D. GOTCHEV,

Mr P. KÜRIS,

Mr P. VAN DIJK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 27 April, 25 May and 28 July 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 9 July 1997 within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 22954/93) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 by Mr Mobin Ahmed, Mr Dennis Perrin, Mr Ray Bentley and Mr David John Brough, all British citizens, on 21 September 1993.

Notes by the Registrar

1. The case is numbered 65/1997/849/1056. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 30).

3. The Chamber to be constituted included *ex officio* Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 27 August 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr C. Russo, Mr A. Spielmann, Mr J. De Meyer, Mr D. Gotchev, Mr P. Kūris and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently, Mr L.-E. Pettiti and Mr R. Pekkanen replaced Mr Macdonald and Mr Russo who were unable to take part in the further consideration of the case (Rule 22 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the orders made in consequence, the Registrar received the applicants' memorial on 22 December 1997 and the Government's memorial on 15 January 1998. A schedule to the applicants' memorial setting out details of their claims under Article 50 of the Convention was received at the registry on 22 January 1998. An amended schedule of claims was filed with the registry on 27 April 1998. The Government's responses to the applicants' claims were filed with the registry on 21 April and 18 May 1998. The applicants filed observations in reply on 29 May 1998.

5. On 2 September 1997 the President of the Chamber granted Liberty, a non-governmental organisation based in London, leave to submit written comments on the case (Rule 37 § 2). These were received on 12 January 1998 and subsequently communicated to the Agent of the Government, the representative of the applicants and the Delegate of the Commission for possible observations. No observations were submitted.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 April 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr C. WHOMERSLEY, Foreign and Commonwealth Office,	<i>Agent,</i>
Mr J. MORRIS QC, Attorney-General,	
Mr J. EADIE, Barrister-at-Law,	<i>Counsel,</i>
Mr I. MACLEOD, Legal Secretariat to the Law Officers,	
Mr P. ROWSELL, Department of the Environment, Transport and the Regions,	
Mr D. STEELE, Department of the Environment, Transport and the Regions,	<i>Advisers;</i>

(b) *for the Commission*

Mr N. BRATZA,	<i>Delegate;</i>
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(c) *for the applicants*

Mr J. GOUDIE QC,	
Mr A. LYNCH, Barrister-at-Law,	<i>Counsel,</i>
Mr B. BANKS,	<i>Solicitor.</i>

The Court heard addresses by Mr Bratza, Mr Goudie and Mr Morris.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants

7. Mr Mobin Ahmed, Mr Dennis Perrin, Mr Ray Bentley and Mr David Brough are all British citizens, born in 1941, 1948, 1947 and 1932 respectively. They live in London, Yelverton, Edgware and Exeter respectively. At the relevant time they were each permanently employed in different capacities by various local authorities. Their precise status and functions are described in Section C below.

The background to their complaints to the Convention institutions is constituted by the enactment and implementation of legislative measures designed to limit the involvement of certain categories of local government officials, such as themselves, in political activities. The history of the enactment of the relevant measures as well as their purport and scope are

described in Section B below. The impact of the measures on the applicants, all persons considered holders of politically restricted posts within the meaning of the applicable legislation, is described in Section C below.

B. The adoption of the Local Government Officers (Political Restrictions) Regulations 1990

1. The political background to the adoption of the Regulations

8. Against the background of the increasing politicisation of local government and attendant problems in respect of the relationship between elected members and local government officers, the Secretaries of State for the Environment, for Scotland and for Wales, appointed on 5 February 1985 a committee (“the Widdicombe Committee”) to inquire, *inter alia*, into the respective roles of elected members and officers of local government authorities and to make any necessary recommendations for strengthening the democratic process.

9. On 9 May 1986, after receiving evidence from 138 local government authorities and over 500 other organisations and individuals, the Widdicombe Committee submitted its report. The Committee firmly endorsed the continuation of the tradition of politically impartial local government officers having regard in particular to the roles of senior officers as managers, advisers and arbitrators in the day-to-day functioning of local government. In his foreword to the final report the Chairman of the Committee wrote:

“6. Although most of the problems we have perceived have been ones of uncertain relations, there have been some cases, albeit a few, where power has been abused.”

In the Chairman’s view, the recent sharpening of the political intensity of local politics was reflected in the relations between elected council members and local government officers and that the trend towards greater politicisation might be a source of future problems unless recommendations were made in order to provide a framework able to cope with it. With regard to the importance of the impartiality of local government officers, the Widdicombe Committee concluded that:

“6.141. The overwhelming view in the evidence we have received has been that officers (subject to very limited and closely defined exceptions) should continue to serve the council as a whole. ... There has been equally wide agreement that the public service tradition of a permanent corps of politically impartial officers should be retained. ...

6.180. Public service in the United Kingdom is founded on a tradition of a permanent corps of politically neutral officers serving with equal commitment whatever party may be in political control. ...

6.182. Local government in the United Kingdom has traditionally been based on the same public service tradition as central government, but this has been a matter of convention and practice. ...

6.186. The issue of principle is therefore straightforward. There must continue to be a system of permanent and politically neutral officers appointed on the basis of merit. The issue which we need to consider is whether new machinery or rules are required to ensure this, and if so on what basis.”

10. To ensure that senior officers continued to discharge their functions in a manner which was impartial from both a subjective and an objective point of view, the Widdicombe Committee in paragraph 6.217 of its report recommended that:

“(a) the legislation should be amended so that persons who are councillors or who are standing for election as councillors, or who have been councillors within the last year, may not be employed by another authority at the rank of principal officer or above;

(b) the Local Authorities’ Conditions of Service Advisory Board should take steps to include in the terms and conditions of officers at the rank of principal officer and above a prohibition on political activity, including:

(i) standing for, and holding, public elected office;

(ii) holding office in a political party;

(iii) speaking or writing in public in a personal capacity in a way that might be regarded as engaging in party political debate; and

(iv) canvassing at elections;

(c) if the changes recommended at (b) are not made to officers’ terms and conditions, legislation should be introduced to similar effect.”

2. The adoption of the Regulations

11. Following the publication of the recommendations of the Widdicombe Committee, on 16 November 1989 the House of Commons passed the Local Government and Housing Act 1989 (“the Act”), which empowered the Secretary of State for the Environment to make regulations to restrict the political activities of certain categories of local government officers. The Act entered into force on 29 November 1989.

12. The Local Government Officers (Political Restrictions) Regulations 1990 (“the Regulations”) were made under section 1(5) of the Act on 4 April 1990. They were laid before Parliament the following day and came into force on 1 May 1990. The Regulations applied to all persons holding a politically restricted post as defined in section 2(1) of the Act. This term covers three broad categories of local government officials: the most senior post-holders in local government (category one); officials remunerated in excess of a prescribed level and whose posts are listed for the purposes of the application of the Regulations (category two); and officials paid less than the prescribed level but who hold a listed post (category three). Each local authority was obliged to draw up a list of posts falling within the second and third categories (section 2(2)). A local government officer in the second and third categories could apply to an independent adjudicator to have his or her post removed from the list of posts to which the Regulations applied (section 3).

All local government officials employed in these categories at the time of the entry into force of the Regulations were deemed, according to regulation 3(1), to be subject to the measures.

A more detailed analysis of the contents of the Act and the Regulations is set out at paragraphs 26–33 below.

C. The effect of the Regulations on the applicants

1. Mr Ahmed

13. The first applicant, Mr Ahmed, was a solicitor employed by the London Borough of Hackney. Although his salary fell below the level prescribed in section 2(2)(a) of the Act (see paragraphs 12 above and especially 30 below), making him a category three officer, the Council pursuant to section 2(2)(c) of the Act included his post in the list of politically restricted posts because, in its opinion, his post involved giving advice on a regular basis to committees of the Council, namely the Housing Benefits Review Board, the Housing Development Sub-Committee and the Environmental Sub-Committee (see paragraph 30 below).

14. Mr Ahmed was adopted as Labour candidate for election to the London Borough of Enfield in 1990, but was obliged to withdraw his candidature as a result of the Regulations. On 7 March 1990 he applied for removal of his job description from the list of politically restricted posts

(see paragraphs 12 above and especially 32 below). The Council confirmed that Mr Ahmed had not attended committees during the previous twelve months, but stated that he would be involved in giving advice to committees in future, and would attend on a more regular basis. The Council did not provide therefore a certificate stating that he did not give advice regularly. The adjudicator replied to the Council on 30 March 1990 that Mr Ahmed's application for exemption could not therefore be granted.

2. *Mr Perrin*

15. Prior to his retirement, the second applicant, Mr Perrin, was Principal Valuer with the Devon County Council (a category three officer). He was responsible for leading, directing and developing the Council's area valuation staff. His post required him to give regular advice to the Council's committees, including strategy advice on key estate management issues, and to speak to the media. Accordingly his post was included in the list of politically restricted posts kept by the Council in accordance with section 2(2) of the Act (see paragraph 12 above and especially paragraph 31 below).

16. On 19 February 1990 Mr Perrin applied for exemption from political restrictions on the ground that although he advised the Council at meetings and spoke to the media, the advice was "factual valuation information regarding the acquisition, disposal and management of property". His application for exemption was refused on 20 March 1990. The adjudicator wrote:

"I am satisfied that the duties of your post do fall within section 2(3) of the Act in that you do regularly attend committee meetings of the authority to give advice. Your authority do state that this advice does not extend to 'policy advice', but the Act itself makes no distinction between types of advice. I am not prepared, therefore, to grant an exemption under section 3(4) of the Act."

17. As a result of the Regulations, Mr Perrin had to give up his position as Vice-Chair and Property Officer of the Exeter Constituency Labour Party, and had to refrain from supporting and assisting Labour candidates in Exeter City Council elections, including his wife, who was a candidate in May 1990 and May 1991. He also reduced his involvement in trade union activities.

3. *Mr Bentley*

18. The third applicant, Mr Bentley, is a planning manager with Plymouth City Council. He resigned from his position as Chairman of Torridge and West Devon Constituency Labour Party because of the Regulations, and was also restricted in canvassing for his wife who stood as the only Labour Councillor for the West Devon Borough Council, and in giving radio interviews in his capacity as Chairman of the Plymouth Health Emergency, a body concerned with National Health policies.

19. The monitoring officer of the Council classified Mr Bentley's post as one that was politically sensitive (a category one post) and appropriately subject to political restrictions under section 2(3) of the Act (see paragraph 30 below). The reasons for the classification included that Mr Bentley was head of the Council's corporate policy unit, that he was responsible directly to the head of the Council's paid service, that his post was responsible for policy analysis and research, that he represented the Council on a transport steering group involving other authorities and organisations, and that, in the twelve months prior to 31 August 1990, he attended three meetings of the Council's Policy and Resources (Finance sub-) Committee and advised on four separate issues of public transport. The monitoring officer considered that Mr Bentley's post also fell within section 2(7)(a) and (b) of the Act, and was therefore politically restricted in any event (see paragraph 28 below).

20. Mr Bentley applied for exemption from political restrictions. On 19 November 1990 the adjudicator underlined that he regarded his duties as limited to considering applications concerning restrictions under section 2(2) of the Act. He stated that although the Council may have identified the post as being politically restricted, it was not

“politically restricted because of that fact, but because it is explicitly covered by section 2(1)(c) of the Act. I therefore do not consider it necessary or desirable to address the question of whether this post meets the criteria for inclusion in the list of posts under section 2(2) or for exemption from that list, unless or until it is established that the post is not covered by section 2(1)(c).”

4. *Mr Brough*

21. The fourth applicant, Mr Brough, is employed by the Hillingdon Borough Council as the head of its Committee Services Department (a category one post). The provision of services to the Council's committees necessarily involves the Committee Services Department in frequent contact

with and giving advice to the elected members of the Council. Mr Brough was the officer responsible for those activities.

22. As a consequence of the Regulations, Mr Brough can no longer act as Parliamentary Chairman of his party in Harrow East and is prevented from speaking at public meetings on issues such as housing and the health service. Mr Brough did not apply for exemption from the scope of the Regulations.

D. Judicial review proceedings challenging the validity of the Regulations

23. The applicants and NALGO (the predecessor of UNISON, the trade union of which the applicants are members and which represents public-sector workers) applied for and were granted leave to apply for judicial review of the Regulations. The application was dismissed on 20 December 1991. The judge, Mr Justice Hutchison, considered that he was bound by the recent decision of the House of Lords in the case of *R. v. Secretary of State for the Home Department, ex parte Brind and Others* regarding the status of Article 10 of the Convention in domestic law. In connection with the test of “Wednesbury” unreasonableness, the judge referred to an affidavit submitted by Mr Simcock, a senior civil servant at the Department of the Environment, in which Mr Simcock explained how the Widdicombe Committee (see paragraph 8 above) had been set up in 1985 to inquire into local authority practices and procedures with particular reference to the respective roles of elected members and officers. Mr Simcock also described the consultation process between the publication of the Widdicombe Report and the making of the Regulations, in which NALGO was involved, and how the Regulations were in some respects less restrictive than the Widdicombe Committee’s proposals. Referring to senior officers, the Widdicombe Committee had said:

“... It is part of their job to advise councillors, and to adjudicate on matters of propriety, and in so doing they must command the respect and trust of all political parties. There might well be some senior officers who are politically active but who are nevertheless totally able to detach themselves from such activity in carrying out their duties as neutral officers. Nevertheless we believe there will always be a very significant risk that they are viewed with suspicion by councillors of other parties, and that as a consequence the performance of their duties towards the council as a whole will be impaired.”

The judge continued:

“... I preface my summary by pointing out that some of [the applicants’ complaints] reflect the applicants’ root and branch opposition to the whole concept of restricting the political activities of local government employees. It is said that:

AHMED AND OTHERS JUDGMENT OF 2 SEPTEMBER 1998

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- (a) There was no pressing social need for the Regulations – local government employees have in the past provided impartial advice and there is public confidence in their ability to do so.
- (b) The definition of [persons holding politically restricted posts] is unduly wide – a much more restricted category would have served the government’s purpose.
- (c) The restrictions are expressed in broad, subjective and uncertain terms – a vice particularly objectionable where, as here, they seek to restrict fundamental human rights. Thus, in the Schedule references to apparent intention (paragraphs 6 and 7) and to publication in circumstances likely to create an impression (paragraphs 9 and 10) are objectionable, as is paragraph 4 of the Regulations themselves.
- (d) The consequence of the vice mentioned in the previous paragraph is that employees are likely to be treated inconsistently by different employers, by reason of there being room for undue latitude in interpreting the restrictions.
- (e) The Regulations go too far in prohibiting conduct undertaken with apparent intention, etc., or likely to create the impression of support, etc. They should, at most, have proscribed actual political activities.
- (f) The width of the language used means that many non-party political activities, including trade unions and charitable activities, are prohibited.
- (g) The terms are imposed on existing employees, who entered into their contracts of employment on a different basis.
- (h) The restrictions may have an adverse effect on recruitment and lead to resignations by skilled staff.

Some of these points will have to be considered individually when I come to deal with further arguments advanced by the applicants under quite different heads, but in the context of *Wednesbury* unreasonableness I propose only to say that they do not in my judgment come near to establishing a case of perversity. I have already briefly referred to the genesis of the Act and the Regulations in the *Widdicombe* Report, and to the consultative processes that followed it. Paragraph 51 of the Report contained the recommendation that:

‘... terms and conditions of [persons holding politically restricted posts] [should include] a prohibition on political activity, including ... (iii) speaking or writing in public in a personal capacity in a way that might be regarded as engaging in party political debate;’

The Government’s Command Paper in July 1988 (in which, as already mentioned, the view was expressed that the categories of [persons holding politically restricted posts] should be more restricted than the Report proposed) spelt out the essential aim that:

‘it was important that the post-holder should be seen to be politically impartial but that otherwise, local government employees should not be subject to restrictions on their political activity.’

Of the specific arguments mentioned in (a) to (h) above, those in (a), (b), (e), (g) and (h) are, it seems to me, essentially arguments against the whole concept of restricting such activities, and in the circumstances cannot found an attack on Wednesbury grounds. The arguments summarised in (c) and (d) are to the effect that the Regulations are uncertain and incapable of consistent and fair application. As a Wednesbury argument, this contention could not avail the applicants – at least unless the Regulations were void for uncertainty (this would be a distinct ground for challenge) which plainly they are not. Finally, the argument mentioned in (f) is in my view misconceived: the Regulations do not prohibit the kind of activities there mentioned. I shall have more to say on this subject when I deal with the applicants’ specific arguments on *vires* and legitimate expectation, to the first of which I now turn.”

In conclusion, the judge found that the Regulations did not go beyond the policy and purpose of the Act, and rejected an argument that the applicants had a “legitimate expectation” that the Government would not interfere with trade union activities on the basis of an assurance from the then minister for local government matters.

24. An appeal to the Court of Appeal was dismissed on 26 November 1992. Lord Justice Neill found that the provisions of Article 10 of the Convention did not assist NALGO and the applicants, confirmed that it was not open to the courts below the House of Lords to depart from the traditional Wednesbury grounds in reviewing the decision of a minister who has exercised a discretion vested in him by Parliament, and found that the Regulations were not “Wednesbury unreasonable” or *ultra vires*. He also agreed with the first-instance judge as to legitimate expectation. The other judges, Lords Justices Russell and Rose, agreed. Leave to appeal to the House of Lords was refused.

25. The House of Lords refused leave to appeal to it on 24 March 1993.

II. RELEVANT DOMESTIC LAW

A. The Local Government and Housing Act 1989

1. *Statutory amendment of pre-existing contracts*

26. Section 1(5) of the Act provides:

“The terms of appointment or conditions of employment of every person holding a politically restricted post under a local authority (including persons appointed to such posts before the coming into force of this section) shall be deemed to incorporate such requirements for restricting his political activities as may be prescribed for the purposes of this subsection by regulations made by the Secretary of State.”

27. The term “persons holding a politically restricted post” is defined by section 2(1) of the Act. It consists of three broad categories of local government officer (excluding headmasters and teachers, who are exempt from the operation of the Regulations by reason of section 2(10) of the Act).

2. *The categories of officers affected*

28. The first category consists of officers who hold certain posts specified in section 2(1)(a) to (f) of the Act, namely the head of the authority’s paid service (section 2(1)(a)); the chief officers (section 2(1)(b) and (c)); the deputy chief officers (section 2(1)(d)); the monitoring officer (section 2(1)(e)); and assistants for political groups (section 2(1)(f)).

There are an estimated 12,000 officers in this category according to the Government’s memorial.

The chief officers are the heads of the various departments within the local authority’s administration. They consist of “statutory” and “non-statutory” chief officers. These terms are defined in section 2(6) and (7) of the Act respectively. The “statutory” chief officers are the chief education officer, the chief officer of the fire brigade, the director of social services or director of social work, and the chief financial officer. A “non-statutory” chief officer is defined as, *inter alia*, a person for whom the head of the authority’s paid service is responsible (section 2(7)(a)), or a person who, largely or exclusively, reports directly to or is directly accountable to the head of the authority’s paid service (section 2(7)(b)). A “deputy” chief officer is a person who, as regards all or most of the duties of his or her post, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers (section 2(8)). By

section 2(9), purely secretarial or clerical staff are not non-statutory chief officers or deputy chief officers.

29. The second category consists of those local government officers whose annual rate of remuneration exceeds the level specified in section 2(2)(a) and (b) of the Act (“the prescribed level”, which is currently 25,746 pounds sterling per annum or pro rata for part-time posts) and whose posts have not been exempted from the operation of the Regulations.

The Government estimate that there are approximately 28,000 officers whose salary exceeded the prescribed level. However, in their view, the number of officers who were actually subject to the Regulations is considerably less than 28,000 since a significant number had either been granted an exemption or would have been entitled to one had they applied.

30. The third category (defined by section 2(2) (c) of the Act) consists of those local government officers whose annual rate of remuneration is less than the prescribed level but whose duties consist in or involve one or both of the duties identified in section 2(3), namely:

“(a) giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented;

(b) speaking on behalf of the authority on a regular basis to journalists or broadcasters.”

According to the Government’s memorial, there are an estimated 7,000 officers in this category.

3. The list requirement

31. Each authority is obliged to prepare a list of persons falling within the second and third categories (section 2(2)). Any officer whose post is included on this list is entitled to be removed from the list on the grounds that his or her duties do not include duties of the kind set out in section 2(3).

4. The independent adjudicator and exemptions

32. Section 3 of the Act provides for the appointment of a person to consider applications for exemption from political restriction. If the person appointed (who is called the adjudicator) finds that the duties of a listed post (that is, those posts falling within the second and third categories) do not fall within section 2(3), he or she is required to direct that the post is not to be regarded as a politically restricted post. The authority must then remove the post from the list maintained under section 2(2).

According to the Government, as at January 1997, 1,374 applications had been made for exemption of which 1,176 have been granted.

B. The Schedule to the 1990 Regulations

33. The Schedule (Part I) to the Regulations prohibits the participation of persons holding politically restricted posts (including persons appointed to such posts before the coming into force of the Regulations) in elections for the House of Commons, the European Parliament or any local authority either as a candidate (paragraph 1), an election agent (paragraph 3) or a canvasser (paragraph 5). It does not prohibit membership of a political party, but does prohibit the holding of an office within a political party if that would involve participating in the general management of that party or one of its branches (paragraph 4(a)) or representing the party in dealing with others (paragraph 4(b)).

Speaking to the public or to a section of the public or publishing any written or artistic work with “the apparent intention of affecting public support for a political party” is also prohibited by paragraphs 6 and 7 of Part II of the Schedule. Under paragraph 8, nothing in paragraphs 6 and 7 shall be construed as precluding the appointee to a politically restricted post from engaging in the activities mentioned in those two paragraphs to such an extent as is necessary for the proper performance of his duties.

In accordance with regulation 4 when determining whether a person has breached the terms and conditions set out in paragraphs 6 and 7 regard shall be had to:

“(a) whether the appointee referred to a political party or to persons identified with a political party, or whether anything said by him or the relevant work promotes or opposes a point of view identifiable as the view of one political party and not of another; and

(b) where the appointee spoke or the work was published as part of a campaign, the effect which the campaign appears to be designed to achieve.”

C. Recent developments

34. The Government informed the Court in their memorial that a review was then being conducted of the detail of the legislation governing political restrictions on local government officers. The aim of the review was to ensure that the detail of the restrictions imposed was essential for the maintenance of political impartiality of senior local government officials. At the hearing the Government informed the Court that the review had

shown that the maintenance in force of the restrictions set out in the Regulations continued to be justified.

PROCEEDINGS BEFORE THE COMMISSION

35. Mr Ahmed, Mr Perrin, Mr Bentley, Mr Brough and UNISON, a trade union representing public-sector workers, applied to the Commission on 21 September 1993. They alleged that the Local Government Officers (Political Restrictions) Regulations 1990 operate to their detriment in a way which denies their rights to freedom of expression (Article 10 of the Convention) and of assembly (Article 11), and their rights to participate fully in the electoral process (Article 3 of Protocol No.1).

36. The Commission declared the application (no. 22954/93) admissible on 12 September 1995, with the exception of the complaint brought by UNISON. In its report of 29 May 1997 (Article 31), it expressed the opinion that there had been a violation of Article 10 of the Convention (thirteen votes to four); that it was not necessary to consider whether there had been a violation of Article 11 of the Convention (thirteen votes to four); and that there had been no violation of Article 3 of Protocol No.1 (unanimously). The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

37. The applicants in their memorial and at the hearing requested the Court to find that the facts of the case disclose a breach of their rights under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 and to award them just satisfaction under Article 50 of the Convention.

38. The Government in reply requested the Court in their memorial and at the hearing to decide and declare that the facts disclose no breach of the applicants' rights under any of the Articles invoked.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

39. The applicants maintained that the introduction and application of the Local Government Officers (Political Restrictions) Regulations (see paragraphs 26–33 above) constituted an unjustified interference with their rights to freedom of expression, having regard to the impact which the impugned measures had on the pursuit by them of normal political activities. They relied on Article 10 of the Convention, which provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

40. The Commission agreed with the applicants’ arguments. The Government did not dispute that the applicants could rely on the guarantees contained in Article 10; nor did they deny that the application of the Regulations interfered with the exercise of their rights under that Article. They contended however that the interferences which resulted from the application of the Regulations to the applicants were justified under the second paragraph of Article 10.

A. As to the applicability of Article 10 and the existence of an interference

41. The Court notes that the guarantees contained in Article 10 of the Convention extend to the applicants irrespective of their status as public servants employed by local government authorities (see, *mutatis mutandis*, the *Vogt v. Germany* judgment of 26 September 1995, Series A no. 323, p. 22, § 43; and see paragraph 56 below). This has not been disputed by those appearing before the Court. Nor has it been disputed that the Regulations interfered with the exercise by the applicants of their rights to freedom of expression by curtailing in various ways their involvement in

certain forms of political activities. The Court for its part also considers that there have been interferences with the applicants' rights to freedom of expression and it accepts in this respect the Commission's summary of the situation which resulted for each of the applicants by virtue of the fact that the nature of his duties brought him within the ambit of the parent legislation and hence the implementing Regulations: Mr Ahmed was unable to stand for elected office; Mr Perrin and Mr Bentley had to resign their respective positions and could no longer canvas for their wives in local elections; Mr Brough could no longer act as Parliamentary Chairman of his political party. All of these activities involved the exercise by the applicants of their rights to freedom of expression in various ways and in particular their rights to impart information and ideas to third parties in the political context.

B. As to whether the interferences were justified

42. The Court observes that the above-mentioned interferences give rise to a breach of Article 10 unless it can be shown that they were "prescribed by law", pursued one or more legitimate aim or aims as defined in paragraph 2 and were "necessary in a democratic society" to attain them.

1. "Prescribed by law"

43. The applicants submitted that the Regulations were imprecise in their wording, making it impossible to foresee with reasonable certainty the consequences which a given action may entail for them. They criticised in particular what they claimed was the vague or purely subjective wording of paragraphs 6 ("section of the public") and 7 ("apparent intention") of the Schedule to the Regulations (see paragraph 33 above) as well as the potential for inconsistent application of the restrictions by local authority employers. In their view, such expressions made it extremely difficult to predict whether the views which they espoused in speech or in writing might be interpreted by their employers or by an individual member of the public as tending to affect public support for a particular party. Further, the lack of certainty in predicting how the Regulations might apply in concrete situations had also to be seen as a deterrent to the exercise of the right to freedom of expression since local government officers would inevitably be fearful of acting in a manner which might transgress the Regulations and of incurring penalties as a result.

44. The Government denied that the expressions used in paragraphs 6 and 7 of the Schedule to the Regulations were ambiguous or highly subjective. Their meaning and scope could readily be assessed either from

the plain meaning of the words or on the basis of an objective assessment, having regard in particular to the guidance offered by regulation 4 to the interpretation of those paragraphs (see paragraph 33 above). If doubt existed as to the interpretation and application of the paragraphs or of any other provisions in the Regulations and accompanying Schedule in a specific context, advice could be sought.

45. The Commission noted that the Regulations were framed in rather broad terms and that paragraphs 6 and 7 of the Schedule thereto introduced elements of vagueness and uncertainty. Nevertheless, it agreed with the Government that since the Regulations were intended to lay down rules of general application and to cover a large number of local government officers and contexts it was inevitable that the measures were couched in relatively broad terms. Read as a whole and having regard in particular to the terms of regulation 4, the Regulations satisfied in the Commission's opinion the test of foreseeability for the purposes of the "prescribed by law" requirement of paragraph 2 of Article 10.

46. The Court notes that the impugned Regulations were designed to lay down a framework of rules restricting the participation of a substantial number of local government officers within the categories defined in the parent legislation in certain kinds of political activities which might impair the duty of impartiality which they owed to their local authorities. It is inevitable that conduct which may call into question an officer's impartiality in the eyes of third parties cannot be defined with absolute precision. For this reason, paragraphs 6 and 7 of the Schedule to the Regulations define types of conduct which have the potential to undermine an officer's impartiality. Even accepting that it may be difficult on occasions for an officer to assess whether a given action may or may not fall foul of the Regulations, it is nevertheless open to him or her to seek advice beforehand either from the employer or from the union or other source. It must also be stressed that the scope and application of paragraphs 6 and 7 of the Schedule, like the Regulations as a whole, have to be considered in the light of the vice which the parent legislation sought to avoid. To that end, regulation 4 (see paragraph 33 above) must be considered a helpful aid to gauging the acceptability of a particular course of action from the standpoint of paragraphs 6 and 7 of the Schedule to the Regulations.

47. As to the applicants' contention that the decision to entrust the interpretation and implementation of the Regulations to each local government employer only serves to promote inconsistencies in the application of the restrictions, the Court notes that the applicants have not adduced any evidence to show that this has been the case. In any event, an officer who has been disciplined for having breached the Regulations could

appeal to an industrial tribunal whose decisions over time would undoubtedly help to promote a harmonised approach to the interpretation of the Regulations.

48. Having regard to these considerations, the Court finds that the interferences were “prescribed by law”.

2. Legitimate aim

49. The applicants repudiated the Government’s view that the interference with their rights could be justified on account of the need to protect the rights of others to effective political democracy. While that aim had been considered legitimate by the Court in its *Vogt* judgment (cited above), it could not be invoked in the instant case given that the applicants’ involvement in normal political activities did not represent any threat to the constitutional or democratic order of the respondent State. The Government’s reliance on this aim ignored the background against which the measures challenged in the *Vogt* case had been adopted and the reasons which led the Court to conclude that those measures pursued a legitimate aim in the particular context of post-war Germany.

50. The Government defended their view that the Regulations were essential to the proper functioning of the democratic system of local government in the United Kingdom. They stressed that, in line with the conclusions and recommendations of the Widdicombe Committee (see paragraphs 9 and 10 above), the restrictions contained in the Regulations were intended to strengthen the tradition of political neutrality on the part of specific categories of local government officers by prohibiting them from participating in forms of political activity which could compromise the duty of loyalty and impartiality which they owed to the democratically elected members of local authorities.

51. The Commission did not take any final position on whether the restrictions imposed by the Regulations pursued a legitimate aim and if so which one. It was prepared to assume for the purposes of its examination of the merits of the applicants’ complaints that the Regulations were designed to preserve the existence of an effective political democracy and that that aim was compatible with the aim of protecting the rights of others within the meaning of paragraph 2 of Article 10.

52. The Court does not accept the applicants’ argument that the protection of effective democracy can only be invoked as a justification for limitations on the rights guaranteed under Article 10 in circumstances where there is a threat to the stability of the constitutional or political order. To limit this notion to that context would be to overlook both the interests served by democratic institutions such as local authorities and the need to make provision to secure their proper functioning where this is considered necessary to safeguard those interests. The Court recalls in this respect that democracy is a fundamental feature of the European public order. That is

apparent from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights (see, *mutatis mutandis*, the United Communist Party of Turkey and Others v. Turkey judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, pp. 21–22, § 45). For the Court this notion of effective political democracy is just as applicable to the local level as it is to the national level bearing in mind the extent of decision-making entrusted to local authorities and the proximity of the local electorate to the policies which their local politicians adopt. It also notes in this respect that the Preamble to the Council of Europe’s European Charter of Local Self-Government (European Treaty Series no. 122) proclaims that “local authorities are one of the main foundations of any democratic regime”.

53. The Court observes that the local government system of the respondent State has long rested on a bond of trust between elected members and a permanent corps of local government officers who both advise them on policy and assume responsibility for the implementation of the policies adopted. That relationship of trust stems from the right of council members to expect that they are being assisted in their functions by officers who are politically neutral and whose loyalty is to the council as a whole. Members of the public also have a right to expect that the members whom they voted into office will discharge their mandate in accordance with the commitments they made during an electoral campaign and that the pursuit of that mandate will not founder on the political opposition of their members’ own advisers; it is also to be noted that members of the public are equally entitled to expect that in their own dealings with local government departments they will be advised by politically neutral officers who are detached from the political fray.

The aim pursued by the Regulations was to underpin that tradition and to ensure that the effectiveness of the system of local political democracy was not diminished through the corrosion of the political neutrality of certain categories of officers.

54. For the above reasons, the Court concludes that the interferences which resulted from the application of the Regulations to the applicants pursued a legitimate aim within the meaning of paragraph 2 of Article 10,

namely to protect the rights of others, council members and the electorate alike, to effective political democracy at the local level.

3. *“Necessary in a democratic society”*

(a) General principles

55. The Court recalls that in its above-mentioned Vogt judgment (pp. 25–26, § 52) it articulated as follows the basic principles laid down in its judgments concerning Article 10:

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”. Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any exceptions must be convincingly established.

(ii) The adjective “necessary”, within the meaning of Article 10 § 2 implies the existence of a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a “restriction” is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it is “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.

56. In the same judgment the Court declared that these principles apply also to civil servants. Although it is legitimate for a State to impose on civil

servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 10 of the Convention (p. 26, § 53)

(b) Application of the above principles to the instant case

57. The applicants contended that there was no pressing social need for the restrictions imposed by the Regulations. In their view the Widdicombe Committee had concluded that there was no serious evidence of the political impartiality of senior local government officers having been compromised as a result of their engagement in political activities. Accordingly, there was no need to introduce statutory restrictions to curb activities which had never been seen to constitute a problem.

They further submitted that even if it were possible to concede that there was a pressing social need at stake, the restrictions amounted to a disproportionate interference with their rights under Article 10 in view of the fact that they applied to a large number of officers and precluded involvement in a wide range of activities and not solely political ones. They repeated in this context their criticism of the way in which paragraphs 6 and 7 of the Schedule were framed (see paragraph 43 above) and how they may be at risk of sanction for expressing views on trade union concerns as well as on social, economic, and other controversial issues, including local ones, which may be considered by a member of the public as endorsement of a party political line on a particular topic.

The applicants maintained that the categories of posts covered by the Regulations were too broadly conceived and absorbed large numbers of local government employees including officers like Mr Perrin who provide local authority committees with purely professional or technical advice having no political content whatsoever. For this reason the Government's insistence on the fact that the restrictions were imposed using tasks-based criteria could not be sustained. Further, the severity of the restrictions was not mitigated by the role of the adjudicator (see paragraph 32 above). In the first place, category one officers such as Mr Bentley and Mr Brough were not entitled to exemption. Secondly, whether or not the adjudicator exempted an officer in the second and third categories was to a large extent determined by the opinion of the local authority employer who has put the officer's post on the list of politically restricted posts, as was shown by Mr Ahmed's experience (see paragraph 14 above).

58. For these reasons in particular, the applicants requested the Court to find, like the Commission, a breach of Article 10 of the Convention.

59. The Government disagreed with the applicants' views on the effects of the Regulations. They contended that the restrictions were entirely in line with the conclusions of the Widdicombe Committee which had backed the need to strengthen the political neutrality of senior officers in the light of specific instances of abuses by officers of their positions and the risks to the preservation of that neutrality attendant on the increased divisions in local government affairs along party political lines (see paragraphs 9 and 10 above). Against that background, the introduction of the Regulations had to be considered a proportionate response to a real need which had been properly identified and addressed in accordance with the respondent State's margin of appreciation in this sector.

The Government stressed that the proportionality of the restrictions had to be assessed in the light of the following considerations: firstly, they only applied to at most 2% of an estimated 2,300,000 officers; secondly, the categories of officers subject to the restrictions were clearly defined in accordance with the duties which they performed and where both the fact and appearance of political impartiality were of paramount importance; thirdly, the duties-based approach meant that the restrictions were applied as narrowly as possible and exemptions given on as wide a basis as possible. The Government did not deny that the political impartiality of the applicants had never been called into question as a result of their participation in political activities. However, they reiterated that the applicants' actual and objective impartiality were critical to the performance of the duties assigned to them and this fact in itself justified the imposition of restrictions.

60. The Commission agreed with the applicants that the Regulations imposed far-reaching, inflexible and disproportionate restrictions on senior officers such as the applicants, even allowing for the duties and responsibilities which they owed to their respective local authorities and the margin of appreciation of the respondent State in the sector at issue. In the Commission's view, there had never been any suggestion that the applicants' professionalism and impartiality had been compromised by their pursuit of political activities. However, the Regulations never allowed for exemption on that account since they were introduced across-the-board to all those officers in the categories caught by the Regulations by means of unilateral amendment of their contracts.

61. The Court's task is to ascertain in view of the above-mentioned principles (see paragraphs 55 and 56 above) whether the restrictions imposed on the applicants corresponded to a "pressing social need" and

whether they were “proportionate” to the aim of protecting the rights of others to effective political democracy at the local level (see paragraph 54 above). In so doing it must also have regard to the fact that whenever the right to freedom of expression of public servants such as the applicants is in issue the “duties and responsibilities” referred to in Article 10 § 2 assume a special significance, which justifies leaving to the authorities of the respondent State a certain margin of appreciation in determining whether the impugned interference is proportionate to the aim as stated (see, *mutatis mutandis*, the above-mentioned Vogt judgment, p. 26, § 53).

62. It is to be observed at the outset that the Widdicombe Committee reported back to the government at the time that it had found specific instances of abuse of power by certain local government officers. The Committee was concerned both about the impact which the increase in confrontational politics in local government affairs would have on the maintenance of the long-standing tradition of political neutrality of senior officers whose advice and guidance were relied on by the members elected to local councils as well as about the increased potential for more widespread abuse by senior officers of their key positions in a changed political context. Those concerns emerged from the Committee’s detailed analysis of the state of local government at the time and its wide-ranging rounds of consultations with interested parties (see paragraph 23 above). There was a consensus among those consulted on the need for action to strengthen the tradition of political neutrality either through legislation or modification of the terms and conditions of officers’ contracts of employment (see paragraphs 8–10 above).

In the Court’s view, the Widdicombe Committee had identified a pressing social need for action in this area. The adoption of the Regulations restricting the participation of certain categories of local government officers, distinguished by the sensitivity of their duties, in forms of political activity can be considered a valid response by the legislature to addressing that need and one which was within the respondent State’s margin of appreciation. It is to be observed in this regard that the organisation of local democracy and the arrangements for securing the functioning, funding and accountability of local authorities are matters which can vary from State to State having regard to national traditions. Such is no doubt also the case with respect to the regulation of the political activities of local government officers where these are perceived to present a risk to the effective operation of local democracy, especially so where, as in the respondent State, the system is historically based on the role of a permanent corps of politically neutral advisers, managers and arbitrators above factional politics and loyal to the council as a whole.

63. As to whether the aim of the legislature in enacting the Regulations was pursued with minimum impairment of the applicants' rights under Article 10 the Court notes that the measures were directed at the need to preserve the impartiality of carefully defined categories of officers whose duties involve the provision of advice to a local authority council or to its operational committees or who represent the council in dealings with the media. In the Court's view, the parent legislation has attempted to define the officers affected by the restrictions in as focused a manner as possible and to allow through the exemption procedure optimum opportunity for an officer in either the second or third categories to seek exemption from the restrictions which, by the nature of the duties performed, are presumed to attach to the post-holder (cf. the above-mentioned Vogt judgment, p. 28, § 59). It is to be observed also that the functions-based approach retained in the Regulations resulted in fewer officers being subject to restrictions than would have been the case had the measures been modelled on the Widdicombe Committee's proposal to apply them to principal officers and above as a general class and irrespective of the duties performed (see paragraph 10 above).

It is also to be recalled that the requirement of political neutrality owed by the officers such as the applicants to the council members extends also to the members of the local electorate given that they have cast their votes to enable the political complexion of the council to reflect their view of what policies are best suited to their area (see paragraph 53 above). Hence, it is equally in their interests that officers with influence in the day-to-day running of local government business do not engage in activities which may be wrongly interpreted not only by council members but also by the public as impairing that process. For this reason, the restrictions imposed by the Schedule to the Regulations can reasonably constitute a justified response to the maintenance of the impartiality of officers such as the applicants.

It is also to be noted that paragraphs 6 and 7 of the Schedule to the Regulations were not designed to silence all comment on political matters, whether controversial or not. The Court reiterates in this respect that the vice which they are intended to avoid is comment of a partisan nature which judged reasonably can be considered as espousing or opposing a party political view (see paragraph 33 above). The same conclusion can be drawn in respect of the restrictions which are imposed on the activities of officers

by reason of their membership of political parties. As with speech and writing of a partisan nature, paragraph 4 of Part I of the Schedule (see paragraph 33 above) is directed at precluding participation in only those types of activity which, on account of their visibility, would be likely to link a politically restricted post-holder in the eyes of the public or council members with a particular party political line. There is no restriction on the applicants' rights to join a political party or to engage in activities within that party other than the limited restrictions identified by paragraph 4 of the Schedule.

For the Court, the reasons advanced by the respondent State to justify the restrictions contained in Parts I and II of the Schedule may be considered both relevant and sufficient. Further, those restrictions apply in such a way as to make an appropriate distinction between the duties and responsibilities which the applicants owed to their local authorities and the pursuit by them of their own personal activities (cf. the above-mentioned *Vogt* judgment, p. 28, § 59). The Court also notes in this context that the current government since coming to office have conducted a review of the restrictions introduced when they were in opposition. That review has shown that the maintenance in force of the restrictions continues to be justified (see paragraph 34 above).

64. Nor does the Court consider that the decision to apply the restrictions by means of modification of existing contracts or other legal relationships is fatal to their proportionality. In its view, the authorities of the respondent State cannot be accused of having infringed freedom of expression for avoiding a process of bargaining between the officers concerned and their employers over the introduction of the restrictions; nor can they be criticised for not confining the application of the restrictions to future appointees to politically restricted posts. In neither case would the goal of uniform application of the restrictions to all officers entrusted with similar duties be attained.

65. Having regard to the need which the Regulations sought to address and to the margin of appreciation which the respondent State enjoys in this area, the restrictions imposed on the applicants cannot be said to be a disproportionate interference with their rights under Article 10 of the Convention.

The Court concludes therefore that there has been no violation of Article 10 of the Convention by reason of the existence of the legislation and its impact on the applicants' rights under that Article in the circumstances of this case.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

66. The applicants submitted that the restrictions imposed by the Regulations on their holding of office and being active in political parties of which they are members seriously impeded the exercise of their rights to freedom of association in violation of Article 11 of the Convention, which provides:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

67. The applicants maintained that the right guaranteed to an individual under Article 11 to join a political party must be taken to include the right to be active in an organisational and administrative capacity in that party and to be an officer-holder. However the restrictions contained in the impugned Regulations precluded this (see paragraph 33 above). They relied on the same reasons which they had adduced under their Article 10 complaints to contest the validity of the Regulations from the standpoint of Article 11.

68. The Government replied essentially that the reasons which they had advanced to justify the restrictions on the applicants' Article 10 rights were an equally valid response to the applicants' allegations under Article 11.

69. The Commission considered that the applicants' complaints under Article 10 lay at the heart of their case. Having found a violation of that Article, it concluded that it was unnecessary to examine separately the merits of their complaints under Article 11.

70. The Court notes that it has found the interferences with the applicants' rights under Article 10 to be justified from the standpoint of the requirements of the second paragraph of that Article. Notwithstanding its autonomous role and particular sphere of application, Article 11 must in the present case also be considered in the light of Article 10 having regard to the fact that the freedom to hold opinions and to receive and impart information and ideas is one of the objectives of freedom of assembly and association as enshrined in Article 11 (see, *mutatis mutandis*, the above-mentioned Vogt judgment, p. 30, § 64).

In the Court's view, the conclusions which it reached regarding the foreseeability of the impugned measures, the legitimacy of the aim pursued by them and their necessity hold true for the purposes of the requirements of the second paragraph of Article 11. It would also reiterate that paragraph 4 of the Schedule to the Regulations (see paragraphs 33 and 63 above) is limited to restricting the extent of the applicants' participation in an administrative and representative capacity in a political party of which they are members. The Regulations do not restrict the applicants' right to join any political party of their choosing.

71. The Court finds accordingly that there has been no violation of the applicants' rights under Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1

72. The applicants further alleged that the Regulations amounted to a breach of Article 3 of Protocol No. 1, which provides:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

73. The applicants referred in particular to the impact which the restrictions contained in paragraphs 1 to 3 and 5 to 7 of the Schedule to the Regulations had on their rights to stand for election at local, national and European levels and to take part in electoral campaigns (see paragraph 33 above). In their view, these restrictions were such as to impair the very essence of the free expression of the opinion of the people in the choice of legislature by limiting without justification the electorate's choice of candidates.

74. The Commission, with whom the Government agreed, found that there had been no violation of the above-mentioned Article. It considered that in view of the limitations inherent in Article 3 of Protocol No. 1 and the aim pursued by the restrictions it could not be said that the essence of the applicants' rights to stand for election had been impaired or that the respondent State had exceeded its margin of appreciation in imposing such restrictions. In particular there was nothing to prevent any of the applicants from resigning his position so as to stand as a candidate in an election.

75. The Court recalls that Article 3 of Protocol No. 1 implies subjective rights to vote and to stand for election. As important as those rights are, they are not, however, absolute. Since Article 3 recognises them without setting them forth in express terms, let alone defining them, there is room for implied limitations. In their internal legal orders the Contracting States

make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. The Court considers that the restrictions imposed on the applicants' right to contest seats at elections must be seen in the context of the aim pursued by the legislature in enacting the Regulations, namely, to secure their political impartiality. That aim must be considered legitimate for the purposes of restricting the exercise of the applicants' subjective right to stand for election under Article 3 of Protocol No. 1; nor can it be maintained that the restrictions limit the very essence of their rights under that provision having regard to the fact that they only operate for as long as the applicants occupy politically restricted posts; furthermore, any of the applicants wishing to run for elected office is at liberty to resign from his post.

76. Without taking a stand on whether local authority elections or elections to the European Parliament are covered by Article 3 of Protocol No. 1, as was also disputed by the Government, the Court concludes that there has been no breach of that provision in this case.

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to three that there has been no violation of Article 10 of the Convention;
2. *Holds* by six votes to three that there has been no violation of Article 11 of the Convention;
3. *Holds* unanimously that there has been no violation of Article 3 of Protocol No. 1.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 2 September 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr De Meyer;
- (b) joint dissenting opinion of Mr Spielmann, Mr Pekkanen and Mr van Dijk.

Initialled: R. B.

Initialled: H. P.

CONCURRING OPINION OF JUDGE DE MEYER

(Translation)

It is not only legitimate, but also necessary, especially in a democratic society, to ensure as far as possible the loyalty of officers in public service towards the authority to which they are accountable and at the same time the freedom of the electorate in its choice of representatives.

The people are entitled to count on the objectiveness, impartiality and political neutrality of their servants, those being essential requirements of a position of trust. They are likewise entitled not to be exposed to a risk that their servants may, during elections or in other circumstances, benefit personally or politically from their position.

Members of staff in the public service must not therefore be allowed to be members of assemblies elected by the people or to stand as candidates for such assemblies, or permitted to take part in any manner whatsoever in the activity of the parties. Common sense dictates that such interests are incompatible with the public service.

People who wish to work in public service must renounce “politics”, that being a restriction on their freedom of expression, freedom of association and electoral rights that is inherent in their position¹.

1. The Court’s slightly too detailed reasoning in the instant case is unsatisfactory, particularly in two respects. Firstly, the Court found it necessary to refer once more to the States’ “margin of appreciation”; that seems in particular to imply that it considers equally acceptable a system permitting the situations prohibited by the system the applicants complained of. Such relativism is rather worrying, even though it can be explained by the excessive permissiveness of many States with regard to such situations. Secondly, the Court appears to attach too much importance to the fact that only a limited number of people were affected by the measures in issue, which suggests that a more general prohibition would have been less acceptable. It is regrettable that the Court did not more clearly acknowledge the merit of the principle applied in the present case by the United Kingdom.

JOINT DISSENTING OPINION OF JUDGES SPIELMANN,
PEKKANEN AND VAN DIJK

1. To our regret we are not able to join the majority in their conclusion that Article 10 has not been violated in the present case. We agree that the interference with the applicants' right to freedom of expression was prescribed by law. We can also accept, be it with some hesitation, that the United Kingdom authorities, by enacting and implementing the impugned Regulations, pursued a legitimate aim, namely the protection of the rights of others, although we would highlight the risk of that notion being stretched so far as to lose almost all distinct meaning if it is held to cover "rights" such as that to effective political democracy at the local level.

We cannot persuade ourselves, however, that the interference was "necessary in a democratic society", given, on the one hand, the scope of its effects and, on the other hand, the aims pursued.

2. The starting-point for the weighing of the different aspects and elements of the case has to be – as is also recalled in the judgment (paragraph 55) – that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment, and that, consequently, precisely to strengthen democratic society, the necessity to limit that freedom "must be convincingly established" (see the *Vogt v. Germany* judgment of 26 September 1995, Series A no. 323, p. 25 § 52).

This holds good even more so in the case of restrictions on freedom of expression which have a preventive character: "the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court" (see the *Observer and Guardian v. the United Kingdom* judgment of 26 November 1991, Series A no. 216, p. 30, § 60).

3. The above principles also apply in relation to civil servants; "as a general rule the guarantees of the Convention extend to civil servants" (see the *Glaser v. Germany* judgment of 28 August 1986, Series A no. 104, p. 26, § 49; the aforementioned *Vogt* judgment, p. 26, § 53). There is no reason, and indeed no room, for an inherent limitation in respect of the civil service. Article 10 does, of course, refer in its second paragraph to "duties and responsibilities", but that does not mean that this provision contains an implied limitation for certain individuals or groups; it is primarily up to those exercising their right to freedom of expression to fulfil those duties and responsibilities. Only if they fail to do so in one or more concrete cases, or if there is the imminent danger of such a failure, would there be grounds for introducing legislative or administrative measures to ensure the proper

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fulfilment of these duties and responsibilities; but even then only to the extent “necessary in a democratic society”. We cannot read in the second paragraph of Article 10 any specific ground of limitation for civil servants nor can we see any justification for such a specific ground if applied in a general, categorical way. In that respect there is a clear difference between, on the one hand, Article 10 and, on the other hand, Article 11 of the Convention; only the latter Article provides expressly for the possibility to restrict the right concerned for members of the administration of the State.

4. Was the interference of the applicants’ right of freedom of expression “necessary in a democratic society”? To answer this question we will successively address the two component aspects: was there a pressing social need for the interference, and was the scope of the interference proportionate to the aim pursued?

5. Was there a pressing social need for the Regulations in issue and for their application to the applicants?

According to the Widdicombe Committee there was a need for regulation. The Committee referred to a tradition of a corps of politically neutral officers and to an increased risk of senior officers’ abusing their positions for political reasons. At the same time, however, the Committee indicated that no serious problems had arisen in the past and that there had been no cases of disciplinary action being taken. Nor had there been any complaints from citizens or local administrations.

The mere fact that the Committee noticed a change of atmosphere in recent years in the direction of stronger party affiliation of civil servants, especially at the local government level, does not in itself mean that the same standard of political neutrality in public service could not be maintained without recourse to such restrictive regulations as those in issue. In particular, it has not convincingly been argued by the Government why civil servants would not, as a rule, be responsible enough to decide for themselves the sort of political action their position permits and does not permit, subject to *ex post facto* disciplinary supervision. In that respect, it seems relevant for the assessment of the necessity in a democratic society test that in other member States of the Council of Europe, which claim to be strong democracies as well, a regulation with similar far-going restrictions to the freedom of expression of civil servants has not been considered necessary. There, the primary responsibility and discretion is placed on the civil servants themselves, with possibilities for corrective but not preventive restraint.

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We are inclined to agree with the Canadian Supreme Court, quoted by Liberty in its submission to the Court, which held that public servants cannot be silent members of society and that as a general rule all members of society should be permitted to participate in public discussion of public issues.

Therefore, in view of the fact that (1) the United Kingdom has a long history without such comprehensive and far-reaching restrictions, which apparently had not given rise to any major problems; (2) this was recognised by the Widdicombe Committee, which also reported that there had been no need to use the instrument of disciplinary measures; and (3) other democratic societies appear to function without such general and far-reaching restrictions, we come to the conclusion that the existence of a pressing social need for the introduction of such general limitations such as those in issue, and more particularly their application to the applicants, has not sufficiently been demonstrated by the British Government. Indeed, strengthening democracy at the expense of freedom of expression may be justified in extreme circumstances only, since logically such a measure would seem to be counterproductive.

6. Even if there is a pressing social need for the interference concerned, the latter must be proportionate to the legitimate aim pursued. Are the Regulations themselves and the way in which they have been applied proportionate to the aim of strengthening democracy?

The Regulations are said to affect only 2% of civil servants. However, that still is a considerable number; in a qualitative sense also the civil servants concerned represent an important segment of the local civil service. For them, the situations in which they have to abstain from political activities, according to the Schedule, are potentially very broad; in fact, almost all political opinions and activities may in some way or another be associated with a political party. This means that the civil servants concerned may feel under what could be called permanent self-censorship in order not to endanger their positions.

In addition, the following aspects weigh in their favour:

(a) the Regulations do not make a clear distinction between service and private life (see the above-mentioned Vogt judgment, p. 28, § 59); what the majority states in that respect in paragraph 63 of the judgment would not seem to be well-founded;

(b) possibilities for exemptions exist only for officers of the second and third categories, and even then only to a limited extent;

AHMED AND OTHERS JUDGMENT – JOINT DISSENTING
OPINION OF JUDGES SPIELMANN, PEKKANEN AND VAN DIJK

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(c) the Regulations prohibit the civil servants concerned from standing for Parliament or for the European Parliament unless they first give up their positions in the local administration, and we have not found any indication that leave of absence is granted until the outcome of the elections is known. This particular interference can hardly be deemed instrumental in strengthening democracy, since a healthy democracy has need of the best and most experienced parliamentarians;

(d) there has been no suggestion that the applicants fell short of their responsibilities and duties as civil servants, or have shown any lack of impartiality; and

(e) the authorities could have used other, less restrictive ways and means to act against abuses of positions or against threats to the impartiality of civil servants.

This leads us to the conclusion that the proportionality requirement has not been met either.

7. For all the above-stated reasons we are of the opinion that the interference complained of was not necessary in a democratic society and, consequently, was not justified under the second paragraph of Article 10.

In our opinion, this conclusion compels itself in the present case in an even more forceful way than in the Vogt case, where the Court found a violation of Article 10. In the latter case the restraint imposed on the applicant was not of a preventive but of a corrective character; moreover specific political activities were involved which affiliated the applicant to a political party having as its aim the undermining of the constitutional system of the State concerned.

8. Since we conclude that Article 10 has been violated in the present case, we agree with the majority of the Commission that the complaint under Article 11 did not give rise to any separate issue.

9. With respect to Article 3 of Protocol No. 1, we share the unanimous opinion that the rights to vote and to stand for elections laid down therein are not absolute rights, and that the restrictions contained in the Regulations as applied to the applicants did not limit the very essence of these rights.

Council Staff Becoming Councillors

1. Information is not readily available in relation to how the issue of employees of a local authority becoming a member of a local authority is addressed in other European countries.
2. Information provided by officials from the Department of the Environment, Community and Local Government in Dublin indicates that in Ireland the application of the disqualification provision contained in the Local Government Act, 2001 and the Local Government Act 2001 (Section 161) Order 2004 is a matter for the Returning Officers at elections. They are responsible for ensuring that a candidate is not disqualified by virtue of the provisions.
3. Potential conflicts of interest arising from an employee of a council also being a councillor are a matter for individual councils. The conversation with the officials did not indicate that significant issues had been identified in relation to the operation of the provisions.

Local Government Policy Division 1

February 2014

Super Affirmative Procedure – Previous Example

1. The Examiner of Statutory Rules, in his report to the Environment Committee on the Delegated Powers Memorandum for the Local Government Bill recommended that a super affirmative procedure should be considered in relation to the use of the enabling powers provided in clause 85 (powers to make supplemental provision) of the Bill. This clause provides a power for the Department, by order, to amend, repeal, revoke, or disapply any statutory provision that the Department thinks prevents or restricts a council from exercising the general power of competence.
2. An enhanced affirmative enabling power was provided for the Department in section 3 of the Local Government (Best Value) Act (Northern Ireland) 2002 (the 2002 Act). A copy of this section is attached.
3. If the procedure specified in section 3 of the 2002 Act is adopted the practical operation of this would be as follows:
 - The Department drafts the Order and undertakes consultation as specified in clause 125 of the Bill;
 - The Department lays a document including a draft of the Order along with details of the consultation conducted (including responses) in the Assembly;
 - MLAs have an opportunity to make representations to the Department during the “statutory period”. (See section 41(2) of the Interpretation Act (Northern Ireland) 1954 – *10 days on which the Assembly has sat or 30 days, whichever is longer*);
 - The Department must consider any representations;
 - The Department then arranges for the draft Order to be printed and lays the Order and Explanatory Memorandum, **together with a statement giving details of any representations received and any changes made**;
 - The Committee (Examiner) consider the draft Order, Memorandum and statement;
 - The Department writes to the Assembly Business Office asking for time for the draft Order to be debated;
 - The draft Order is debated in the Assembly;
 - If the draft Order is approved, the Order is made and sealed by the Department.

Local Government Policy Division 1

February 2014

Changes to legislation: There are currently no known outstanding effects for the Local Government (Best Value) Act (Northern Ireland) 2002, Section 3. (See end of Document for details)



2002 CHAPTER 4

Power to modify statutory provisions and confer new powers

3.—(1) If the Department thinks that a statutory provision prevents or obstructs compliance by councils with the duty under section 1(1), the Department may by order make provision modifying or excluding the application of the provision in relation to councils.

(2) The Department may by order make provision conferring on councils any power which the Department considers necessary or expedient to permit or facilitate compliance with the duty under section 1(1).

(3) In exercising a power conferred under subsection (2) a council shall have regard to any guidance issued by the Department.

(4) An order under this section may—

- (a) impose conditions on the exercise of any power conferred by the order (including conditions about consultation or approval);
- (b) amend a statutory provision;
- (c) include supplementary, incidental, consequential and transitional provisions.

(5) No order shall be made under this section unless a draft has been laid before, and approved by resolution of, the Assembly.

(6) Before the Department makes an order under this section it shall consult—

- (a) persons appearing to it to represent councils; and
- (b) such other persons as appear to the Department to be representative of interests affected by the proposals.

(7) If, following consultation under subsection (6), the Department proposes to make an order under this section it shall lay before the Assembly a document explaining the proposals and, in particular—

c. 4

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Changes to legislation: There are currently no known outstanding effects for the Local Government (Best Value) Act (Northern Ireland) 2002, Section 3. (See end of Document for details)

- (a) setting them out in the form of a draft order; and
- (b) giving details of consultation under subsection (6).

(8) Where a document relating to proposals is laid before the Assembly under subsection (7), no draft of an order under this section to give effect to the proposals (with or without modification) shall be laid before the Assembly until after the expiry of the statutory period beginning with the day on which the document was laid.

(9) In preparing a draft order under this section the Department shall consider any representations made during the period mentioned in subsection (8).

(10) A draft order laid before the Assembly in accordance with subsection (5) must be accompanied by a statement of the Department giving details of—

- (a) any representations considered in accordance with subsection (9); and
- (b) any changes made to the proposals contained in the document laid before the Assembly under subsection (7).

Changes to legislation:

There are currently no known outstanding effects for the Local Government (Best Value) Act (Northern Ireland) 2002, Section 3.

Draft Constitution Framework

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Summary and Explanation

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Rules of Procedure

- Access to Information Procedure Rules
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- Management Structure
- Members Allowances Scheme
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- Officer Employment Procedure Rules
- Protocol on Member/Officer Relations
- Scheme of delegation

Filling Vacancies on a Council – Use of Co-option

1. On 31 March 2010 the UK Government made the Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010 (the 2010 Order) to amend the procedure to be used for the filling of a casual vacancy on a council. A copy of the 2010 Order is attached.
2. Prior to the making of this Order, section 11 of the Electoral Law Act (Northern Ireland) 1962 made provision that a vacancy that arose on a council could be filled by the council “co-opting” a new councillor to replace the former councillor (who may, for example, have retired or died). This required the agreement of **all** councillors present at the co-option meeting. A by-election was required to fill any vacancy not filled by co-option.
3. The 2010 Order amended section 11, and inserted new sections to replace the system of co-option. Since the making of the 2010 Order, if a vacancy arises in the seat of a member who was elected in the name of a registered political party (or parties) then the nominating officer of that party (or parties) will nominate his or her replacement. If a vacancy arises in the seat of a member who was elected as an independent, his or her replacement will be selected (by the Chief Electoral Officer) from a list of “substitutes” provided by that member prior to the vacancy arising.
4. If, when the Chief Electoral Officer receives notice of the vacancy, the party or parties (or one of the parties) in whose name the member was elected are no longer registered, a by-election will be held to fill the vacancy. A by-election will also be held if any individual named on the list provided by the member who was elected as an independent is unwilling to fill the vacancy.

Local Government Policy Division 1

February 2014

Vacation of Office on Account of Non-Attendance

1. Research across a number of councils would suggest that this has not presented an issue, certainly in the recent past.
2. Information obtained indicated that the administrative services in the councils monitor attendance at meetings, and in the event of a continuing non-attendance will, contact the member, unless he/she has previously contacted the council. A report will be prepared for consideration by the council which will determine whether the reason for the absence is appropriate to grant an exemption.

Local Government Policy Division 1

February 2014

Subordinate Legislation Summary

Set out below are summaries of the provisions to be taken forward by the Department in subordinate legislation to give effect to provisions in the Local Government Bill. The Department is working with senior officers from local government through a Legislation Working Group to develop the policies to inform the drafting of the subordinate legislation.

The Local Government (Transitional, Supplementary and Incidental Provisions and Modifications) Regulations (Northern Ireland)

1. The enabling power for the Department to make these Regulations is conferred by clause 123 of the Local Government Bill. The Regulations will make transitional provision with respect to local government reorganisation and, in particular, the respective activities of the eleven new and 26 existing councils during the shadow period.
2. The new councils will come into existence on 26th May 2014, following the election on 22nd May, and will take over full responsibility for local government on 1st April 2015 when the 26 current councils will cease to exist. The Regulations will cover that period and the initial period after 1st April 2015.
3. In general, the provisions of existing local government legislation will apply to the new councils during the shadow period as they apply to existing councils. However, there will be certain exceptions to this principle, where the Regulations will be used to disapply existing legislative provisions in relation to the activities of either the new councils or the existing councils, in order to ensure clarity in respect of their respective roles during the shadow period. For example, the existing councils will not be required to prepare an annual budget or strike a rate for 2015/16 and the new councils will not be empowered to exercise any waste management functions prior to 1 April 2015.
4. The main aspects that will be dealt with in the Regulations are:
 - the vesting of functions and powers in the new councils to enable them to prepare for the assumption of their full functions and to ensure continuity in performance after 1st April 2015;
 - transitional provision with respect to the making of new bye-laws and the controls applicable to new councils;
 - transitional provision with respect to positions of responsibility within the new councils;
 - application of the Northern Ireland Local Government Code of Conduct for Councillors to councillors of, and persons appointed by, the existing councils as well as councillors of the new councils;
 - continuity in the exercise of functions between the existing and new councils;
 - provision of information and assistance by the existing councils to the new; and
 - the winding up of the existing councils.

The Local Government (Designation of Disqualifying Employments) Regulations (Northern Ireland)

1. The enabling power for the Department to make these Regulations is conferred by paragraph 1(2) of Schedule 1 to the Local Government Bill.
2. The Regulations will specify those offices and employments, appointments to which are made by the council, that would disqualify the holder from being elected, or being a councillor.

The Local Government (Executive Arrangements) Regulations (Northern Ireland)

1. The enabling powers for the Department to make these Regulations are conferred by clauses 26(3) and (6), 29(1), (2), (3), 30, 34(4) and 39 of the Local Government Bill. The Regulations will make provision on the aspects identified in the following paragraphs.

The allocation of functions and responsibilities between the council and its executive

2. The Regulations will specify those functions that are not to be the responsibility of a council's executive or are to be the responsibility of an executive only to a limited extent or only in specified circumstances. The Regulations amongst other issues will list those functions which may be the responsibility of a council's executive, if the council so decides.

Discharge of functions

3. The Regulations will make provision in relation to those bodies, under executive arrangements, that can make arrangements for the discharge of an executive's function(s):
 - by another council, or
 - by another council's executive, or
 - through joint arrangements.

The Regulations also make provision on the arrangements to be put in place in relation to the discharge of such functions.

Overview and scrutiny – Excluded matters

4. The Regulations will make provision in relation to matters that members of a council may not refer to an overview and scrutiny committee, for example, regulatory or quasi-judicial decisions.

Access to meetings and information

5. The Regulations will make provision relating to public access to meetings of council executives and their sub-committees. They will also deal with access to documents where executive decisions have been made by officers under delegated authority from the executive. The Regulations will also make provision in relation to access to information in respect of decisions made by joint committees of councils where these are solely comprised of executive members and are discharging an executive function.

The Local Government (Standing Orders) Regulations (Northern Ireland)

1. The enabling power for the Department to make these Regulations is conferred by clause 42 of the Local Government Bill. The Regulations will specify three aspects of the political governance arrangements that a council must include in its Standing Orders. The Regulations will also specify the wording that must be used by a council in respect of these issues.
2. The three aspects that will be specified are:
 - The timeframe in which the nominating officer of a political party must select a position of responsibility and nominate a person to hold that position and, for the person nominated to accept the position. This will apply if a council adopts either the d'Hondt or Sainte-Laguë method for allocating positions of responsibility. The specification of the timeframe, in Standing Orders, is provided for in paragraph 2(3) of Schedule 3 to the Bill.
 - The specification of decisions which are to be taken by qualified majority. The specification of these decisions, in Standing Orders, is provided for by clause 44 of the Bill.
 - The criteria for, and the operation of, the procedure for the request for the reconsideration of a decision (the call-in procedure), including the specification of decisions that may not be subject to call-in. The specification of these arrangements, in Standing Orders, is provided for in clause 45 of the Bill.

3. The Regulations will also specify a prohibition on a council amending in any manner, suspending, or revoking any Standing Orders specified in the Regulations, unless required to do so by amending Regulations.

The Local Government (Community Planning Partners) Order (Northern Ireland)

1. The enabling power for the Department to make this Order is conferred by clause 70 of the Local Government Bill.
2. The Order will specify the bodies and persons who will be community planning partners of a council. These bodies and persons are required to participate in community planning and assist a council in the discharge of its community planning duties.

The Local Government (Performance Indicators and Standards) Order (Northern Ireland)

1. The enabling power for the Department to make this Order is conferred by clause 92 of the Local Government Bill.
2. The Order will provide the legislative vehicle for the Department, on behalf of all Northern Ireland departments, to specify performance indicators and standards by which a council's performance in the exercise of its functions can be measured. The intent is that any indicators and standards specified will relate to regionally significant issues and that they will be developed in partnership with local government, under the auspices of the Partnership Panel.

Local Government Policy Division 1

February 2014

List of further amendments - 14 Dec 2014

Local Government Bill

Draft amendments for Consideration Stage

Clause 64, Page 37

Leave out line 38

Clause 64, Page 38

Leave out lines 6 to 8

Clause 64, Page 38

Leave out lines 17 to 19

Clause 76, Page 44, Line 3

At end insert 'reasonable'

Clause 95, Page 53, Line 34

Leave out '31st October' and insert '30th September'

New Clause

After clause 117 insert-

'Payments for special purposes [etc.]

Payments for special purposes and public appeals

117A. In the Local Government Finance Act (Northern Ireland) 2011 the following provisions cease to have effect -

- (a) section 37 (payments for special purposes);
- (b) section 38 (restrictions on power to make payments under section 37); and
- (c) section 40 (limit on expenditure on payments under section 37 and on public appeals).'

Schedule 10, Page 91, Line 19

Leave out 'Northern Ireland department concerned' and insert 'transferee'

Schedule 12, Page 94, Line 13

In the second column at the beginning insert-

'Sections 37 and 38.
In section 39, the words "Subject to section 40,".
Section 40.'



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Sheila Mawhinney
Clerk to the Environment Committee
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Date: 14 February 2014

Dear Sheila,

I attach a list of the further proposed Ministerial amendments to the Local Government Bill as discussed with the Committee on 13 February.

I trust this information is of assistance. Should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO
[by e-mail]

Issues raised by Committee 13 02 14 - Departmental position

Issues Raised by the Environment Committee on 13 February 2014 – Departmental Response

Clause 2

Officials agreed to report back to the Committee, following discussions with the Minister, on a possible amendment which would ensure that a council constitution is published no later than April 2015.

To follow.

Clause 60

Officials agreed to provide further information on the rise of complaints in Wales in the run up to an election and how the complaints are dealt with.

The Annual Report of the Public Services Ombudsman for Wales for 2011/2012 highlighted the issue of the increase in the number of code of conduct complaints received in the run up to council elections. An extract of the report, commenting on the increase in cases and on the changes introduced (ie a local resolution process) to deal with the issue, is attached at **Annex A**.

Clause 62

Officials agreed to report back to the Committee, following discussions with the Minister, on a possible amendment which would ensure that the grounds of appeal, similar to those in Scotland, are included in this clause.

To follow.

Clause 64

Departmental officials informed the Committee that an additional amendment was proposed for this clause.

The wording of the amendment was sent to the Committee on 14 February 2014.

Clause 67

Departmental officials informed the Committee that the Minister was prepared to make an amendment to allow for top slicing council grants to pay for the costs of the investigations of complaints by the Commissioner for Complaints.

To follow.

Clause 69

The Committee requested further clarification on the Minister's proposed way forward on this clause as the officials informed members that the Minister was not minded to make an amendment but was still taking soundings from stakeholders.

The Committee also asked for confirmation that the Minister will give an assurance at Consideration Stage that statutory guidance would outline the role of the voluntary and community sector and would include wellbeing, equality and good relations.

The Minister has yet to take a definitive view on this issue, however, officials can confirm that the Minister will give an assurance at Consideration Stage in relation to the promotion of equality and good relations, and social well-being through community planning and, the role of the community and voluntary sector in community planning.

Clause 76

The Departmental officials informed the Committee that an amendment was proposed for this clause.

The wording of the amendment was sent to the Committee on 14 February 2014.

Clause 96

Officials agreed to report back to the Committee, following discussions with the Minister, on a possible amendment which would ensure a move to a risk based audit approach over time.

The Committee also asked for confirmation that the Minister will give an assurance at Consideration Stage that a review would be carried out on the operation of the audit function as proposed in the Bill.

The Minister has agreed to the Department taking an enabling power to provide for a move to a risk based audit approach by allowing the Department each financial year, after consultation with the local government auditor, to determine those councils on which a report or reports should be produced.

The wording of the proposed amendments to clauses 98 and 100 to give effect to this are set out in **Annex B**.

The Minister will give an assurance at Consideration Stage in relation to the review of the operation of the audit function.

Clause 108

Following the meeting on 11 February, the Committee wrote to the Department asking the Departmental officials to report back on the possibility of amending the clause to include the right of appeal for council against the findings of an investigation.

The Minister does not consider that an amendment to this clause is required. The clause provides powers of last resort for a Northern Ireland Department and its proposed use can be addressed under the auspices of the Partnership Panel.

New Clause 117(A)

The officials informed the Committee that a new clause would follow clause 117.

The wording of the new clause was sent to the Committee on 14 February 2014.

Schedule 4

Officials agreed to provide the Committee with worked examples of how this schedule will work in practice in appointing councillors to committees, particularly on the basis of a council of 40 members with 8 committees of 10 members on each.

To follow.

Additional issue

Clauses 96 and 98

Officials briefed the Committee that amendments would be brought forward at Consideration Stage to replace references to “guidance issued under section 95(6)” in clauses 96(b) and 98(1)(b) and (e) to “guidance issued under section 113”. Following further consideration and discussion with the legislative draftsman, and in order to provide clarity that the local government auditor’s role in relation to a council’s compliance with guidance is in respect of guidance on a council’s performance improvement duties, the amendments which the Minister will bring forward at Consideration stage have been revised.

The revised wording is set out in **Annex C**.

Annex A

Extract from the Annual Report of the Public Services Ombudsman for Wales for 2011/2012

Commentary on the increase in the number of Code of Conduct complaints

It is not surprising that the increase in the number of Code of Conduct complaints received has occurred during the year in the run up to county council elections. I am extremely disappointed that it appears the Code is being used in this way.

I am also concerned about certain practices emerging amongst town and community councils. It became necessary during the year to correspond with the Clerk of Prestatyn Town Council in relation to our mutual concern about the number of complaints I receive in respect of members of Prestatyn Town Council. During 2011/12, I received 65 complaints out of a total of 206, representing 32% of the complaints about town and community councils. This level of complaints is entirely disproportionate. Such a level of complaints, in my view, reflects a very hostile set of interactions between councillors and must inevitably lower the esteem in which the Council is held by its electors. I have urged the Council to reflect on the culture which is giving rise to these complaints and how behaviour might be changed to reverse this trend. I am also aware that some of these complaints are being made by a small number of members of the public and one person in particular. I will actively consider what further steps are available to me to tackle the problem. In particular, if there is no reduction in the number of complaints by members against other members, the Code has explicit provisions regarding vexatious complaints and I will not hesitate to invoke them. I have urged the members of Prestatyn to develop the Council so that its reputation steadily improves.

Code of Conduct for local authority members – changes to practice

In recognition of concern about certain aspects of the Code and the use of complaints for political purposes, I have been in discussion with the Welsh Local Government Association (WLGA), the Association of Council Secretaries and Solicitors (ACSeS) and the Welsh Government on a range of measures designed to reform the current Code of Conduct system, which can be achieved without the need for legislation. The aim is that these measures will enable a local resolution process to be introduced across Wales which should greatly reduce the number of complaints brought by councillors against other councillors which need to be considered by my office.

The first element of this new approach was introduced at the beginning of 2012, and applies to members of county/county borough councils and community/town councils. When I am minded not to investigate a complaint or having commenced an investigation I am minded to close my investigation, I will write to the Monitoring Officer. This will arise when I judge that even if the Standards Committee did find that there had been a breach of the Code, it would be unlikely to administer a sanction. It will then be for the Monitoring Officer to consider the matter. If they take a different view on the likelihood of the Standards Committee applying a sanction if they decide that there has been a breach of the Code then I will transfer the investigation to them for local consideration.

Annex B

Local Government Bill

Draft amendments for Consideration Stage

Clause 98, Page 54, Line 25

After 'Each financial year, the' insert 'Department, after consultation with the local government auditor, must determine which councils are to be councils in respect of which subsection (1A) applies in that financial year.

(1A) Each financial year,

Clause 98, Page 54, Line 26

After 'each council' insert 'to which this subsection applies in that financial year'

Clause 98, Page 55, Line 20

At end insert-

'(5) In subsection (4) "specified" means specified in a direction under that subsection.'

Clause 100, Page 56, Line 4

At end insert ', unless no such reports have been issued in respect of that council during that financial year'

Annex C

Clause 96, Page 54, Line 13

Leave out '(1) to (5)'

Clause 96, Page 54, Line 15

Leave out 'under section 95(6)' and insert 'by the Department about the council's duties under that section'

Clause 98, Page 54, Line 31

Leave out '(1) to (5)'

Clause 98, Page 54, Line 33

Leave out 'under section 95(6)' and insert 'by the Department about the council's duties under that section'

Clause 98, Page 55, Line 1

Leave out 'under section 95(6)' and insert 'by the Department about the council's duties under section 95'



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Sheila Mawhinney
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Stormont
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18 February 2014

Dear Sheila,

I attach a list of the further proposed Ministerial amendments to the Local Government Bill as discussed with the Committee on 13 February and responses to issues raised by the Committee at that meeting.

I also attach the Department's response to the issues raised by Community Places and NILGA in their most recent letters to the Committee.

I trust this information is of assistance. Should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO
[by e-mail]

Issues raised by Community Places and NILGA - Departmental response

Local Government Bill – Committee Stage

Issues raised by Community Places – 17 February 2014

Improving service provision

The provisions in the Local Government Bill in relation to community planning are about more than service provision - they are about improving the social, economic and environmental well-being of a district and people living or working in it. These improvements will be brought about through a range of approaches, some of which relate to direct service provision whilst others will relate to changes in actions or making facilities available for new or different purposes. The Bill, as drafted, provides the scope for the statutory guidance to address the breadth of issues that can be considered by a council and its community planning partners to deliver the agreed improvements.

Proactive Community Engagement

Councils and councillors, as locally elected representatives, have a long history of and experience in engaging effectively with the communities they represent. As a result of the Committee's scrutiny of the Bill, the Minister agreed to bring forward an amendment at Consideration Stage (clause 76) regarding the duty on a council and its community planning partners in relation to engagement with the community. The wording of this amendment was forwarded to the Committee on 14 February 2014.

The wording of the amendment suggested by Community Places as being the equivalent in Scotland and England relates specifically to:

- those public bodies which are not specified in the Act, and whose functions are exercised in a local authority's area, and
- such community bodies as the local authority thinks fit to participate in community planning.

As requested by the Committee, the Minister will give an assurance at Consideration Stage that the role of the community and voluntary sectors will be addressed in the statutory guidance to be issued by the Department.

The provision in clause 76 relates to the involvement of the community, in its widest definition, in the development of community planning and recognises an individual's right not to participate in the process.

Involvement in shaping the Community Plan

As officials indicated during their engagement with the Committee, community planning will be an organic process that will involve individuals and groups at different stages in the process. The Department considers that, as a first stage, a council should engage with its community planning partners and departments to begin to identify objectives and issues that can be addressed through the community plan. It will be a matter for a council to determine at which stage in the process it wishes to engage with:

- the community,
- the voluntary and community sector, and
- other stakeholders.

The Bill, as drafted, provides for this flexible approach rather than specifying which organisations, outside of those that deliver public services or functions in the council district, a council must involve during the formative phase of the identification of objectives.

The role of the various participants in community planning and the potential phases that a council may adopt in relation to the development of its community plan will be addressed in the statutory guidance to be issued by the Department.

Outcomes

Whilst the new performance improvement framework for councils provides a link to a council's community plan, it is specifically related to improvement in the delivery of a council's services. Improved outcomes from community planning may be delivered by a range of means, not just improvement in the delivery of a council's services. Furthermore, there is the potential that certain council services will have limited or no bearing on community planning and the delivery of its objectives.

Issues raised by NILGA – 14 February 2014

The Partnership Panel is intended to provide a forum for political discussion between elected representatives from councils, as the bodies elected locally that are delivering services locally, and Executive Ministers representing the regional tier of governance that agrees and sets the policy framework for the delivery of services by the departments and statutory bodies. The Department cannot, in legislation, specify a body that is not itself established by statute.

The inclusion of a representative from the regional representative body for local government will be a matter for agreement by the Panel. Officials contacted counterparts in the Welsh Government who advised that the inclusion of the Welsh Local Government Association (WLGA) President on the Partnership Council for Wales was agreed by the membership of the Council following a review of its structure – it is not provided for in statute. Welsh Government officials also advised that the Chief Executive of the WLGA, along with others, attends meetings of the Partnership Council, in an observer capacity: he has no formal role in relation to the Council.

In Wales, the Department for Local Government and Government Business is responsible for the operation of the Partnership Council. The development and maintenance of the framework for the operation of the Partnership Panel will be a matter for the Department of the Environment, in consultation with other departments and local government.



Northern Ireland
Assembly

Appendix 5

Research Papers



Northern Ireland
Assembly

Research and Information Service
Briefing Paper

12 May 2013

Suzie Cave

Community Planning

NIAR 220-13

This briefing is prepared for the Committee for the Environment. It seeks to facilitate the committee's consideration of local government auditors in the United Kingdom devolved administrations, providing comparisons of their roles and responsibilities.

This information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

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Background

Community planning is a relatively new concept for Northern Ireland introduced through the Review of Public Administration. It is to be legislated for under the Local Government (Re-organisation) Bill, the final piece of legislation that ties up the Local Government aspects of RPA.

While community planning is in its infancy in NI, it has been implemented in other regions such as Scotland, England, Wales and the Republic of Ireland, by varying degrees over the past 10 years. It is due to this that the definition of community planning tends to vary slightly from region to region making it difficult to identify a common meaning to the term.

The model for community planning recommended for Northern Ireland is based on the Scottish model,¹ and for this reason a strong place to start is the definition given by Scotland. In Audit Scotland's Report "Community Planning: An Initial Review", community planning is defined as,

"the process through which public sector organisations work together and with local communities and the voluntary sector, to identify and solve local problems, improve services and share resources".

However, in terms of a definition from a Northern Ireland perspective, back in 2008 the Minister of Environment at the time, Mrs. Arlene Foster, laid out the components of community planning in a statement to the Assembly. These included:

- an effective, statute-based Community Planning process led and facilitated by the new councils;
- a clear statutory requirement on all other public bodies including policing, health and education bodies to participate in and support the Community Planning process;
- a clear duty placed on councils to engage with local communities to produce a community plan.

The following table, from Community Places, gives examples of how community planning has been described both in Northern Ireland and other regions where it is in operation. The examples are taken from strategic views on community planning to local definitions.

1 Department of the Environment Community Planning Subgroup Recommendation one, to the Taskforce, June 2006 [online] available from: http://www.flga.org.uk/uploads/docs/lgrt_cp_recommendations_to_the_taskforce.pdf

What is Community Planning?

Community Places highlights that the definitions are taken from a range of sources which include Government Legislation, Council Community Plans/ Strategies and Local Community Plans

	Scotland	England and Wales	Republic of Ireland	Northern Ireland
Strategic View	<p>Community Planning is a process whereby the public services in the area of a Local Authority are planned and provided after consultation and (ongoing) co-operation among all public bodies and with community bodies.</p> <p>Local Government Act 2003</p>	<p>Public bodies need to identify and understand the needs and aspirations of their citizens and the communities that they serve, and then plan to meet those in the most responsive, accountable and effective way.</p> <p>At the local level, this means local authorities and other partners working closely to shape the medium- and long-term development of their areas while actively engaging with citizens and communities as a vital part of that process.</p> <p>A process known as Community Planning.</p> <p>'Local Vision' - Statutory Guidance from the Welsh Assembly Government</p>	<p>A County/City Development Board operates under the aegis of each County or City Council.</p> <p>The Boards bring together all players locally – the public sector agencies, the social partners, local government and local development – to seek common cause in developing their counties and cities, in planning for the future with better co-operation and co-ordination and to operate in a more integrated way.</p> <p>Department of Environment and Local Government</p>	<p>The aim of Community Planning is to make sure that people and communities are genuinely engaged in decisions made about the public services which affect them.</p> <p>Allied to this is a commitment/duty by all those who deliver services in the council area to work together to provide co-ordinated, high-quality outcomes people rightly expect.</p> <p>The drive for Community Planning should be seen in the context of the process to create more responsive and effective public services for citizens.</p> <p>Review of Public Administration</p>

<p>Council View</p>	<p>Scotland</p> <p>Community Planning is the process through which the connections between national priorities decided by the Scottish Executive and those at Highland, local and neighbourhood levels are improved. It is about making sure that people and communities in the Highlands are genuinely engaged in making decisions on public services which affect them. It requires a commitment from organisations in the Highlands to work together, not apart, in providing better public services.</p> <p>The Highlands Council</p>	<p>England and Wales</p> <p>Community Planning is a way of giving local people the opportunity to create a shared vision for their area and identify priorities for action which are agreed by a wide range of people, organisations and groups.</p> <p>Devon County Council</p>	<p>Republic of Ireland</p> <p>The Louth County Development Board brings together various strands involved in local government, local development, the state agencies at local level and the social partners which includes the community and voluntary sector. The broad functions of the Board are to: draw up a comprehensive County Strategy on social, economic and cultural development; identify gaps and duplication in local service delivery; nurture constructive co-operation and active participation by all members of the Board based on a partnership approach; oversee the implementation of the Strategy.</p> <p>Louth County Development Board</p>	<p>Northern Ireland</p> <p>The proposed Community Planning process will provide a framework for making public services responsive to, and organised around, the needs of communities. The two main aims of Community Planning can be described as: making sure people and communities are genuinely engaged in the decisions made on public services which affect them; allied to a commitment from organisations to work together, not apart, in providing better public services.</p> <p>Northern Ireland Local Government Association</p>
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<p>Local View</p>	<p>Scotland Community Planning is a way of working that brings together organisations and the communities they serve to improve the quality and range of services for local people. Wigtown Area Community Plan</p>	<p>England and Wales Community Planning is about working across organisational and geographic boundaries to use resources more effectively and to ensure that communities are able to influence decision-making. Llanelli Community Network</p>	<p>Republic of Ireland The local strategy addresses the economic, social and physical development of Dunmanway and its hinterland and sets out a framework of objectives and actions for the next ten to fifteen years, with a view to making the area a better place to live, learn, work, visit and do business. Dunmanway Integrated Development Strategy, Cork</p>	<p>Northern Ireland Community Planning is the opportunity for communities and individuals to have a say in the way they are governed, in the decisions that affect their lives and the way public money is spent. 'Putting the Community into Community Planning' – Sustainable Northern Ireland Project</p>
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Legislative Summary

Northern Ireland

To fully appreciate the potential for Community Planning in Northern Ireland it may be useful to get an insight into the decisions being made under the Review of Public Administration in relation the Reform of Local Government.

The reform proposals impact on every aspect of local government operation such as the structures for efficient, fair and transparent decision-making, the sharing of power and responsibility, the standards by which councils and councillors operate, how improvement in the delivery of council services can be achieved, and how councils can act as the focal point for improving the outcomes for citizens in their area through community planning.

Community Planning is being legislated for under the final piece of reform legislation known as Local Government (Re-organisation) Bill to be introduced to the Assembly before the summer. According to the Department's Consultation document (2010) it is proposed that councils should have a requirement placed on them to lead and facilitate community planning. This involves:

- councils consulting and co-operating with all service providing bodies in the district, the community, and individuals to plan for public service provision;
- Councils being required to publish community plans for their districts, and review these as necessary;
- Councils having responsibility for determining representation on structures they establish;
- Establishment of a statutory Link in the between development plans and community plans;
- Publication of guidance on scope of the duties of all those involved, including the role of departments underpinned by the Partnership Panel²;
- Guidance on publication of plans to give broad direction on prioritisation etc.
- Enabling Community Planning Partnership to become a body corporate³

England

In England the change was made to neighbourhood planning in 2011 under the Localism Act. The Localism Act 2011 introduced new powers for people to make neighbourhood plans and neighbourhood planning orders, with reduced interference from central government. These new powers are in addition to existing opportunities for community involvement, which are already part of the planning system.

Communities are able to proceed with local development without the need for a planning application. The neighbourhood decides what a plan contains and identifies the specific site or broad location, the form, size, type and design of new development. It must be in conformity with national planning policies and the strategic policies in the Council's LDF Core Strategy. The plan goes through an independent check, and should it pass it is put to a local referendum; the local planning authority must adopt it if it gets 50% approval.⁴

2 This advisory panel would formalise the relationships between the Executive and district councils and provide a forum for the collective consideration of strategic issues.

3 In Scotland CPPs are tasked with preparing community plans. While Community Planning Partnerships have not been specifically defined in the Consultation, the Department has agreed to this provision suggesting that CPPs may become part of the process in time.

4 <http://www.parliament.uk/briefing-papers/SN05838>

Scotland

In Scotland, community planning falls under the Local government in Scotland Act (2003). Section 15 of the Act places a duty on local authorities to initiate and facilitate Community Planning in their respective areas.

Section 16 places a statutory duty requiring NHS Boards, Scottish Enterprise, Highlands and Islands Enterprise, Joint Police Boards and Chief Constables, Joint Fire Boards, the Strathclyde Passenger Transport Authority (SPTA) and the local authority to participate in the Community Planning process.

Community Planning Partnerships

Community Planning Partnerships (CPP) are central to the community planning process; coordinating initiatives within their locality and acting as principal connection between national and local priorities and policies. CPP's are a statutory body within each of Scotland's 32 local authority areas and are a central feature of the reform of local governance introduced by the Local Government Act. CPP's are intended to ensure that local authorities, other local public agencies, the voluntary, community and private sectors develop a shared vision for their area and work in partnership to implement this.⁵

All councils have established a CPP to lead and manage community planning in their area. CPPs are not statutory committees of a council, or public bodies in their own right. They do not directly employ staff or deliver public services. Under Section 19 of the Act, it is possible for the CPP to establish the partnership as a legally distinct corporate body. According to Audit Scotland some CPPs have considered this option but, to date, none has taken it forward.

The structure of CPPs and the areas they cover vary considerably, depending on the size and geography of the council area, the local economy, local political priorities, and socio-demographic factors such as age, gender, and relative wealth.⁶

Statement of Ambition

In 2011 the Christie Commission report on the future of public services highlighted the need for a new, more radical, collaborative culture throughout Scotland's public service. It called for a much stronger emphasis on tackling the deep-rooted, persistent social problems in communities across the country to enable public bodies to respond effectively to financial challenges.⁷

The Scottish Government's response to the Christie Commission included a commitment to review community planning. That review led to the publication of a Statement of Ambition for community planning which stated that effective community planning arrangements will be at the core of public service reform.

CPPs will drive the pace of service integration, increase the focus on prevention and continuously improve public service delivery to achieve better outcomes for communities. The Statement of Ambition also emphasises the need for all partners to have collective accountability for delivering services. This includes being accountable for their own contribution to local planning.⁸

5 Sinclair, S. (2008) "Dilemmas of Community Planning: Lessons From Scotland," *Public Policy and Administration* vol. 23(4) pp. 373-390

6 Audit Scotland (March 2013) *Community Planning in Aberdeen*.

7 The Commission on the Future Delivery of Public Services, Christie Commission, June 2011.

8 Review of Community Planning and Single Outcome Agreements: Statement of Ambition, Scottish Government and COSLA, March 2012.

Community Empowerment and Renewal Bill

On 6 June the Scottish Government launched an initial public consultation on its proposed Community Empowerment and Renewal Bill, for which a draft Bill is hoped to be consulted on summer 2013. Although no final decision has been taken, the Bill is seen as a possible vehicle for the proposed changes to the statutory duties on community planning that emerged from the review. The proposed Bill covers a wide range of issues, such as:

- strengthen community participation
- unlock enterprising community development; and
- renew our communities.
- The consultation paper proposes:
 - the possible extension of a community right to buy to urban Scotland;
 - giving local people a greater say in local budget decisions;
 - giving communities a right to challenge local public service delivery if it is not meeting their needs;
 - giving local authorities greater powers to deal with empty homes and buildings;
 - allotments legislation should be amended to better support communities taking forward grow-your-own projects; and
 - exploring how existing legislation can be better used to allow Local Authority and RSL tenants to manage their housing.⁹

9 Scottish Parliament, Community Empowerment and Renewal Bill <http://www.scotland.gov.uk/Topics/People/engage/cer>

Good Practice

In 2006 Northern Ireland Environment Link (NIEL) and Sustainable NI made suggestions for good practice in Community Planning¹⁰. These were taken from lessons learned from the Castlereagh Visioning Community Project, and included:

1) Engaging with the Community:

- holding public meetings involving community residents and representatives from statutory voluntary and public sectors.
- Using community events to involve residents in the visioning/planning process e.g. visual displays and inviting comments at Community Fun Days etc. to encourage people who may not normally attend public meetings.
- Access all media
- Show the practical benefits gained from community planning and recognise and promote community achievements.

2) Developing and sustaining two-way communication and information sharing:

The community needs to be aware of the process that is required to achieve their aims so that agreed plans can be progressed. It is suggested that both positive and negative feedback on the process should be available to the community so that they can get a picture of what is realistically achievable and within what timeframe.

3) Ensuring the process is inclusive

Open up the opportunity to engage and become involved in the process across the community. Community Planning facilitators should have the ability to seek out and accommodate differing opinions. The NIEL and Sustainable NI document referred to an example from a Youth Outreach Worker in the Castlereagh Project,

“The project to paint the murals on two prominent walls in Ballybeen (replacing old murals, having previously sought agreement from those who had put up the paramilitary style murals) initially involved two groups of young people. They met with the artist to discuss the designs, prior to the first week in July when we began to paint the murals. Other young people came along and watched. We invited them to pick up a paintbrush and join in – which they did.”¹¹

4) Providing support to the community

Through providing one or two people known to the community who can work with volunteers and others between formal meetings, and are available to explain any parts of the process or aspect of information which community representatives are uncertain or worried about. NIEL and Sustainable NI demonstrated this through the following example from a Castlereagh Borough Council Community Worker stated,

“We had both worked with the community in Cregagh before, and knew the people and personalities involved. During the Visioning process we were able to explain some of the process in more detail and also acted as ‘middle-men’ between those working to develop the vision and the community, for example ensuring that they did not over-burden volunteers.”¹²

10 NIEL, Sustainable NI (2006), Putting the Community in Community Planning: Making new governance structures responsive and relevant to communities – Lessons from the Castlereagh Community Visioning Project. Available at <http://www.sustainableni.org/our-activities/community-planning/index.php>

11 Ibid (p.8)

12 Ibid (p.9)

5) Involving people of different ages, gender, backgrounds and cultures

This has been suggested by targeting smaller audiences of particular characteristics rather than aiming to attract large numbers of people to a single event so as to provide a wide range of perspectives from the entire community.

6) Ensuring that the local community takes responsibility for the overall process and has ownership of the action plan

While consultants or a statutory/public sector organisation may have taken the initial lead in the community planning process and take responsibility for certain activities, according to NIEL and Sustainable NI, successful community planning happens when the community takes charge. According to a community representative from the Castlereagh Project,

“When we first met with the facilitators we had an open discussion about what the process would involve. Rather than jumping into a prefabricated consultation process we developed our own ideas about what we wanted to achieve and how to go about achieving this.”¹³

7) Working with the community to develop a realistic vision

NIEL and Sustainable NI suggested,

“Realistic plans rather than a wish-list can be achieved through keeping people informed, raising awareness about the agencies and organisations who need to be approached to move an issue forward, explaining the processes involved, and discussing the constraints”¹⁴

13 Ibid (p.9)

14 Ibid (p.9)

Examples of Community Planning

Northern Ireland

Local Community Plans - Supporting Communities in Community Planning Project

Community Places have facilitated a number of local community plans over the past few years through its Supporting Communities in Community Planning Project. Community audit and engagement methods have included: household surveys (also using online technology); community workshops; public discussions; focus groups; etc. Community Places informed that where possible these have been modelled on what community planning will be like post 2015 – that is with councillors and council officials directly involved along with community group representatives and officials from statutory/public agencies in developing, agreeing and implementing the plan.

An example of this project includes the rural village of Bushmills for which Community Places provided the following information:

Bushmills

A large number of community groups have been established in the Bushmills area including residents' organisations, youth groups, church groups and cultural organisations, providing a range of services and activities for the local community. With so many groups in the area, a Village Forum was established to provide a more co-ordinated approach to addressing the needs of the local community.

In July 2009, Community Places was invited to meet with the Village Forum and officers from Moyle District Council and Supporting Communities NI to explore the opportunities to develop a Local Community Plan for the Village. The Bushmills Village Community Plan was launched in June 2010.

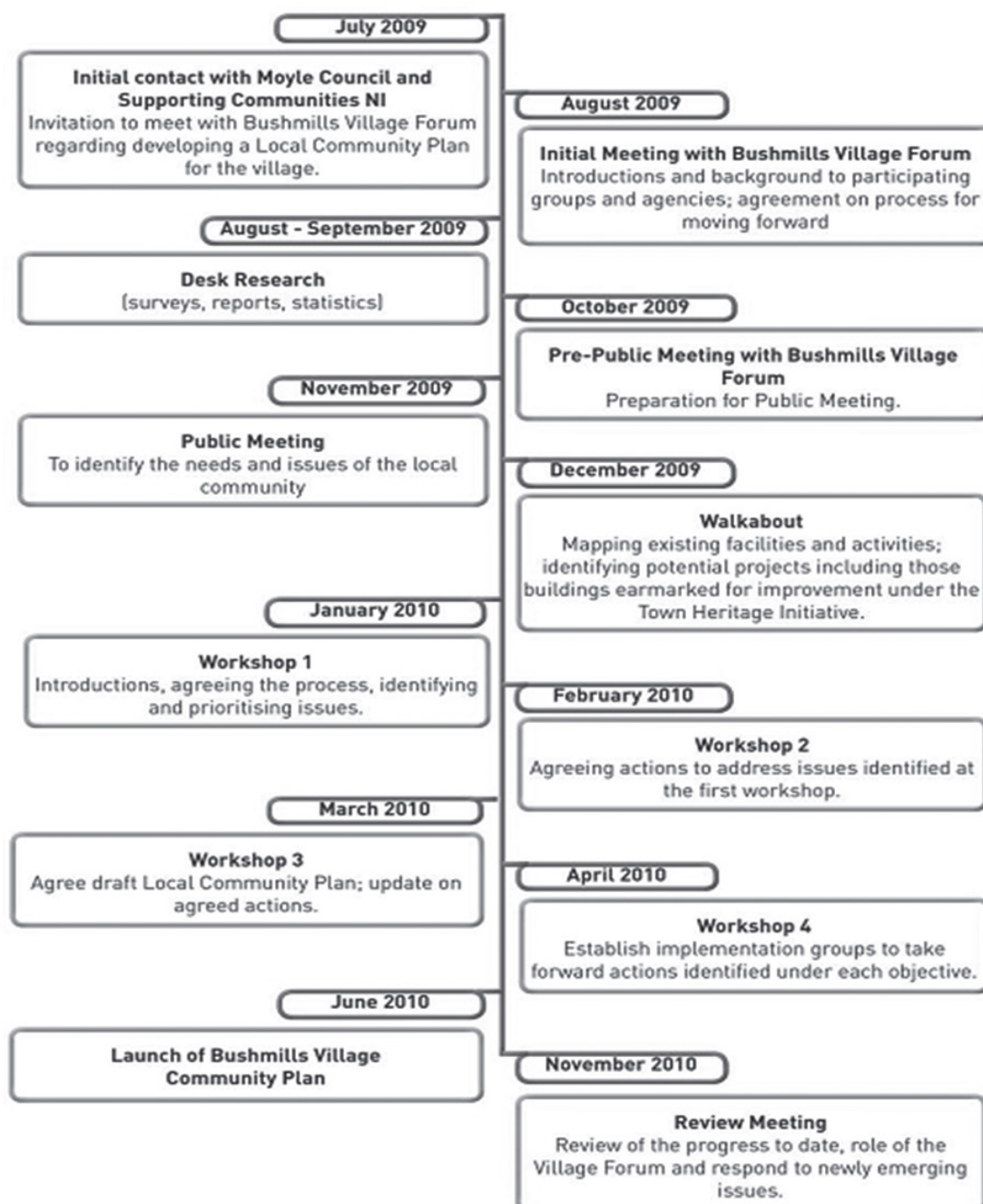
Groups/organisations involved:

Bushmills Community Association, Bushmills Distillery, Bushmills Peace Group, Bushmills Presbyterian Church, Bushmills Residents' and Environmental Forum, Bushmills Royal British Legion, Bushmills Trust, Bushmills Ulster Scots Heritage, Church of Ireland, Dalriada Sure Start, Dunluce Presbyterian Church, Moyle District Council, Northern Ireland Housing Executive, Planning Service, PSNI, Supporting Communities NI, and Town Heritage Initiative Partnership.

Process

The following diagram illustrates the timeline of the process used.

Timeline of Process Undertaken



Source: Community Places (2013)¹⁵

15 Community Places (2013), Supporting Communities in Community Planning: Developing Local Community Plans for Bushmills and Braniel

Outcomes and Achievements

Agreed Outcomes	Achievements
To increase co-ordination between the Council, agencies and the community	The publication of a village newspaper - The Bush Telegraph, has been hugely successful in keeping the community informed of events and activities in the area. It is published on a quarterly basis with contributions from many of the local groups. The establishment of a website and Facebook page have become invaluable tools in communicating with the wider community, and in encouraging feedback from the local community on a range of topical issues.
To improve the village's environment, facilities and quality of life to make it a more attractive place to live, work in and visit	<ul style="list-style-type: none"> - Environmental improvements include: seating area at Hamill Terrace, clean-up of Millennium Park and additional planting schemes throughout the village. - The 'Brighter Bushmills' Project was to improve the overall façade of derelict properties in the village by placing art and photographic work in 17 buildings, to encourage visitors to stop and enjoy Bushmills and to improve the look and feel of the village for residents, workers and visitors alike – this project has been a huge success. - BT Building Art Project: The removal of the unsightly fence at the BT building has finally been achieved. A project is now underway with a group of young people to create artwork for the wall of the BT building. The art project, guided by artist Ross Wilson, will have an overall theme relating to communications to tie in with the 'Alphabet Angel'. - The Village Forum is currently working on establishing a Heritage Trail within the village and surrounding area.
To promote wider understanding and enjoyment of the culture and heritage of the village	Salmon and Whiskey Festival: The inaugural festival was organised to showcase two of Bushmills' best loved products Salmon and Whiskey. The event, celebrating the local culture, heritage and produce attracted thousands of people to the village and will become a regular feature in the Bushmills calendar.

Source: Community Places (2013)¹⁶

Village Plans

The following examples were also provided by Community Places showing the development of Village Plans using the community planning process for Cushendun/Knocknacarry:

Cushendun/Knocknacarry

The Village Plan for Cushendun and Knocknacarry was developed over a number of months and published in August 2011. Local residents in the area were given the opportunity to put forward their views about how they would like their village to develop over the next five years. The process was assisted by Cushendun and District Development Association with Moyle District Council, and was facilitated by Community Places.¹⁷

Both villages were described as relatively isolated, with nearby towns such as Ballycastle and Ballymena 12 and 20 miles away respectively. They are both located within an AONB, in fact due to it being a conservation area, most of Cushendun has been owned and maintained by the National Trust since 1954. With this in mind the development of the Village Plan was seen as an opportunity to give residents a say in the vision for their village.

16 ibid

17 Community Places (2011) Cushendun and Knocknacarry Village Plan available at <http://www.communityplaces.info/publications/community-plans>

Funding

Funding came from the NE Rural Development Programme Village Renewal Measure which was part funded under Axis 3 and 4 of the Northern Ireland Rural Development Programme 2007-2013. Moyle District Council contributed 25% of the cost of the project.

The process

- The key steps included:
- Briefing Meetings
- Village Walk Around
- Contact Key Groups and Organisations
- Desktop Analysis
- Publicity and Promotion
- Community Consultation
- Develop the Plan
- Finalise the Plan

A range of consultation methods were used to gather views from groups, individuals and businesses in the area.

Groups consulted were:

- Boat Club
- Cushendun Building Preservation Trust
- Cushendun and District Development Association (CDDA)
- Cushendun Environment Group
- Folk Group Choir
- Glens Angling Club
- Glens of Antrim Historical Society
- Robert Emmet's GAC
- Shane's Park Residents' Association
- St Patrick's Church Choir
- University of the Third Age (U3A)
- Youth Club

Findings

The consultation gave residents the opportunity to highlight areas that needed attention and needed to be included in the Village Plan. From these agreed actions were developed. The table below lists some of the issues raised and the actions agreed to be taken.¹⁸

Issue	Action/Next Step
Signage directing traffic from Causeway Coastal Route through Cushendun Traffic following the Causeway Coastal Route road signs currently bypasses Cushendun	Lobby NITB and Roads Service on this issue

Issue	Action/Next Step
Electronic Tourist Information Point (with accessible toilet)	Consider applying to Rural Development Programme for funding for a costed technical feasibility study. Explore the potential for the National Trust to maintain this facility.
Improved Community Venue/Meeting Space	Discuss the possibility of a local community group making an application to the Big Lottery Fund's Energy Efficient Venues Programme for an energy audit of the hall and some initial works.

For more examples visit Community Places: <http://www.communityplaces.info/publications/community-plans>

England

The following examples were suggested by communityplanning.net which provides information on 'how-to- do- it' best practice.¹⁹

Aylesham Master Plan, Kent

According to communityplanning.net this is one of the most successful comprehensive examples of producing a Masterplan for a substantial urban extension with the full and creative involvement of key stakeholders including local residents.

One of the key issues facing the area was the lack of housing provision where only 1,760 homes built housing 4,200 residents. The village has been in decline since the closing of the local Snowdown Colliery in 1986. However the village was recognised as a strategic opportunity in Kent County Council Structure Plan 1996 and Dover District Local Plan 2002. Consequently a Partnership was formed by regeneration agencies and local authorities with a view to seizing initiative and creating something of quality.²⁰

Process used and timeline

The process began in 2002 with the adoption of the local plan and the establishment of a Master Planning Team. The final Masterplan was adopted in July 2004. The process used was the 'Enquiry by Design' method based on a series of workshops with all stakeholders, masterplanning team and local residents. For full details on the process and timeline see Annex 1.

Funding for the masterplanning process and consultation was by the English Partnership, SEEDA and Dover District Council; other partners provided staff resources while development was to be funded by the private sector.

Outcomes

According to communityplanning.net success was seen in terms of:

- the use of the Enquiry by Design method to engage stakeholders and facilitate creative collaborative working;
- good partnership working and project management;

¹⁹ More information available at <http://www.communityplanning.net/aboutcp/aboutthissite.php>

²⁰ Aylesham Case study <http://www.communityplanning.net/casestudies/casestudy001.php>

- creative and robust public consultation process;
- Very considerable public support for the end results.
- Good documentation of the process throughout.
- Relatively rapid but not rushed timescale.
- Good communication and use of IT.

However it was felt there was a loss of momentum after the consultation process.

A Forward Planning Manger for Dover District Council commented that:

*'The Enquiry by Design process changed the way that some local people viewed the village and the issues. It brought forward proposals that are not in the Local Plan. This made for contentious but better proposals.'*²¹

For more examples see case studies at communityplanning.net

Scotland

The following examples give a mixed view on the impacts of community planning in Scotland. While the Audit Scotland's review of community planning in Aberdeen points out positive impacts, its appears to be much more negative in general in comparison to the example taken from the Scottish Government on the East Ayershire Coalfield Area.

Aberdeen Audit

Aberdeen, North Ayrshire, and the Scottish Borders Community Planning Partnerships (CPPs) agreed to participate in three early audits to help the Accounts Commission and the Auditor General for Scotland test the CPP audit framework. For the first time, these audits focused on the impact and effectiveness of individual CPPs, rather than community planning as a national process.²²

The overall aim of the audit was to assess the effectiveness of community planning in making a difference to local communities. The audit of Aberdeen's CPP was carried out in September 2012, by a team from Audit Scotland.

According to the report, community planning has been established for almost a decade in Aberdeen. Over this period, partnership working between different parts of the public sector has steadily developed. Despite this, the report states that there is little evidence to show that community planning has had a major impact on people living in Aberdeen. The report highlights that there are significant differences between the least and most deprived communities in aspects such as health, crime and education levels gaps.²³

However the report mentions the following points in terms of positive outcomes:

Increased partnership working

In 2003, The Aberdeen City Alliance (TACA) was established, consisting of Aberdeen Council and its local public and private sector partners, as the key group for improving outcomes for local people. TACA developed a series of community plans, setting out long-term plans

21 Communityplannin.net (2006) Casestudy 001Aylesham Masterplan. Available at <http://www.communityplanning.net/casestudies/casestudy001.php>

22 Audit Scotland for the Accounts Commission and the Auditor General for Scotland (2013) Community Planning in Scotland

23 Ibid (p.8)

for developing the local economy, reducing inequalities within the city, and improving health, education and community safety.²⁴

A Community Health Partnership has been established, designed to strengthen the links between health and social care services. In addition, other groups were established to address particular areas of concern, such as the Aberdeen Drugs and Alcohol Partnership and the Integrated Children's Services Partnership. However, according to the report there is little evidence to show that this increased partnership working had any significant impact in tackling the sharp inequalities within Aberdeen.²⁵

By 2011, there was a growing awareness by Aberdeen Council and its partners that they needed to make significant changes in their approach to community planning. Following an external review, TACA was replaced by the Community Planning Alliance (CPA). CPA has also started to put a greater emphasis on preventative work and has implemented a series of reforms. It has piloted a new whole-systems approach, which aims to shift partner resources from dealing with social problems to preventing them. There are two pilot projects, in education and community safety.²⁶

However, Audit Scotland feels there is still a need for:

- Agreeing a clear set of shared priorities that focus on what is important for Aberdeen, rather than try to meet every aspiration.
- Ensuring that shared community planning priorities are embedded in the strategies and resourcing plans of partner organisations.
- Developing a joint resourcing framework, underpinned by a better understanding of costs and service impact, and using this to shift resources towards preventative work which can generate long-term savings or improved outcomes.
- Establishing a strong focus on outcomes that will allow it to monitor the impact it is having on individuals and communities within Aberdeen and to hold partners to account for their performance.²⁷

Community Planning in the East Ayrshire Coalfield Area

The following case study is an example highlighted by the Scottish Government as demonstrating community empowerment. It demonstrates the power of communities working together through a federation.

East Ayrshire has a rich coal mining history, which left behind a legacy of unemployment, isolation and a falling population. The Coalfield Communities Federation is a community-led charity, set up ten years ago to bring communities together, help put them back on their feet and give them a better future and "to give local people a stronger voice in planning their future".

The Federation sits on the Community Planning Partnership board and plays a key role in the planning and delivery of the local Community Planning Forum. This allows them to influence the planning and decision-making of community planning partners.

How it operates

The Federation is responsible for its own projects and employs its own staff. Each community brings forward local issues on the annual development day where priorities are discussed and agreed. The action plan which is the outcome of the day is circulated to community councils and represents the agreed work programme for the Federation.

24 Ibid (p.8)

25 Ibid (p.8)

26 Ibid (p.8)

27 Ibid (p.9)

Once an interest is agreed, relevant experts and professionals are invited to take part in discussions to turn ideas into practical projects. According to the Federation this approach has worked well.

Funding for the general running of the Federation and employment of staff comes from the Fairer Scotland Fund through the Community Planning Partnership (to 2010). Funds and how they are used are subject to quarterly monitoring and annual review. Other sources include Big Lottery funding and the European LEADER fund.

Actions

- Transport access

In an area of isolated villages, poor public transport emerged as an important issue. The Federation's flagship project was Coalfield Community Transport which operates a fleet of yellow buses across the coalfield area. The aim was to reduce the isolation of groups and individuals by offering cheap and convenient transport e.g. bringing children to nurseries, run shopping trips and excursions for senior citizens, taking people to church etc.

Also run a 'wheels to work' initiative which gives scooters to people without transport to their work or education.

- Community newspaper
- Schools arts programmes
- Environmental improvements in villages
- Working on compiling a schedule of derelict buildings to bring back into use

Achievements

- Joined up working - one of the impacts of the projects has been the shift in focus away from problems of individual communities towards shared solutions and thinking.
- Inclusive working – developed a new way of sharing information and new methods of community involvement which are inclusive and action oriented bringing benefits to all communities, not just those with biggest problems or loudest voices.
- The process has been seen to be effective that it has been adopted in the northern part of East Ayrshire also.²⁸

For more examples see case studies on the Scottish Government website: <http://www.scotland.gov.uk/Topics/People/engage/empowerment/casestudies>

28 For more information see <http://www.scotland.gov.uk/Topics/BuiltEnvironment/regeneration/engage/empowerment/casestudies/communityplanning>

Reviews of Community Planning

The following section gives a brief overview of reviews on community planning. These reviews consider the impacts of community planning at a national scale, whereas the Aberdeen Audit example in the previous section gives a review at local level.

England	Scotland
<p>An OFMDFM analysis on Community Planning in Operation within the UK and Ireland found in general that experiences were 'positive', however in real times it is hard to demonstrate hard outcomes such as efficiency savings through shared budgets in terms of both added value and impact.²⁹</p> <p>A number of reports for Communities and Local Government evaluated community strategies in 2006 and 2008, and found the following:</p> <ul style="list-style-type: none"> • That strategies are becoming more coherent and that most focus on the principal themes of health, crime and community safety, employment and the local economy, the environment and housing and homelessness³⁰. • Many community strategies fell back on making a link between evidence and actions. For example, in an assessment of 50 community strategies, nine provided no account in any way of evidence being used: it was unclear how strategic priorities and interventions had been derived³¹ • mismatch between Local Area Agreement (LAA) targets³² and community strategies³³. 	<p>According to Audit Scotland's national report Community planning: an initial review, 2006, found that there had been some progress with community planning, but that important issues needed to be dealt with:</p> <ul style="list-style-type: none"> • The complexity of community planning structures and different accountabilities could be a barrier to effective working. • Performance management and monitoring processes were not well developed. • Community engagement could be more sustained and systematic. • CPPs should be clearer about the resources required to achieve their outcomes.³⁴ • Audit Scotland's 2011 national report, The role of community planning partnerships in economic development, found that: <ul style="list-style-type: none"> • CPPs had supported local economic developments • the introduction of Single Outcome Agreements (SOAs) had improved how CPPs monitor and report progress • However, it also found that many of the problems identified in 2006 persisted.³⁵

29 Blake Stevenson Ltd and Stratagem (2005) "Case Analyses for RPA on Community Planning in Operation within the UK and Ireland" OFMDFM: Belfast

30 Percy-Smith, Janie (2008) Formative evaluation of community strategies: detailed assessment of community strategies. Department for Communities and Local Government

31 Peter Wells (Community and Local Government) 2006, Formative Evaluation of Community Strategies The Use of Evidence in Community Strategies

32 LAAs are a contract between central and local government and major local delivery partners to deliver the needs of local people. More information can be found at the Planning Advisory Service <http://www.pas.gov.uk/pas/core/page.do?pageld=12384>

33 Monro et al (2008) Process evaluation of plan rationalisation: formative evaluation of community strategies - issue paper no 11. The relationship between community strategies and Local Area Agreements. Department for Communities and Local Government

34 Community planning: an initial review, Audit Scotland, 2006.

35 The role of community planning partnerships in economic development, Audit Scotland, 2011.

Annex 1: Aylesham Master Plan Process and Timeline

Process

<i>Year</i>	<i>Month</i>	<i>Activity</i>		<i>Parties involved</i>
2002	Jan	Local plan adopted	Identifies Aylesham as a strategic location for expansion.	DDC
2002	Feb			
2002	Mar	Development partnership established	Authorities plus development agencies and academic institution	SEEDA, EP, DDC, KKC, ACDP, APC, PF
2002	Apr May			
2002	Jun	Masterplanning team appointed	Professionals consultants.	EDWA, Donaldsons, AB&A
2002/ 2003	Jul Aug Sep Oct Nov Dec Jan Feb	Background briefing prepared	Setting out context and constraints	Masterplanning team with the partnership
2003	Mar	Enquiry by Design workshop 1	25th March Day 1: Scene setting 1. Briefing - Aylesham context 2. Briefing - placemaking 3. Q & A session 4. Walking tours 5. Group discussion 6. Open evening	All stakeholders, masterplanning team and local residents
		Enquiry by Design workshop 1	26th March Day 2: Exploring Issues 1. Brainstorming and visioning 2. Constraints and Opportunities briefing 3. Group workshops and reporting back	All stakeholders, masterplanning team and local residents
		Enquiry by Design workshop 1	27th March Day 3: Initial design concepts 1. Team working 2. Discussions with key stakeholders 3. Partnership briefing	All stakeholders, masterplanning team and local residents
		Enquiry by Design workshop 1	28th March The emerging Masterplan 1. Producing drawings 2. open evening – presentation, Q & A	All stakeholders, masterplanning team and local residents
2003	Apr May			

2003	Jun	Workshop with stakeholders	Financial and delivery assessment, refining the masterplan, preferred strategic framework	Key stakeholders and masterplan team
2003	Jul	Enquiry by Design workshop 2	<ol style="list-style-type: none"> 1. Presentation of process 2. Open discussion 3. Group workshops on key themes 4. Presentation on design codes 5. Group workshop on design code aspects 6. Open evening with exhibition (50) 	All stakeholders, masterplanning team and local residents (50 people)
2003	Aug			
2003	Sep	Draft Masterplan presentation at public meetings	On outstanding issues. Mark out location of housing around open space	Masterplanning team, partnerships and local residents
2003	Oct			
	Nov			
	Dec			
2004	Jan			
2004	Feb	Independent public consultation team appointed		NWA, Urban canda, Accent
2004	Mar	Public consultation on Draft Masterplan	<ul style="list-style-type: none"> • Draft masterplan circulated to every household with summary questionnaire • Staffed exhibition • Face-to-face interviews • Statutory consultees 	Public consultation team with partnership and masterplanning team
	April			
2004	May	Masterplan revised		Masterplanning team for partnership
	Jun			
2004	Jul	Consideration of Masterplan by authorities	Identifies Aylesham as a strategic location for expansion.	DDC
		Formal adoption of Masterplan as SPG	Identifies Aylesham as a strategic location for expansion.	DDC

Source: Communityplanning.net (2006) Case study 001 Aylesham Masterplan.36



Northern Ireland
Assembly

Research and Information Service
Briefing Paper

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Michael Scholes

Local Government Audit in Northern Ireland, Scotland and Wales

This briefing is prepared for the Committee for the Environment. It seeks to facilitate the committee's consideration of local government auditors in the United Kingdom devolved administrations, providing comparisons of their roles and responsibilities.

This information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

1. Introduction

This briefing compares the roles and responsibilities of local government auditors in Northern Ireland (NI), Scotland and Wales. The first section provides a comparative overview of the roles and responsibilities of each of the heads of local government audit. It also includes the outputs and reports produced by each devolved administration's audit office, with signposts to more detailed information contained later in the paper.

The briefing itself addresses the role of the local government auditor in each region. Each section follows a similar format. Background information on the creation and statutory basis of each audit office is given. This is followed by an explanation of the role of the head of local government audit and ends with a description of the outputs or reports, resulting from the audit work. The paper's conclusion summarises key differences and similarities between the regions.

The term '*local government auditor*' is used throughout this paper to describe the head of audit in each administration. The term 'auditor' when used on its own, refers to the staff appointed (in most cases by the local government auditor), to carry out the audit work.

1. A comparison of the roles and responsibilities of the local government auditor in NI, Scotland and Wales.

The table below summarises the roles and responsibilities of the head of local government audit in each of the devolved administrations:

Administration	Local Government Auditor	Description of role and responsibilities
NI	Chief Local Government Auditor	<ul style="list-style-type: none"> • Prepare a Code of Audit Practice • Prepare an annual report • Commission reports in the public interest • Sign off audit certificates • Certify claims and returns • Conduct studies for economy, efficiency and effectiveness • Judicial Review <p>(For more detail on specific roles see section 2.2)</p>
Scotland	Controller of Audit/Accounts Commission	<ul style="list-style-type: none"> • Approve a code of audit practice • Appoint auditors of local government bodies • Sign off audit certificates • Promote best value and community planning • Promote performance audits • Negligence and misconduct powers <p>(For more detail on specific roles see sections 3.2 and 3.3)</p>
Wales	Auditor General	<ul style="list-style-type: none"> • Prepare and review the Code of Audit Practice • Appoint auditors of local government bodies • Sign off audit certificates • Extraordinary Audit • Special Inspections • Documents relating to police authorities • Promote or undertake studies for improving economy, efficiency and effectiveness <p>(For more detail on specific roles see section 4.2)</p>

It is the responsibility of all local government auditors to sign off audit certificates. In NI and Wales, heads of audit prepare the code of audit practice (the code). In Scotland the code is prepared by Audit Scotland and approved by the Auditor General and the Accounts Commission, not the Controller of Audit. All local government auditors share the responsibility of appointing auditors. However, in Scotland and Wales there appears to be a high level of 'contracting out' audit work to staff from private accountancy firms.

The special inspection powers in Wales under Section 21 of the Local Government (Wales) Measure 2009 are noteworthy, as they allow the Auditor General (AG) to carry out an inspection of a local authority if he is of the opinion that the authority is not showing significant performance improvements in terms of strategic effectiveness, service quality, efficiency and innovation. Equally noteworthy are the negligence and misconduct powers in Scotland; they allow the Accounts Commission to take action against councillors and council officials where a special report by the Controller of Audit has indicated that their negligence or misconduct has led to the loss or unlawful misappropriation of money.

For information, Annexe 1 presents a summary of the overall public audit structure in United Kingdom (UK), including government departments and National Health Service (NHS) bodies.

1.2 Comparison of the key outputs of local government audit in NI, Scotland and Wales

The table below summarises key reports arising from the audit of local government in the devolved administrations:

Administration	Output/Report
NI	<ul style="list-style-type: none"> • Annual reports • Public interest reports • Studies for improving efficiency and effectiveness <p>(For more detail on specific reports see sections 2.2 and 2.3)</p>
Scotland	<ul style="list-style-type: none"> • Local Government overview reports • Local government national reports • Impact reports • Annual audit reports • Client reports • Performance information • Best value & community planning reports <p>(For more detail on specific reports see section 3.3)</p>
Wales	<ul style="list-style-type: none"> • Annual Improvement reports • Improvement assessments • Local Government studies <p>(For more detail on specific reports see section 4.3)</p>

In NI and Scotland, the local government auditor has a statutory obligation to summarise the findings of all audits in an annual report. In Scotland, *local government overview* reports fulfil this obligation.¹ In NI, the document used to report major findings from the year's local authority audits is called the '*Exercise by Local Government Auditors of their functions*'. To date there is no equivalent statutory obligation, in Wales to produce such an, overarching annual summary of audit findings. Instead, the Welsh annual improvement reports are published for each authority. They summarise the work of auditors in relation to arrangements and performance; and they contain the Auditor General's view as to the likelihood that the individual authority will make arrangements to secure continuous improvement.

1 The current local government overview report can be viewed at: http://www.audit-scotland.gov.uk/work/local_national.php?year=2012

In NI, only one public interest report has been produced to date - on the sale by Ards Borough Council of a former abattoir site.² Public interest reports in Scotland and Wales are public sector wide and do not focus solely on local authorities or councils. They range from topics as diverse as, maintaining roads, early retirement and pension advice for public sector staff.

The public performance reports in Scotland are noteworthy, as they provide a statistical analysis of topics of interest to the public sector at local authority level. In Wales, the local government studies are largely scrutiny documents related to more detailed public sector wide, value for money reports on a variety of topics.

2 Local government audit in NI

2.1 Background and statutory framework

The statutory responsibilities to regulate the audit of local government bodies in NI rest with the Department of the Environment (DoE). *The Local Government (Northern Ireland) Order 2005 (the 2005 Order)* provides that DoE may, with the consent of the Comptroller and Auditor General (C&AG), designate persons who are members of the Northern Ireland Audit Office (NIAO) as local government auditors. Once designated, local government auditors carry out their statutory and other responsibilities, and exercise their professional judgment, independently of DoE and the C&AG.

2.2 The role of the CLGA

Article 4 of the 2005 Order allows DoE, with the consent of the C&AG, to designate a local government auditor as Chief Local Government Auditor (CLGA). *The Audit Accountability (Northern Ireland) Order 2003* established arrangements for the transfer of the CLGA and his staff to the NIAO. Prior to 2003, local government auditors were employed solely by DoE. The rationale of this move was to enhance independence, accountability and career opportunities.³ All public sector audits in the last ten years have been delivered by the NIAO.

The table below summarises the roles and responsibilities of the CLGA:⁴

Responsibility	Description of Roles
To prepare and review the Code of Audit Practice (the Code)	The Code prescribes the way in which auditors carry out their functions under article 5 of the <i>2005 Order</i> . To keep the Code up to date, it must be approved by a resolution of the Assembly at intervals of not more than five years. The Code focuses on ensuring that the audit of the financial statements is conducted in accordance with International Auditing Standards, issued by the Auditing Practices Board. ⁵
Preparation of annual report "The Exercise by Local Government Auditors of their functions".	The CLGA is required under Article 4(4) of the <i>2005 Order</i> , to prepare an annual report. The report's main aim is to provide key messages from audits performed during the past year.
Reports in the public interest	Article 9 of the 2005 Order requires the CLGA to consider whether, in the public interest, s/he should report on any matter coming to his/her notice during an audit, so it can be considered by the body audited or brought to the attention of the public. ⁶

2 Report can be viewed at:http://www.niauditoffice.gov.uk/index/publications/report_archive_home/reports_archive_2010/report_sale_of_abbat.htm

3 Chief Local Government Auditor. Committee for the Environment briefing. NIA: 9/5/2013.

4 Table compiled by RaISe.

5 Local Government Financial Audit: http://www.niauditoffice.gov.uk/index/about-niao/financial_audit_local_government.htm

6 To date only one Public Interest Report has been produced - on the sale by Ards Borough Council of a former abattoir site. :http://www.niauditoffice.gov.uk/index/publications/report_archive_home/reports_archive_2010/report_sale_of_abbat.htm

Responsibility	Description of Roles
Sign off audit certificates	<p>CLGA must sign audit certificates to complete each audit. The certificate is addressed to the audited body and a copy of the audited financial statements is passed to DoE. CLGA is responsible for auditing 46 sets of accounts each year from the following public bodies:</p> <p>District Councils; Joint Committees; and Other local government bodies, including District Policing Partnerships</p> <p>Local government auditors audit the statement of accounts of these bodies and give their opinion on the following:</p> <p><i>whether they give a true and fair view of the financial position of the audited body and its expenditure and income for the year in question.⁷</i> <i>And: whether they have been prepared properly in accordance with the relevant legislation and applicable accounting standards.⁸</i></p>
Certification of claims and returns	CLGA, under Article 25 of the 2005 Order, shall make arrangements for certifying claims and returns in respect of grants or subsidies made or paid by any NI department or public body.
Judicial Review	Article 21 of the 2005 Order enables the local government auditor to apply for a Judicial Review in respect to any decision of a local government body or any failure to act that would have an impact or effect on the accounts.
Objections at audit	Article 18 of the 2005 Order provides that, at any audit, “an interested person” ⁹ may make an objection to a local government auditor, provided the auditor has received written notification of the proposed objection and the grounds on which it is to be made.
Studies for improving economy, efficiency and effectiveness	Under Article 26 of the 2005 Order the CLGA shall, if required by DoE, commission studies designed to enable him/her to make recommendations for improving economy, efficiency and effectiveness. Reports on absenteeism in NI councils are an example of this type of study. ¹⁰
Declaration that item of account is unlawful	Local government auditors may apply to the High Court if they feel that any item in the accounts is unlawful, except where it is sanctioned by the DoE. If the High Court agrees that the item is unlawful, they can order the person responsible to repay the amount. Where the expenditure is more than £2,000 and the person responsible is a member of the body the High Court can order that that person be disqualified from being elected or from being a member for a specified time.

A summary of the work by auditors supporting the CLGA is supplied in Annexe 2.

7 Northern Ireland Audit Office. Code of Audit Practice 2011 :http://www.niauditoffice.gov.uk/index/publications/local_government_publications/code_of_audit_practice_2011.pdf

8 Northern Ireland Audit Office. Statement of responsibilities of local government auditors : http://www.niauditoffice.gov.uk/index/publications/local_government_publications/ni_statement_of_local_government_auditor_responsibilities_june2008.pdf

9 An interested person is defined under Article 18 (4) of the 2005 Order as (a) “ A local elector for the district of the body to which the audit relates; or (b) a person liable for rates in respect of any hereditament situated in that district; or (c) a representative of a person mentioned in sub-paragraph (a) or (b).

10 Reports on Absenteeism in NI Councils can be found at: http://www.niauditoffice.gov.uk/index/publications/local_government_publications/other_clga_reports.htm

2.3 Reporting the results of audit work

Auditor's must review and report annually on the public body's corporate performance management and financial management arrangements. The audit role does not include providing financial or legal advice or consultancy to the local government body. The results of audit work are reported in a range of outputs. The Code recommends the use of the following outputs:¹¹

Output	Description
Audit planning documents	Used to explain the auditor's assessment of risks to the audited body. They should include provision for audited body to demonstrate how they have implemented agreed actions.
Audit reports	Article 10(1) b of the 2005 Order requires the auditor to express an opinion on the accounts. The audit report includes the auditor's opinion of the financial statements and their opinion as to whether or not the body has put in place proper arrangements for securing economy, efficiency and effectiveness. (Also includes any matter reported in the public interest during the course of the audit).
Reports in the public interest	Article 9 of the 2005 Order requires the CLGA to consider whether, in the public interest, they should report on any matter coming to their notice during an audit, which then can be considered by the body audited or brought to the attention of the public.
Audit certificates	Used to certify the completion of each audit. The certificate is addressed to the Audited body and a copy of the audited financial statements is passed to DoE.
Annual audit letters	Summary of the audit work carried out. Issued by the auditor to the audited body. The letter must be published by the audited body, as required by the Local Government (Accounts and Audit) Regulations (Northern Ireland) 2006.
Annual management letters ¹²	Report issued by the auditor to the Chief Financial Officer of the audited body. Includes points to improve that body's management.

More information on Local Government Audit Reports can be found at:

http://www.niauditoffice.gov.uk/index/publications/local_government_publications.htm

3. Local government audit in Scotland

3.1 Background and statutory framework

Accounts Commission

Established in 1975 by *the Local Government (Scotland) Act 1973*, (hereinafter, the 1973 Act), the 'Accounts Commission' (the Commission), is responsible for the audit of all local authorities and associated bodies in Scotland. The 'Auditor General' (AG) is responsible for the audit of government departments in Scotland. The Commission is independent of local councils and of the Scottish Government. Members are appointed by Scottish Ministers, following an open recruitment under public appointments procedures. By statute there are at least six, and not more than twelve members. The chair and deputy chair are also appointed by Ministers. To maintain the independence of the Commission, Ministers must consult local authority associations before appointing members.

¹¹ Table compiled by RaISe

¹² Also referred to as "Reports to those charged with governance".

The role of the Controller of Audit

The 1973 Act also made provision for the post of Controller of Audit. The appointment is by the Commission, after consultation with, and subject to the approval of, Scottish Ministers. The functions of the Controller of Audit is to report to the Commission on: the accounts of local authorities; matters arising from the audits of local authorities; and, the performance by authorities of their best value and community planning duties.

3.2 The role of the Commission

The table below summarises the roles and responsibilities of the Commission:

Responsibility	Description of Roles
To appoint auditors	The Commission can appoint either Audit Scotland or private firms to audit Scotland's 32 councils and 45 joint boards and committees. ¹³
Promote best value and community planning	The concept of Best Value was introduced in <i>the Local Government in Scotland Act 2003 (the 2003 Act)</i> . It made local authorities have a responsibility to secure best value in service provision. The 2003 Act also extended the Commission's powers to hold hearings and publish findings so that they cover issues relating to Best Value and Community Planning.
Controller of audit reports	The Commission must consider any reports made by the Controller of Audit and can make recommendations to Scottish Ministers and to local authorities.
To promote performance audits	The Commission can undertake and promote performance audits which examine value for money issues across the audited bodies. The Commission can also give direction to local authorities and publish information on performance.
Negligence and misconduct	The Commission can also take action against councillors and council officials where a special report by Controller of Audit has indicated that their negligence or misconduct has led to money being lost or unlawfully misappropriated.

3.3 Reporting the results of audit work

The following table highlights key outputs from local government audits in Scotland:¹⁴

Output	Description	Author
Local Government overview reports	Every year a local government overview is published. Reports draw on recent audit work including the annual audits. The most recent report considers service challenges in 2013 and reviews local government's use of resources in 2012. It is available at: http://www.audit-scotland.gov.uk/docs/local/2013/nr_130328_local_authority_overview.pdf	Accounts Commission Performance Audit and Best Value (PABV) group

13 Audit Scotland was created to support both the Accounts Commission and the Auditor General for Scotland in carrying out their work.

14 Table compiled by RaSe.

Output	Description	Author
Local government national reports	These are reports into subjects that effect local government in Scotland. Topics are varied and are chosen from a rolling programme; these are then followed up as impact reports after a year or so. The most recent national reports are on early retirement in the public sector and Maintaining Scotland's roads. These are both available at: http://www.audit-scotland.gov.uk/work/local_national.php	Accounts Commission Performance Audit and Best Value (PABV) group
Impact reports	Following the publication national reports, auditors assess what impact they have had in helping public bodies improve in the following areas: assurance and accountability; planning and management; economy and efficiency; and, effectiveness and quality. Reports are available at: http://www.audit-scotland.gov.uk/work/local_impact.php	Accounts Commission Performance Audit and Best Value (PABV) group
Annual audit reports	Annual audit of public body. Includes the audit opinion on: financial statements; corporate governance; and best value use of resources. Audit reports are available at: http://www.audit-scotland.gov.uk/work/local_audit.php?year=2011	Audit Scotland's Audit Services Group or private firms
Client reports	In addition to the audit reports, auditors also issue a number of reports each year to the client. These include annual audit plans and reviews of internal controls.	Audit Scotland's Audit Services Group or private firms
Performance information	Performance indicators providing detailed statistics on each council are published each year. Areas include: corporate management and benefits; adult social work; cultural and community services; housing; and, roads and lighting. Reports are available at: http://www.audit-scotland.gov.uk/performance/council/	Audit Scotland
Best value & community planning	These are risk-based audits covering all aspects of performance, including: asset management; community engagement; financial management; governance; people management; risk management; and, procurement.	Accounts Commission

4 Local government audit in Wales

4.1 Background and statutory framework

The Wales Audit Office (WAO) was created on 1 April 2005, following the merger of the Audit Commission in Wales and the National Audit Office Wales. In Wales, as in Scotland, local government audits are conducted by WAO staff or private firms of accountants. Auditors are appointed by the Auditor General (AG). Although independent of the AG, they must follow the requirements laid out in his/her Code of Audit Practice. Audit arrangements for local government bodies in Wales derive from Part 2 of the *Public Audit (Wales) Act 2004*, (the 2004 Act). Local government bodies include councils, local probation boards, national parks, police and rescue authorities.

Local Government (Wales) Measure 2009

The best value regime for audits was replaced in 2002 by the Wales Programme for Improvement (WPI). This regime looked to councils to improve the performance of services and the corporate health of their organisation. The *Local Government (Wales) Measure 2009*

significantly reformed WPI.¹⁵ A Welsh improvement authority must make arrangements to secure continuous improvement in the exercise of its functions. Under the legislation, authorities have a duty to make arrangements to secure continuous improvement in the exercise of their functions. Authorities must publish 'Improvement Objectives' annually, which should reflect the following 7 aspects of improvement, as outlined in the Measure:

- Strategic Effectiveness;
- Service Quality
- Service Availability
- Fairness
- Sustainability
- Efficiency
- Innovation

4.2 The role of the AG for Wales

The AG is appointed by the Queen. She/he reports to the National Assembly for Wales, is independent and is held accountable by the Public Accounts Committee of the National Assembly, for the WAO's work and financial management.

The table below summarises the roles and responsibilities of the AG:

Responsibility	Description of Roles
Audit Accounts of local government bodies	To appoint auditors of local government bodies. Before making an appointment the AG must first consult the audited body. She/he may not appoint himself/herself.
To prepare and keep under review the Code of Audit Practice	Section 16 of the 2004 Act empowers the AG to issue a 'Code of Audit Practice' which prescribes the way in which auditors are to carry out their functions.
Extraordinary Audit	The AG may direct an auditor to hold an extraordinary audit of the accounts of a local government body. Welsh Ministers may ask the AG to direct an auditor to hold an extraordinary audit, if they deem it to be in the public interest.
Special Inspections	Under Section 21 of the <i>Local Government (Wales) Measure 2009</i> , the AG may carry out an inspection of a local authority if s/he is of the opinion that the authority is not showing significant performance improvements in terms of strategic effectiveness, service quality, efficiency and innovation.
Documents relating to police authorities	If the AG received a report in the public interest from an auditor relating to a police authority s/he must send a copy to the Secretary of State and the Welsh Ministers.
Studies for improving economy, efficiency and effectiveness	AG must, for each financial year, promote or undertake studies to enable him/her to make recommendations on improving economy, efficiency and effectiveness in local authorities.

4.3 Reporting the results of audit work

The following table highlights key outputs from local government audits in Wales:

Output	Description
Annual Improvement Report	AG publishes an annual, comprehensive report on how each authority is actually performing, showing how its plans for improving are working out in practice. Under the <i>Local Government (Wales) Measure 2009</i> , the AG must report each year on how well Welsh councils, fire and rescue authorities and national parks are planning for improvement and delivering their services.
Improvement assessments	These are letters to the authority regarding their discharge of duties under the <i>Local Government (Wales) Measure 2009</i> .
Local government studies	Produced by the AG they complement the, wider public sector, value for money studies. They look specifically at the preparation of governance statements and the scrutiny arrangements of Value for Money (VFM) studies.

5. Conclusion

Comparisons between administrations are problematic. The organisational structures in each audit office are very different, as is the size and number of councils and local authorities in each jurisdiction. This is particularly well demonstrated by the public audit structure in Scotland. The Accounts Commission, Audit Scotland, Auditor General and the Controller of Audit all carry out different audit roles throughout the Scottish public sector.

It appears that the key roles and responsibilities of the local government auditors are broadly similar in that all sign off audit certificates; all have some form of responsibility towards preparing or reviewing a code of audit practice that prescribes the way in which auditors are to carry out their functions.

Comparing the range of reports published in each jurisdiction is equally challenging. Scotland's output seems impressive when stood next to Wales and NI. Apparently the Wales Audit Office plans two substantial national summary reports for publication this year.¹⁶ Both reports are to address scrutiny arrangements and effectiveness in public authorities. But, it remains to be seen if they will address issues arising from local authority audits, or concentrate on other public sector organisations, such as the Welsh government departments and NHS bodies.

On the surface, NI does not appear to produce many public reports or value for money studies. However, NIAO does provide extensive, in-depth, time-consuming, value for money reports about executive departments and public bodies. At a recent briefing, the CLGA indicated to the Committee for the Environment that NIAO intended to move more into this area in future.¹⁷

The apparent larger output from local government audit offices in Scotland, and to a lesser extent Wales, may be attributable to a number of factors, such as key distinctions relating to: the size and diversity of their local government arrangements; and, the audit offices' prescribed roles and responsibilities. But further comparisons would need to establish whether this is in fact the case. These factors potentially explain the Scottish and Welsh offices' reliance on staff from private sector firms to carry out audit work. If NIAO decide to follow this strategy, or increase recruitment to increase its output, remains to be seen. A watching brief could be kept in this area if requested.

16 Wales Audit Office email correspondence dated 19 June 2013.

17 Chief Local Government Auditor. Committee for the Environment briefing. NIA: 9/5/2013.

Annexe1

Public audit structures in the UK¹⁸

UK	Scotland	Wales	Northern Ireland
<p>The Comptroller and Auditor General (C&AG) audits matters reserved to the UK Government, and all other spending by central government departments in England. The C&AG is also responsible for auditing payments of the block grants to the devolved administrations, and direct expenditure by the Scotland Office, Wales Office and Northern Ireland Office. The C&AG is supported by the staff of the National Audit Office. The NAO does not audit local government spending in England, which is done by the Audit Commission.</p> <p>The C&AG reports to the UK Parliament and his work is considered by the Public Accounts Committee.</p>	<p>The Auditor General for Scotland audits or appoints the auditors to the bodies funded by the Scottish Parliament. Audit Scotland provides support to the Auditor General and the Accounts Commission, which is responsible for the auditing of local authorities, fire and police boards.</p> <p>The Auditor General for Scotland reports to the Scottish Parliament and his work is principally considered by the Audit Committee.</p>	<p>The Auditor General for Wales audits the bodies funded by the National Assembly for Wales. The Auditor General for Wales has overall responsibility for audit standards across the public sector in Wales, including audit and value for money studies of NHS bodies and the appointment of auditors to local government and other public bodies in Wales.</p> <p>The Auditor General for Wales is supported by his staff and together they form the Wales Audit Office.</p> <p>The Auditor General for Wales reports to the National Assembly for Wales and his reports are considered primarily by the Assembly's Audit Committee.</p>	<p>The Comptroller and Auditor General for Northern Ireland (NIC&AG) is responsible for the audit of Northern Ireland Departments and their Executive Agencies, NDPBs, health and personal social service bodies and other centrally funded public bodies. The NIC&AG is supported by the staff of the Northern Ireland Audit Office. Certain Northern Ireland Audit Office staff are designated by the Department of the Environment as local government auditors.</p> <p>The NIC&AG reports to the Northern Ireland Assembly and his reports are considered primarily by the Assembly's Public Accounts Committee.</p>

18

Table supplied by the Scottish Parliament Information Centre (SPICe). 'Public Audit Structures in the UK'. SPICe briefing 10 September 2008: <http://www.scottish.parliament.uk/Research%20briefings%20and%20fact%20sheets/SB08-45.pdf>

Annexe 2

Work by auditors that support the CLGA (processes for auditing accounts in NI)

Review and report on corporate governance

Regulation 2 of the Local Government (Accounts and Audit) (Amendment) Regulations 2006 placed a formal requirement for local authorities to ensure they have a sound system of internal control. The system of internal control is to be reviewed at least annually. Councils use an annual governance statement to review and approve their internal control systems.¹⁹ Auditors should review and report as appropriate on the organisation's annual governance statement.²⁰ The statement is intended to give the reader a clear understanding of how the accounting officer (of the audited body) has discharged his or her responsibility to manage and control the organisation's resources during the year. It should clearly articulate how well an organisation is managing the risks associated with achievement of its aims and objectives, both in the current year and looking forward. Where there are weaknesses, emphasis should be placed on how these are currently addressed.

The use of resources

Article 6 (1)(d) of the 2005 Order requires auditors to be satisfied that the audited body has made proper arrangements for securing economy, efficiency and effectiveness in the use of its resources. The 'Code of Audit Practice 2011' gives the following examples for such arrangements:

- Planning finances effectively to deliver strategic priorities
- Reliable and timely financial reporting
- Procuring quality services and supplies that are tailored to local needs
- Procuring quality services and supplies that deliver value for money

19 Northern Ireland Audit Office: Exercise by local government auditors of their functions: Report by the Chief Local Government Auditor 2011: http://www.niauditoffice.gov.uk/index/publications/local_government_publications/clga_reports/cheif_lga_report_2011-2.pdf

20 Northern Ireland Audit Office: Code of Audit Practice 2011 : http://www.niauditoffice.gov.uk/index/publications/local_government_publications/code_of_audit_practice_2011.pdf



Northern Ireland
Assembly

Research and Information Service Bill Paper

30th September, 2013

Suzie Cave

Local Government Bill

NIAR 231-13

The following Bill paper gives a brief overview of the Local Government Bill as introduced to the Assembly on the 23rd of September 2013. It describes similar legislation in other jurisdictions and highlights potential areas for further consideration.

Paper XX/XX

xx xxxxxxx 2010

Research and Information Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Key Points

- The Local Government (Northern Ireland) Bill is the final piece of primary legislation in the reform process.
- It was introduced to the Assembly on the 23rd of September 2013. The Department hopes it will receive approval by March 2014 in time for elections to shadow councils in April 2014.
- The purpose of the Bill is to provide the legislative basis required to reform the future operation of councils, delivery of council functions and the promotion of communities in shaping their area.
- A number of functions are to transfer from departments to the new councils, for which legislation is to be developed. The full transfer of functions is to take place in April 2015.
- Similar legislation in England includes the Local Government Act (1992) for re-organisation of local government, the Localism Act (2001) for de-centralisation of power, local government performance, neighbourhood planning, the general power of competence and the code of conduct.
- Similar legislation in Scotland includes the Local Government (Scotland) Act (1994) for re-organisation of local government; the Community Empowerment and Renewal Bill (2012) for de-centralisation of power; the Local Government (Scotland) Act (2004) for local government performance, community planning and power of well-being; and the Ethical Standards in Public Life Act (2000) for the Code of Conduct.
- An Action Programme for Local Government Reform in the Republic of Ireland was published in 2012 with legislation to be in place by local elections in 2014.
- There have been two major changes made to the Bill since the policy proposals; these are a revised ethical standards scheme and the introduction of a general power of competence rather than a power of well-being.
- Other areas for consideration include:
 - the need for a multitude of subordinate legislation and guidance that is required and the timeline for its production
 - the costs and funding available for the implementation of the local government reform programme;
 - achieving agreement of the full suite of functions to transfer from central government to the new councils;
 - lack of an appeals mechanism for breaches of the code of conduct;
 - how the department will ensure that problems which were raised with obtaining political representation on STC's does not arise with establishment of the new councils;
 - the need for further clarification on employees of the council also being members, ensuring gender equality, cohesion and integration and capacity building.

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Key Points

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1 Introduction

Developments for the Review of Public Administration (RPA) date back to the restoration of the Northern Ireland Assembly in 2007 when the Executive set up a Sub-committee to prepare for the process. In 2008 the Sub-committee made recommendations in relation to local government structures, functions, resources, operational arrangements and governance which included:

- Reducing the number of councils to 11;
- Bringing in new governance arrangements for councils to ensure fair and transparent decision –making;
- Developing a council-led community planning process with a power of well-being;
- Transferring functions from central to local government; and
- Developing appropriate performance management systems for councils.

The original plan was to deliver the reform package before the elections in 2011, however due to delay surrounding agreement on new boundaries; the date was moved to April 2015. The Sub-committee’s review insisted that the Executive should work with local government to deliver the priorities under the Programme for Government (PfG), which fell to the commitments under the 2011-2015 PfG. Under Priority 5 “Delivering High Quality and Efficient Public Services” one of the commitments was to “*Establish the new 11 council model for Local Government by 2015*”, for which the Department of Environment would hold responsibility. In order to achieve this commitment, the following milestones were listed: 1

The Reform process has encompassed the production and Executive approval of a number of pieces of legislation to include:

- The Local Government (Miscellaneous Provisions) Bill 2010;
- The Local Government (Finance) Bill 2011;
- The Planning (Northern Ireland) Act 2011;
- The Local Government (Boundaries) Order (Northern Ireland) 2013; and
- The Local Government (Severance Payments for Councillors) Regulations 2013.

The Local Government Bill (the Bill), which was introduced to the Assembly on 23rd of September 2012, to receive approval by March 2014², is the final piece of legislation in the reform process. The purpose of the Bill is to provide the legislative basis required to reform the future operation of councils, delivery of council functions and the promotion of communities in shaping their area.

Following the passing of the Local Government Bill, the DOE details that in May 2014 it is hoped (the Secretary of State has agreed that elections will take place in 2014 but the actual date is to be confirmed) that incoming councils during the shadow period will appoint senior staff, strike rates, and approve business and financial plans for the new councils taking on full powers and responsibilities in April 2015.³

1 “Priority 5: Delivering High Quality and Efficient Public Services; Key Commitments”. Programme for Government 2011-15. Belfast: Office of the First Minister and deputy First Minister. 12 March 2012. <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf#page=54>.

2 DOENI, Reform Timetable Indicative timings http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_timetable.htm

3 *ibid*

1.2 Transfer of Functions

According to the Department of Environment, the following functions will be transferred from central to local government:

Planning

- Local development plan functions
- Development control and enforcement

Roads

- Off street parking (except Park and Ride)

Urban regeneration and community development

- Functions associated with physical development (e.g. environmental improvement schemes)
- Area based regeneration (such as Neighbourhood Renewal)
- Some community development programmes for the voluntary and community sectors

Housing

- Registration of houses in multiple occupation
- Housing unfitness responsibilities, including repair and demolition notices

Local Economic Development (transfer from Invest NI)

- Start a Business Programme and Enterprise Shows
- Youth Entrepreneurship (such as Prince's Trust and Shell Livewire)
- Social Entrepreneurship
- Investing for Women
- Neighbourhood Renewal funding relating to enterprises initiatives

Local Tourism

- Small scale tourism accommodation development
- Providing business support including business start up advice along with training and delivery of customer care schemes
- Providing advice to developers on tourism policies and related issues

Other

- Some elements of the delivery of the EU Rural Development Programme;
- Authority to Spot List to enable Councils to add a building to the statutory list on a temporary basis, subject to ratification by the DOE;
- Authority to draw up local lists of buildings that are of architectural and/or historic interest;
- Armagh County Museum;
- Local water recreational facilities;
- Local sports (greater involvement of local government in local sports decisions);
- Donaghadee Harbour

Source: DOE4

2 Overview of Bill

The following section gives brief account of the Bill which consists of 128 clauses divided into 16 Parts with 12 Schedules.

Part 1 clauses 1 and 2 deal with the names of councils, and require all 11 councils to prepare a constitution.

Part 2 is similar to provisions under the Local Government Act 1972, where clauses 3 to 9 are focused on the election of individuals as a councillor, their resignation, disqualification and penalties faced, and any circumstances in which a vacancy may occur. Schedule 1 (disqualification for being elected), and Schedules 2 and 3 (declaration of councillors) give more detailed provisions in relation to this part of the Bill.

Positions of responsibility come under **Part 3** clause 10 which details the arrangements needed to ensure the sharing of positions of responsibility across political parties and any independents represented on a council. Schedule 4 contains more detail on this section.

Part 4 contains clauses 11 to 22 which ultimately deal with the discharge of functions. This includes arrangements for the discharge of functions of councils and the establishment of committees to advise on this. Schedules 5 (appointment of councillors to committees) and 6 (voting rights of co-opted members) are connected to this part.

Part 5 contains provisions for permitted forms of governance which outlines the political management structures available to councils. Clauses 23 and 24 states that a council may use a committee system where all decisions are the ultimate responsibility of the council. Another option is through executive arrangements, where certain decisions will be deferred to a smaller group of councillors within a framework agreed by the council. However the Department has the remit to introduce alternative arrangements.

Part 6 which incorporates clauses 25 to 36 looks at executive arrangements in more detail. This new decision-making framework operates with the separation of decision-making and scrutiny of those decisions. Two broad forms of executive arrangements may be chosen by a council, these include that specified decisions may be taken by the executive of the council. The second option is a cabinet style executive where the executive may discharge certain functions to a sub-committee. The overall objective is to give greater transparency and efficiency to the decision making processes, increasing its accountability through overview and scrutiny committees and giving greater public access to meetings and information (also detailed in Part 8).

Part 7 of the Bill (clauses 40-45) deals with the arrangements for the regulation of the proceedings, meetings and business of the council, which must be detailed in standing orders made by the council. Any decision made by a council must be taken by simple majority which means more than 50 per cent of votes of members present and voting. However, standing orders may stipulate that certain decisions are to be taken by qualified majority i.e. requiring 80 per cent of votes. More detailed provisions on meetings and proceedings is included in Schedule 7.

Part 8 (clauses 46- 55) looks in greater detail at access to meetings and documents. It introduces new arrangements to improve transparency of councils through increased public right of access to meetings and documents (i.e. agenda, minutes, background papers etc.) to be considered at meetings of both the council and its committees. Part 8 should be read in conjunction with Schedule 8 in relation to exempt information for the purposes of access to information.

Part 9, which consists of clauses 56 to 68, is concerned with the conduct of councillors by establishing a new ethical standards framework for local government. This is to be achieved through the introduction of a mandatory code of conduct for councillors and other involved in

council business. The Commissioner for Complaints for Northern Ireland will be responsible for investigations and adjudications of alleged breaches of the code.

Part 10 (clauses 69 to 81) introduces the legislative basis for community planning, a council-led process to provide a framework for councils to work in partnership with other public service providers in their district to plan and implement a shared community vision for the economic, social and environmental well-being and development of the area. This is to be achieved through the production of a community plan. The council must ensure that community involvement is at the heart of the production of the plan, its implementation and review.

Part 11 provides councils with a general power of competence, similar to England and Wales. Clauses 82 to 86 allows councils to do anything, including the developing innovative approaches, that will help benefit the economic, social and environmental wellbeing of their area, providing it is not prohibited by law.

Part 12 (clauses 87 to 105) is concerned with a new framework to support the continuous improvement in the performance and delivery of council services. This includes determining the strategic objectives and issues that are of most importance to those receiving the services. Councils will be responsible for gathering information in order to assess improvements in services and to inform an annual report on their performance based on benchmarks set by themselves or by the departments.

Part 13 requires the Department to establish a Partnership Panel to be made up of Executive Ministers and elected representatives from councils. The main point of business is to discuss and advise on matters of mutual interest and concern, such as the delivery of functions.

Part 14 gives departments powers to supervise councils in the exercise of their functions by requiring councils to produce reports on request, and to hold local enquiries and investigations. Should a council be found to have failed to perform its functions, the Department may intervene and perform the duty the council defaulted on.

Part 15 amends the Local Government Order 2005 to reflect changes in the structure of the Local Government Audit Office by providing for the designation of a member of staff from the NI Audit Office as local government auditor, and should be read in line with Schedule 9. It also provides power for the Department to repeal any provisions in relation to councillor surcharges.

Part 16 covers further provisions such as a transitional scheme for managing rates convergence (covered in more detail in Schedule 10), managing the disposal of contracts and finances, transfer of assets and liabilities and compensation for those affected by the new structures. This section should also be read with Schedules 11 and 12 which lists minor amendments and repeals as a result of the Bill.

3 Other Jurisdictions

The following table gives an indicative overview of legislation in England and Scotland that contains similar elements to the NI Bill.

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
Re-organisation	Local Government Act 1992	<p>The re-organisation of local government in England has taken a more piece-meal approach over the years. The Local Government Boundary Commission for England, set up under the 1992 Local Government Act reviewed the structure of non-metropolitan areas, and recommended that some areas retained the existing two-tier structure while others became single-tier unitary authorities (UAs):</p> <p>County and district councils - county councils cover large areas and provide most public services i.e schools, social services, public transport. Each county is divided into several districts which cover smaller areas and provide more local services i.e. housing, leisure facilities, local planning, water and recycling.</p> <p>Unitary authorities - these are just one level of local government, responsible for all local services.</p> <p>Town and parish councils still exist in some areas and cover a smaller radius. They are responsible for allotments, public toilets, parks and ponds, war memorials, local halls and community centres (sometimes referred to as the third-tier of local government).</p> <p>In April 2009, the government introduced unitary governments in 7 regions in England; reducing 44 local authorities down to 9 with the idea of simplifying the whole system.ⁱ</p>	Local Government (Scotland) Act 1994	<p>Re-organisation began in 1996 where 9 regions and 53 districts were replaced with 32 single tier (or unitary) bodies. All 32 councils are responsible for delivering education, leisure and recreation, planning and building standards, social services, street cleaning, and refuse collection.ⁱⁱ</p>

Main Elements	England	Scotland
	Legislation	Legislation
	Summary	Summary
Decentralisation of power	<p>Localism Act 2011</p>	<p>Community Empowerment and Renewal Bill (2012)</p>
	<p>Local authorities will be the beneficiaries of decentralisation as power is passed to them through the Localism Bill, they will also have a vital role in passing power to communities and individuals.</p> <p>The Localism Bill will scrap several instruments of top-down control:</p> <p>Regional strategies replaced with local plans that reflect the local area's vision.</p> <p>Standards Board regime abolished, allowing councils to devise own regimes to govern propriety, behaviour and empowering local people to hold elected representatives to account.</p> <p>End to the 'predetermination' rules where councillors are prevented from acting on local issues because of the risk of challenge that they are biased.</p> <p>The Government's 'Essential Guide' lists 6 actions that should be taken to make decentralisation happen, these are include:</p> <p>Lift the burden of democracy – by removing costs and control of red tape restricting local action;</p> <p>Empower communities to do things their way – by creating rights for people to get involved and direct development of their communities;</p> <p>Increase local control of public finance – allowing communities to decide how public money is spent and raised;</p> <p>Diversify supply of public services – by ending public sector monopolies, ensuring a level playing field for suppliers, giving people more choice and better standard of service;</p> <p>Open up government to public scrutiny – by releasing government information into the public domain so people can see how their money is spent, used and any effects; and</p> <p>Strengthen accountability to local people – by giving every citizen the power to change services provided to them through participation, choice or the ballot box.</p>	<p>In June 2012, the Minister for Local Government and Planning launched a consultation on proposed Community Empowerment and Renewal Bill to:ⁱⁱⁱ</p> <p>strengthen community participation</p> <p>unlock enterprising community development; and</p> <p>renew communities</p> <p>Proposals include:</p> <ul style="list-style-type: none"> • The possible extension of a community right to buy to include urban land^{iv}; • Giving local people a greater say in local budget decisions; • Giving communities a right to challenge local public service delivery; • Giving local authorities greater powers to deal with/reuse empty homes/buildings; • Allotment legislation to be amended to support communities' 'grow your own' projects; and • To allow Local Authority and RSL tenants to manage their housing.

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
LG Performance	The Localism Act	The Localism Act abolishes the complex and expensive system of targets and performance indicators used by central government to control local government i.e. the Comprehensive Area Assessment, the Local Area Agreements and the Audit Commission.	Local Government in Scotland Act (2003)	<p>The Local Government in Scotland Act 2003 is the key legislation for the modernisation of local government and provides a framework to enable the delivery of better, more responsive public services. This framework includes:</p> <p>A duty to secure “Best Value” in local government service provision. This requires continuous improvement in all aspects of local authority functions, while maintaining a balance between quality and cost, the economy, efficiency and effectiveness, equal opportunities and achieving sustainable development.</p> <p>Reporting on performance outcome to the public.</p> <p>A statutory basis for “Community Planning” to ensure long-term commitment to effective partnership working with communities and between local authorities and other key bodies and organisations.</p> <p>A “Power to Advance Well-Being” to enable local authorities to work in a more innovative and creative way in responding to the needs of their communities. This supports the community leadership role of local authorities in the Community Planning process.</p>

Main Elements	England	Scotland
	Legislation	Legislation
	Summary	Summary
Community Planning/ Neighbourhood Planning	<p>Localism Act</p> <p>Instead of Community Planning, the Localism Bill introduces the concept of Neighbourhood Planning: a bottom-up approach to planning led by the community. Communities play a greater role in finding ways to overcome the pressures that development can create for conservation, local services and amenities. It could also help ensure that development is in line with local needs, provides greater public amenity and more certainty for developers. Communities are able to proceed with local development without the need for a planning application. The neighbourhood decides what a plan contains and identifies the specific site or broad location, the form, size, type and design of new development. It must be in conformity with national planning policies and the strategic policies in the Council's LDF Core Strategy. The plan goes through an independent check, and should it pass it is put to a local referendum; the local planning authority must adopt it if it gets 50% approval.^v</p>	<p>Section 15 of the Act places a duty on local authorities to initiate and facilitate Community Planning in their respective areas.</p> <p>Section 16 places a statutory duty requiring NHS Boards, Scottish Enterprise, Highlands and Islands Enterprise, Joint Police Boards and Chief Constables, Joint Fire Boards, the Strathclyde Passenger Transport Authority (SPTA) and the local authority to participate in the Community Planning process.</p> <p>Under Section 18, guidance produced sets out what is expected of local authorities and associated bodies^{vi} to fulfil the duties and requirements in relation to Community Planning. It is supplemented by more detailed Advice Notes on the effective implementation of Community Planning. They are intended to reflect the evolving nature of Community Planning and to be updated on a regular basis as experience is shared and examples of Community Planning in practice are added.^{vii}</p>

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
General Power of Competence/ Power of Wellbeing	Localism Act	Under Schedule 1, rather than a power of wellbeing the Localism Bill introduces a 'general power of competence' for local authorities – allowing councils to do anything that is not specifically forbidden by law.	Local Government Act in Scotland (2003)	<p>Section 12(1) of the Act gives a local authority the power to do anything that it considers is likely to promote or improve the well-being of its area and persons within that area.</p> <p>Section 20(2) states that this includes the power to:</p> <ul style="list-style-type: none"> • Incur expenditure; • Give financial assistance to any person; • Enter into arrangements or agreements with any person; • Co-operate with, or facilitate the activities of any person; • Exercise any functions of any person; and • Provide staff, goods, materials, facilities, services or property to any person. <p>Previously, local authorities had to check whether legislation explicitly enabled them to engage in a particular activity. The new power is wide-ranging and enables local authorities to do anything that they consider is likely to promote or improve the well-being of their area and/or persons in it.</p> <p>It is classed as a “power of first resort”; rather than searching for a specific power elsewhere in statute in order to take a particular action, the Scottish Executive encourages local authorities to look to the new power in the first instance in taking forward measures likely to promote and improve well-being.^{viii}</p>

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
Code of Conduct	Localism Act	<p>Standards Board</p> <p>The abolition of the Standards Board will revoke the model code of conduct for councillors, and abolish the need for a local authority to have a statutory standards committee. The government's view is that the Standards Board regime was a vehicle for petty and vexatious complaints about councillor's conduct that wasted time and resources, as well as damaging confidence in democracy. The government is committed to the highest standards of conduct by councillors, meaning that while the Standards Board regime is being abolished, they are legislating to make it a criminal offence to deliberately withhold or misrepresent a personal interest. This means that serious misconduct could result in a criminal conviction. A new duty on local authorities to promote and maintain high standards of conduct will be introduced, along with provision for the adoption of a voluntary code of conduct and the powers to revise, adopt, and withdraw such a code.</p>	<p>The Ethical Standards in Public Life etc. (Scotland) Act 2000</p>	<p>Operating since 2003⁸, the codes of conduct are for councillors and the way in which they should conduct themselves in undertaking their duties in the Council. It also imposes on Councils and relevant public bodies a duty to help their members to comply; and establishes a Standards Commission for Scotland to oversee the new framework and deal with alleged breaches of the codes.</p> <p>The code is based on nine general principles:</p> <ul style="list-style-type: none"> • Duty; • Selflessness; • Integrity; • Objectivity; • Accountability and Stewardship; • Openness; • Honesty; • Leadership; and • Respect <p>It considers Councillors conduct at meetings; with council employees; towards remuneration and expenses; accepting gifts and hospitality; confidentiality requirements; towards registration and declaration of interests; lobbying and access to councillors; and statutory decision making processes i.e. planning.^x</p>

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
Electoral Change: Single Transferable Vote			Local Government (Scotland) Act (2003)	This brought the introduction of a form of proportional representation, the Single Transferable Vote (STV), which enables voters to rank local council candidates in order of preference. First elections using this process were in May 2007; election rules are set out under the Scottish Local Government Elections Order 2011. ^{xi}
Remuneration for Councillors			Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 as amended, and the Local Government (Allowances and Expenses) (Scotland) Regulations 2007.	May 2007 also saw the introduction of salaries for elected members. Previously, councillors did not receive salaries, although they did receive allowances, based upon a system introduced in 1995. The basic allowance depended upon the size of the council, and was payable up to a maximum of £7,321. Reason for change was that there was general agreement that the allowance was too low, and that special responsibility allowances were overused by councils; there was also a lack of consistency across the country and a lack of transparency regarding which councillor posts attracted the higher salaries. Since May, 2007, therefore, the basic remuneration for councillors with no significant additional responsibilities in the Council's policy development or decision-making structures has been set at £15,452: this figure is set nationally and applies to the majority (around 62%) of councillors. A limited number of senior councillors - e.g. opposition spokesmen and committee convenors - receive enhanced salaries. ^{xii}

Table Footnotes

- i. http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/Localgovernment/DG_073310
- ii. <http://www.scotland.gov.uk/Topics/Government/local-government/localg/history>
- iii. Consultation document <http://www.scotland.gov.uk/Resource/0039/00394524.pdf>
- iv. Currently the right to buy only applies to rural land.
- v. <http://www.parliament.uk/briefing-papers/SN05838>
- vi. <http://www.scotland.gov.uk/Publications/2004/04/19168/35271>
- vii. Local Government in Scotland Act (2003) *Statutory Community Planning Guidance* <http://www.scotland.gov.uk/Resource/Doc/47237/0028845.pdf>
- viii. Local Government in Scotland Act (2003) *Power to Advance Wellbeing Guidance* <http://www.scotland.gov.uk/Resource/Doc/47237/0028847.pdf>
- ix. This was reviewed in 2009 to reflect changes in the planning regime and in light of experience gained from its first years of operation.
- x. Councillors' Code of Conduct 2010 <http://www.scotland.gov.uk/Resource/Doc/334603/0109379.pdf>
- xi. Scottish Local Government Elections Order 2011 <http://www.legislation.gov.uk/ssi/2011/399/contents/made>
- xii. For more detail on remuneration in Scotland and Wales please refer to Research Paper Councillor Remuneration (1st July 2013) NIAR 413-13. Detail on the Severance Scheme in Republic of Ireland can be found in Research Paper Severance Scheme: Republic of Ireland (1st July 2013).

3.1 Republic of Ireland

An Action Programme for reforms across all the main areas of local government reform in the Republic of Ireland was published in October 2012, titled '*Putting People First*'⁵. The aim of the Action Programme is to implement changes since the present system of local government began in 1890s. It sets out the reforms the Government has approved in relation to local government and its structure, functions, resources, operational arrangements and governance, some of which include:

- Local government structures at sub-county and regional levels are being streamlined with a reduction of around 500 councillors, the replacement of 114 local authorities with 31 integrated authorities organised on the basis of municipal districts within counties. The total number of local authority seats nationally will not go beyond 950, compared with 883 county and city council and 744 town council seats currently.
- Three sets of local authorities such as Tipperary North and South County Councils and the City and County Councils of Limerick and Waterford will be merged after 2014 local elections.
- Municipal districts will be established all over around existing town authorities and larger non-municipal towns and hinterlands.
- Councillors will be elected simultaneously to both municipal district and county council, with members in common instead of the current separate town and county membership whereby municipal towns have double representation.
- Elected members will perform a substantial range of "reserved" functions at district level on a fully devolved basis, including: a local policy/regulatory role in areas such as planning, roads, traffic, housing, environmental services, recreation, amenity and community development; formal civic functions; a general representational and oversight role; and citizen/community engagement. More far-reaching expansion of the local government remit will be pursued on an ongoing basis as the reforms across the local government system take effect.

5 DECLG, *Putting People First* (2012) Full pdf and Summary available at <http://www.environ.ie/en/Publications/LocalGovernment/Administration/>

- There will be a stronger role for local government in promoting economic development because of the economic impact of its functions in general and its local knowledge and leadership.
- Local government will have a central role in the oversight and planning of local and community development programmes.
- Revision of regional structures and functions by replacing the eight regional authorities and two assemblies by three regional assemblies to perform updated strategic functions.
- A rigorous programme of efficiency measures, organisational streamlining and robust performance evaluation of local government is being implemented
- A secure and sustainable system of local funding will be established with provision for a proportion of local authority financial responsibility to support local democratic decision-making
- Support structures for the reform process include a national steering group to formulate implementation details and over-see the process for new sub-county arrangements, a statutory local government committee to provide recommendations on the configuration of municipal districts/electoral areas, and Implementation Groups for the merger of local authorities.
- A programme of legislation will be put in place to provide for the wide range of measures in time for the 2014 local elections.

4 Possible areas for further consideration

The following section considers some of the areas of the Bill that may be of interest for further consideration. This includes some of the main changes that have appeared in the draft Bill since the consultation on the Local Government Reform Policy Proposals in March 2011. For those proposals that have remained the same, some of the issues that were raised during the consultation back in March 2011 have been highlighted. The table in Appendix 1 contains more detail on the proposals in the draft Bill that raised concern during the consultation, and the associated response from the Department. The table in Appendix 1 refers to the following documents:

- The Local Government Bill as introduced to the Assembly on 23rd September 2013.
- The Consultation document on the Policy Proposals
- The Synopsis of Responses to the Consultation
- The Department's Response to the Consultation.

4.1 Main Changes

There have been two main areas of change since the consultation that have appeared in the Bill, these are:

A revised ethical standards regime

The Bill simplifies and streamlines the system where the Commissioner for Complaints deals with all investigations into breaches of the Code. This is opposed to the consultation which suggested the Commissioner deal with higher profile cases and the local council with less serious cases (for more detail see section on Ethical Standards and Code of Conduct)

General Power of Competence

The Consultation document suggested the use of a Power of Wellbeing instead of a General Power of Competence. According to the Department the change was made to the Bill due to lobbying by local government who wanted a General Power of Competence as it is a much wider power. The PoW would require a council to find a statute to allow the council to act, where as the General Power of Competence (under clause 82) gives councils the same freedom as an individual, unless there is a law there preventing them from carrying out the action (for more detail see section on General Power of Competence).

4.2 Subordinate legislation and guidance

The Department will have a large repertoire of subordinate legislation and guidance that will need to be produced in an efficient and timely manner if it is to take effect in time. In its response to the consultation, a number of times the Department stated that concerns would be addressed through detail in further guidance and subordinate legislation, which includes:

- The production of guidance on the publishing of a standardised format for a published constitution in relation to Clause 2.
- The suggested ability, by respondents, that councils should be able to add to the list of decisions to be made by the full council under clause 11 and 12.
- Providing more information and guidelines on the different models to be used for decision making in clauses 23-25.

- The production of subordinate legislation, under clauses 26 and 27, to allow councils to add to the list of council functions that are to remain the responsibility of the executive i.e. those that cannot be discharged to a committee.
- The production of regulations (stated in clause 38) or primary legislation (as suggested in the Department's consultation response) specifying the limited circumstances when council meetings can be closed to the public.
- In relation to voting mechanisms to be used for council decision making i.e. simple and majority voting (clause 43-45), the Department suggested in the consultation that it will produce guidance with further clarification.
- It has also been suggested that the call-in mechanism will be provided under Standing Orders in Regulations.
- The development of training and guidance and subordinate legislation on the role of the Commissioner for Complaints in relation to the councillors' code of conduct in clause 58-61.
- The production of guidance in relation to community planning where clause 77 states councils must have 'regard' to guidance. This was also suggested in the consultation, to which respondents felt was too soft a requirement.
- Subordinate legislation will be produced for the bodies involved in community planning. More detail on the scope of duties on participants in community planning (clauses 78 and 79) will be set out in guidance, while the role of departments in supporting community planning will be underpinned through the Partnership Panel.
- Subordinate legislation will also be produced for functions to transfer from central government to the new councils.
- Subordinate legislation in relation to the role of councils during the shadow period.

Ideally it would be advantageous to have guidance and subordinate legislation produced in time for scrutiny with the rest of the Bill. However the timescale afforded for Assembly scrutiny is tight in order for the Bill to receive Royal Assent in time for elections in April 2014 so as to have it in operation for the Shadow Councils. As guidance and subordinate legislation tends to contain the detail, ensuring its production is in line with the movement of the Bill through the Assembly may prove to be difficult due to the vast amount that has to be produced.

4.3 Costs and Funding

In February 2013, the Executive announced a £47.8million package to help fund and support the implementation of the local government reform programme, which will have three elements to it:

1. £13.8 million over the next two financial years to fund new councils working in shadow form, a councillor severance scheme, capacity building, change management, staff induction and winding up the current 26 councils.
2. Up to £4 million over the next two financial years to cover the cost of council borrowing in relation to ICT costs and systems convergence.
3. An estimated £30million for rates convergence following the creation of the 11 new councils in April 2015 to protect those whose rates bills may have experienced an increase due to merging with councils with a higher level.¹⁸

The Department has stated that there will be a need for all those involved in the reform to look at other funding opportunities to cover the remaining costs of implementation such as early savings from local government's Improvement, Collaboration and Efficiency Programme, and the use of assets and loans. *However the question remains as to whether these suggestions alone will be sufficient, and whether all councils will have adequate resources for this.*

In relation to the financial effects of the Bill, the explanatory notes state that the Bill will place a marginal additional financial burden on the public purse as a result of the introduction of the ethical standards regime which will be the responsibility of the NI Commissioner for Complaints. The Bill provides that the cost to resource the Commissioner's office will be covered by local government which is currently estimated at £380,000. In a briefing to the Environment Committee on 26th September 2013, Department Officials informed that the Commissioner's costs will be apportioned according to size of councils.

4.4 Transfer of functions

Agreeing the full transfer of functions from central to local councils may be an area of the Bill that may generate great discussion. This may be due to concerns in relation to resourcing and funding the transfer in a way that will in fact create a more efficient delivery of public services. For example during discussion of the Planning Act 2011 and the Planning Bill 2012 concerns in relation to the transparency and the resources available to local councils to operate a fair and efficient system were raised, and may continue to be an area of discussion throughout the Bill.

4.5 Ethical Standards and Code of Conduct (Clauses 56-67)

Under clause 56 of the Bill the Department produces the Code of Conduct that all councillors must adhere to. Respondents to the consultation made reference to the situation in England under the Localism Bill where one of the aims was to streamline the standards regime while maintaining high ethical standards whereby a code of conduct is no longer compulsory. The Localism Bill removes the need for councils to adopt a model code of conduct; however each local authority must develop and adopt their own code of conduct. Proposals under the consultation suggested that high profile cases should be retained by the Commissioner, with less serious cases sent to the local council for decision. However some consultees expressed that they would prefer for the Commissioner to make decisions on all cases as a safeguard to vexatious complaints and felt it would be undesirable to have the council or committee adjudicating issues with other councillors.

Initially the Department stated in its response to the consultation that it did not agree with the Commissioner having monopoly over all decisions and that evidence suggested that an ethical standards system is accepted more readily where those that it applies to are actively involved in its application and development. However, since this the Department's opinion has changed as clauses 58 to 61 of the draft Bill simplifies the proposals allowing the Commissioner for Complaints to deal with all investigations and adjudication of breaches. According to the Department this simplification will make the process more efficient and cost effective as it does not require the setting up of standards committees in councils or appointing independent monitoring officers.

4.6 Appeals Mechanism

It is unclear what right of appeal a person has against a decision made by a Commissioner as clauses 58 and 59 states that the person under investigation should be given the opportunity to comment on the allegation put to the Commissioner. However, during their briefing to the Environment Committee (26/09/2013), Department Officials clarified that once the Commissioner makes a decision the person has a right to judicial review. Committee members were concerned by this as judicial review is limited only to challenges regarding unfair procedures, and it was felt this offers too narrow a grounds for appeal.

4.7 Community Planning (Part 10)

Respondents to the consultation felt that a financial limit should be placed on community planning so as not to waste public money and ensure that actions remain focused. The Department informed that community planning will give councils, departments, and statutory bodies the opportunity to align existing funding streams to free up resources. The Department is also of the opinion that placing a financial limit on community planning could inhibit the ability of councils and their strategic community planning partners.

Sub-ordinate legislation is to be produced for statutory bodies in community planning, and detailed guidance on the procedures to be used by councils in performing their duties under Part 10 of the Bill.

For further detail and discussion on Community Planning please refer to Research Paper 'Community Planning' (NIAR 220-13).⁶

4.8 General Power of Competence (clause 82)

The consultation document made reference to the introduction of 'power of well-being' which would enable councils to take actions they aren't authorised to do (within their legal limits) in order to promote or improve the well-being of their district. There was general support for this; however respondents also suggested the use of a general power of competence, similar to England, as an alternative. Within the Bill provisions have been made for a General Power of Competence in clauses 82 to 85 similar to that in the Localism Act in England. In England concerns were expressed that the power of well-being was not being used efficiently. This brought about an evaluation of the power in 2008 by DCLG which found that early uses of the power tended to emphasise economic and environmental goals, with no evidence of local authorities balancing the economic, social and environmental impacts in line with sustainable development principles.⁷

The Department also emphasised that in relation to the use of the power, it will be up to the council to ensure that there are no legislative restrictions to taking a proposed action. As such, the General Power of competence is a much wider power than the PoW, as it gives councils the same freedom as any individual provided the act is within the law.

4.9 Role of the Local Government Auditor

In relation to the Local Government Auditor's role over auditing a council's improvement plan in clauses 96 to 100, some respondents to the suggestions made in the consultation voiced concern over the impact on local democracy and the addition of unnecessary bureaucracy and costs. However in response to these concerns the Department replied that it is of the opinion that the role would not inhibit local democracy or add to bureaucracy as councillors will retain control of the strategic direction of their council and setting of local performance indicators. The Department continued that the role of the Local Government Auditor will give external assurance that any Improvement Plan was prepared within legislative requirements, and would ensure a consistent approach across councils.

For further detail please refer to Research Paper Local Government Audit in Northern Ireland, Scotland and Wales (NIAR 347-13) which gives a comparison of local government audit throughout the UK devolved administrations.⁸

6 Supplied in Committee Pack for 26/09/2013

7 Evaluation of the take-up and use of the well-being power; Research summary; Dept for Communities and Local Government, 2008, p1

8 Supplied in Committee Pack for 26/09/2013)

4.10 Control of councils by departments

Clauses 107 to 109 extend powers to all departments allowing them to request reports, conduct inquiries and intervene in the administration of functions by any council. However upon consultation of this proposal, the majority of responses were against the proposal as they felt that such an extension could diffuse supervisory powers. In fact it was felt that the Department of Environment should act as a channel for other departments who could provide a supportive and advisory role.

4.11 Rates convergence (clause 114)

Issues have been raised in relation to the effects of rates convergence and legacy debt issues and how these are going to be handled within the new councils. The consultation did not address the issue in any great detail, however clause 114 of the Bill proposes a transition scheme for managing rates convergence where there are wide disparities in the level of district rates between merging councils. Giving more detail on the issue in response to an Assembly question, in January 2013, on progress that has been made in funding rates convergence costs within new councils, the Minister at the time, Alex Atwood, stated that there will be a need for government assistance with this issue. He also suggested a need to provide soft loans, potentially with the interest being paid by central government, in respect of a council's funding for the transitional and transformative costs that fall to it. He mentioned the need for upfront assistance (around £40 million) where there are no cash-releasing benefits on the far side of RPA. Finally he explained that rates convergence will have to be managed so that it occurs over a period of time and in a way that does not place a burden on ratepayers.⁹

In addition to this, the DOE website has published,

“There is also a further commitment of an estimated £30million for rates convergence following the creation of the 11 new councils in April 2015. Essentially this will protect those whose rates bills may have experienced a significant increase as a result of merging with councils where rates are currently at a higher level.”¹⁰

According to the Department, the matter is being led by DFP and work is currently in progress. It is anticipated that the way forward will be finally set out around autumn 2014, ahead of financial planning for 2015/16.¹¹

4.12 Transfer of assets and liabilities

Dissolving current councils and creating the new 11 councils will require the transfer of legal title of assets and legal responsibility for any liabilities from the current council to its successor

Clause 121 and Schedule 10 requires the Department and any other department transferring a function, to make a scheme for the transfer of assets, liabilities and staff from a local government body or department to a new local government body. The consultation also proposed the issuing of a certificate by the department whereby interests in, or rights over property, could be clarified. It was also suggested that provision for a continuing interest should contain limiting covenants for property, to allow a council to apply for change of use. The Department informed that once asset transfer is affected, sole responsibility will pass to

9 Assembly Question AQO 3287/11-15 to the Minister of the Environment (21/01/2013) <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/04-February-2013/#AQO%203287/11-15>

10 DOE, Reform FAQs http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_faqs.htm#who_is_funding_local_government_reform?

11 DOE, Reform Timetable http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_timetable.htm

the new council. Where problems might arise with the transferee or recipient there will be a need to develop agreements or covenants to maximise and protect the assets in the broader Northern Ireland context. The Department has begun a process of engagement events with council representatives from each of the 11 new local government districts.¹²

4.13 Statutory Transition Committees

The Department has produced regulations for the set up and establishment of Statutory Transition Committees which will be responsible for the recruitment of a new chief executive to its council. However concern has been expressed following detail given on the recruitment process for chief executives. In its briefing to the Committee on the 12th September 2013, the Department informed that it will publish guidance in September. It is important that guidance is produced in time with the operation of this, which is needed in advance of councils adopting shadow form in April 2014.

Political Representation

During the Departmental briefing to the Environment Committee on the 26th September 2013, members raised concern in relation to ensuring political representation on the new councils due to problems experienced with the set-up and formation of STCs. However, Department officials informed that the provisions in the Bill are much stronger than the provisions in the STC Regulations, suggesting that the problems experienced with STCs should not arise in a similar way.

4.14 Shadow councils

Elections to the new councils will take place in mid-2014. Following the election of the new councillors, the eleven new councils will operate in shadow form while the 26 councils and their members will continue to be responsible for service delivery to the ratepayer (such as waste collection, registration of births, deaths and marriages; leisure centres etc.). The 11 new councils will build upon the work of the Statutory Transition Committees in preparing for the transfer of the full range of powers and responsibilities in April 2015, which will include:

- Agreeing a striking of the rate for 2015/16;
- Agreeing a budget for the first financial year; and
- Agreeing Corporate and Business Plan of the new councils;

Further clarification on the roles of new councils during the shadow period is needed and according to the Department will be provided in subordinate legislation.¹³

4.15 Council headquarters

Agreeing the location of headquarters in each of the new councils where old councils have had to amalgamate may prove to be difficult in the interim. Clarification on the process and procedure to be used may be needed to ensure full agreement by each council.

12 For more information on the workshops see 'Reform Inform' Issue 11 (July 2013) http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_newsroom.htm

13 Assembly Question AQO 4037/11-15 to the Environment Minister (2/05/2013)

4.16 Council Employees as Members

During the briefing by the Department to the Environment Committee, Members raised concern with regards to employees of a council also being a member of the council. Members felt that the Bill is unclear on determining the level where employees cannot be a member i.e. does it stop at Chief Executives, Directors, heads of departments etc. or lower? It is clear that clarification on this issue is needed, whether it is addressed through regulations and whether these would be consulted on. Another issue that was raised, and needs further clarification, is in relation to dealing with declarations of interest from an individual who is acting as both a member and employee.

4.17 Gender Equality

The issue of addressing gender equality was raised during the consultation as the proposals did not contain any details on how to ensure it. It was highlighted that there is a need for decision making and policy development to be informed by both men and women, and the Equality Commission raised the issue of participation by under-represented groups.

In response the Department stated that in order to meet statutory obligations, councils should take the steps necessary to ensure that their policy development is informed by all groups in society. The Department continued that while appreciating that addressing under-representation of specific groups in elected members on councils is a matter for political parties, the Department is investigating whether it has the legislative authority to introduce gender quotas for election candidates.

This issue was also brought up during the consultation on Statutory Transition Committees, where respondents commented that provisions should be made to address gender issues in the representation on Statutory Transition Committees.¹⁴

A further consideration is in relation to how gender issues may be affected by the bigger council models, and how this may in turn effect representation amongst elected members to the Northern Ireland Assembly.

4.18 Cohesion and Integration

In an Assembly question asked to the Minister at the time, Mr Alex Attwood, in relation to plans to ensure that Cohesion, Sharing and integration (CSI) plan is embedded within councils following the reform of local government, the Minister stated his support this. He continued that options for how this might be rolled out will be considered and that he intends to monitor what the political parties and OFMDFM may, or may not be doing. Finally he stated that should it be needed, an RPA/Council initiative will be considered.¹⁵

4.19 Capacity Building

Preparing local and central government staff and councillors for their new roles is an important element in the transfer of functions. While the Department has stated that £13.8million will partly go towards capacity building, the Bill itself does not cover capacity building and how it will be rolled out and achieved. In particular, it is important to ensure that all levels of staff involved in producing community plans are provided with sufficient capacity building, this includes staff at local and central government plus the voluntary and community sector. Further detail and guidance is required.

14 DOE, Statutory Transition Committees Synopsis of Responses

15 NIAQ (15/01/2012)

Appendix 1

The following table summarises the clauses of the Local Government (Northern Ireland Bill) and any consideration of the corresponding proposal during the consultation exercise. The table makes reference to the Consultation Document on Policy Proposals, issued by the Department of Environment in November 2010, the accompanying Synopsis of Responses, the Department's Response and finally the Bill as introduced to the Assembly.

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Constitution of councils</p> <p>(Clause 2) Bill requires councils to prepare and publish a constitution detailing how it operates i.e. standing orders; code of conduct and other details the Dept. may require.</p>	<p>Respondents were in agreement with this proposal and also suggested the need for a standardised format for a published constitution to be established.</p>	<p>Departments stated that detail of this would be addressed through guidance, and is therefore not included in the primary Bill</p>
<p>Positions of responsibility</p> <p>(Clause 10) This lists the positions of responsibility to be held, such as the chair and deputy chair of the council and council committees, members of cabinet style executive and positions on external bodies.</p>	<p>Some respondents felt that specification of positions should be a matter for each council, given the potential for differing structures. It was suggested that guidance needs to be provided on a potential list.</p>	<p>To ensure that power and responsibilities are shared across the political parties and any independents on a council, the Department considers that some form of specification of the positions is required. The Department will limit the specification to broad categories (i.e. to positions on the council and its committees, and appointments to external bodies). Councils would be able to add to the list of positions if they considered this appropriate.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Arrangements for discharge of functions</p> <p>(Clause 11+12)</p> <p>A council may have any of its functions discharged by a committee, sub-committee, and officer of council or another council. Committees and sub-committees can also delegate to lower tiers. However making district rates, borrowing money, disposing/acquiring of land cannot be devolved to a committee and must be done by the full council. This is the same for all executive arrangements.</p>	<p>A number of councils expressed the view that councils should be able to add to the list of decisions to be made by the full council.</p>	<p>The Department stated that it accepts the view that councils should be able to add to the list of decisions and will address this through subordinate legislation on the functions of devolved decision-making structures.</p>
<p>Permitted forms of Governance</p> <p>(Clause 23 +24)</p> <p>These set out the forms of political governance a council may operate for its decision-making. These are: executive arrangements (creation of an executive of the council under which executive decisions are made), committee system (for the discharge of functions under Part 4 or prescribed arrangements (which involves the Dept. prescribing alternative forms of governance to be adopted by a council). Executive Arrangements (Clause 25) The executive must be either: A committee to be known as a "cabinet-style executive" where executive decisions are taken by a committee of councillors or where specific decisions are taken by more than one committee known as a "streamlined committee Executive"</p>	<p>The consultation also suggested the traditional committee structure as a possibility as well. Some respondents expressed concern about the cabinet style model. Some preferred a single model across all councils to keep consistency. It was also suggested that options should not be limited to the models suggested.</p>	<p>The Department responded that concerns with the cabinet style may diminish as councils get used to new ways of operation. A single structure would remove the autonomy for councils to determine the most appropriate arrangements for their circumstances. Defining specific models in legislation will ensure that appropriate safeguards are also put in place. The Department will provide further information in guidelines.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Functions which are responsibility of an executive</p> <p>Clause 26 and 27 This provides the mechanism for determining which council functions are to be the responsibilities of the executive.</p> <p>Allocation and discharge of executive functions (Clause 28 to 30)</p> <p>These set out how decision making taken under executive arrangements (i.e. by the streamlined committee model or the cabinet-style model), can discharge/devolve executive functions to committees. Functions can also be discharged by another council or joint committee.</p> <p>Overview and Scrutiny (Clauses 31 to 37)</p> <p>These require a council to set up overview and scrutiny committees.</p> <p>Clause 32 describes how they may carry out their functions and can appoint sub-committees. Clause 33 requires the council to designate an officer to perform these functions. Clause 34 and 35 allows for members and non-members of the scrutiny committee to refer matters to it. Clause 36 and 37 refers to the production and publishing of reports and recommendations made by the scrutiny committee.</p> <p>Executive meetings and access to information</p> <p>Clause 38 and 39</p> <p>The executive can choose whether to meet in private or public, however, through regulations the Department can specify which meetings of the executive or its committees must be open or closed to the public. Decisions made in private must be recorded along with supporting information and must be made available to the public.</p>	<p>There was widespread support for this, however respondents suggested the following should be included in the list:</p> <ul style="list-style-type: none"> • agreeing the governance arrangements; • agreeing the corporate, operational and community plans; • setting budgets; • striking the rate; and • requests for borrowing, acquisition/disposal of land or property etc. <p>A number of councils expressed the view that councils should be able to add to such a list.</p> <p>The consultation document gave options of a single model for decision making or the use of alternative structures. Therefore it was suggested by respondents that flexibility would be needed for the determination of the scrutiny process.</p> <p>The consultation suggested the use of a call in procedure to review decisions made under devolved arrangements.</p>	<p>The Department responded that it accepts the idea of letting councils add to the list, and will address this in subordinate legislation.</p> <p>In the light of comments received, the Department proposes to provide flexibility for councils to determine the nature and operation of their scrutiny arrangements where they choose to introduce devolved decision-making. The</p> <p>Department considers that it should be a matter for a council to determine whether it appoints a single committee or a small number of thematic committees.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Meetings and Proceedings</p>		
<p>General and standing Orders (Clauses 40 – 42) These clauses make provision for the timing and general arrangements for meetings of the council, details of which are set out in Schedule 7. Councils are required to make standing orders to regulate proceedings and business of councils and committees.</p> <p>Decision –making(Clauses 43 – 45) These specify the voting mechanisms to be used by councils for decision making, which are: simple majority (> 50 per cent votes) and qualified majority voting (80 per cent votes)for decisions on standing orders.</p>	<p>The consultation suggested the use of qualified majority voting for specified strategic decisions such as decision-making structures; major capital projects; and programmes that impact across a number of wards. While respondents agreed with this, some felt that simple majority should also apply.</p>	<p>The Department stipulated that further clarification would be provided in guidance.</p>
<p>Access to meetings and documents of the Council</p>		
<p>Clauses 46-51 These clauses make provisions in relation to public access to council meetings, reports, minutes etc. Exclusions for public access are applied to meetings discussing confidential information. However all material discussed at a meeting is to be accessible by any council member</p> <p>Clause 53 Sets out the offences for obstructing access to information etc</p>	<p>The consultation linked the production of a constitution (provided in clause 2) with increasing transparency and openness to council operations. Under the Local Government Act 1972, subject to conditions, all meetings are to be open to the public. Respondents suggested that private meetings should be kept to a minimum.</p>	<p>The Department responded that primary legislation will specify the limited circumstances when council meetings can be closed to the public.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Code of conduct</p> <p>Clause 56 Issued by the Department the NI code of Conduct for Councillors specifies the principles governing councillor's conduct. It must be consulted on with councils, officers, councillors etc and approved by the Assembly.</p> <p>Clause 57 The Commissioner for Complaints will issue guidance in relation to councillor's conduct.</p>	<p>The majority of respondents were in agreement of similar proposals in the consultation; however some highlighted the situation in England since the introduction of the Localism Bill, where one of the original aims was to streamline the standards regime while maintaining high ethical standards whereby a code of conduct is no longer compulsory. Respondents also suggested that the code should expand to council officials due to the transfer of planning to local councils.</p>	<p>The Department was of the opinion that the principles suggested in the consultation document, which mirror those used in the Northern Ireland Assembly, are appropriate and will be in place before functions are transferred to councils. The Localism Bill removes the need for councils to adopt a model code of conduct, however, each local authority must adopt their own code to maintain high standards of conduct.</p> <p>The Department informed that training and guidance will be addressed by the Department in due course.</p>
<p>Clause 58-61 Breaches of code are to be investigated by the Commissioner who must produce a report on the findings. The subject of investigation must be given opportunity to comment on allegations put to the commissioner.</p> <p>Clause 62-64 On making a decision, the Commissioner can decide whether a councillor should be censured, suspended, or disqualified from being/becoming a councillor. The Commissioner can make recommendations to a council upon which the council must report the actions it will take from the recommendations and provide this to the Commissioner and the Department.</p> <p>Clause 65 The Clerk of the council must maintain a register of interests of councillors that must be publically available.</p> <p>Clause 67 The estimated amount of the expenses of the Commissioner's office is to be apportioned between all councils in NI. Timing and methods of payment will be covered in regulations.</p>	<p>There was general approval of the Commissioner having involvement in investigation of breaches. However respondents were in favour of the proposal in the consultation of a two tier system where the Commissioner would be responsible for an initial sift to determine whether a case should be referred to the council for local resolution or retained by the Commissioner's Office (serious/high profile cases). Others wanted the Commissioner to make decisions on all cases as a safeguard to vexatious complaints, and felt it would be undesirable to have the council or committee adjudicating issues with other councillors. It was also suggested as an alternative that a new shared legal service could be set up through the Improvement, Collaboration and Efficiency (ICE) programme.</p> <p>The consultation also asked whether the code of conduct should apply to co-opted members. In response, respondents asked for clarity on "co-opted member" and the additional principle of stewardship was suggested to be included.</p>	<p>In relation to the work of the Commissioner, more detail will be provided in guidance and subordinate legislation which will be consulted on. The Department agreed that all complaints should be sent firstly to the Commissioner for Complaints to determine how they should be investigated as it would be the use of an existing and experienced skill.</p> <p>In relation to the Commissioner having the monopoly over decisions, the Department informed that other jurisdictions within the UK have confirmed that an ethical standards system is more readily accepted if those it applies to are involved in its application and development. It detailed that for complaints of a serious nature, adjudication would be retained by the Commissioner, and therefore there would be no direct involvement by the council or a council committee.</p> <p>The Department informed that a definition of the term "co-opted members" will be included in the proposed mandatory Code of Conduct, which will be issued for consultation; this will also include levels of sanctions. Stewardship, which generally means imposing a duty of prudent use of resources within the law, may be covered under the principles of accountability, integrity and honesty.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Community Planning</p>		
<p>Clause 69 places a duty on councils and community planning partners (to be defined by the Department in Clause 70) to initiate, maintain, facilitate and participate in community planning for their area. Community planning is also defined as developing long term objectives for improving economic, social and environmental well-being to achieve sustainable Development (also see Research Paper 'Community Planning' NIAR... which discusses community planning in more detail). The council and community planning partners must produce a community plan with objectives and actions (Clause 74). The plan must be reviewed every 4 years (Clause 72 and 73). The Council and partners must monitor the progress towards meeting the objectives and should publish a statement every 2 years on the progress being made. Clause 76 requires a council and partners to take all views in into account such as local residents, non-residents who receive council or partner services , voluntary organisations and those with business interests. The Department will produce guidance that councils must have regard to (Clause 77).</p>	<p>It was felt that clarity is needed on what community planning entails and what adequate resources are required, and that a financial limit should be placed on community planning so as not to waste public money to ensure that actions remain focused. Some respondents were disappointed with the suggestion that councils would only have to 'have regard' to the detail provided in guidance. It was also suggested that it should allow for flexibility at local level, that it should include material on standards of engagement with the community, provision for local and thematic community plans, and steps to ensure all plans are represent all community bodies.</p>	<p>In relation to resources, community planning will provide the opportunity for councils, departments and statutory bodies to more effectively align existing funding streams to free up resources. The Department feels that placing a financial limit on community planning could inhibit the ability of councils and their strategic community planning partners. The Department suggested that the scope of community planning and engagement will be addressed in the legislation and through the guidance that will be issued by the Department.</p>
<p>Clause 78 places a duty on all Departments in NI to promote community planning. The Department can establish corporate bodies to co-ordinate and further community planning (Clause 79)</p>	<p>Respondents to the consultation were of the opinion that the role of departments and statutory bodies should be strengthened and extended from just "participating" in community planning to "delivering" it. It was suggested that they should bring resources and senior management commitment to the process and those that fail to participate and engage should be liable to sanctions.</p>	<p>The Department stated in its response to the consultation that more detail on the scope of the duties on participants will be set out in community planning guidance. The role of departments in supporting community planning will be underpinned through the Partnership Panel.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Clause 80 Amends the Planning Act 2011 and creates a statutory link between community planning and spatial planning.</p>	<p>Respondents highlighted the need for a clear statutory link between community planning and land-use planning. They expressed the view that the integration of both processes can help achieve more sustainable and cohesive communities. This issue was also raised during the consultation on the Reform of the Planning System.</p>	<p>The Department agreed that a link with local development plans is important. As indicated during the Assembly passage of the Planning Act, a statutory link between community plans and local government development plans will be provided in the Local Government (Reorganisation) Bill.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>General powers of councils</p> <p>Clause 82 gives a general power of competence to councils. This means that a council can carry out innovative actions that a council would not normally do. There are no limits to how this power can be used, only that it can't be used outside NI.</p> <p>There are however boundaries to this power (Clause 83) requiring councils to act in accordance with statutory limitations/ restrictions, for example, councils cannot contract out/delegate their functions.</p> <p>Under clause 84 councils cannot charge for providing a service under the general power. However councils can charge up to full cost recovery for services they are not required to provide, where the person has agreed to those services being provided.</p> <p>The Department can free up the use of the general power if a council is restricted due to legal reasons. However the Department can also restrict what a council can do under the general power or enforce conditions (Clause 85). The Department must consult with those affected before using these powers.</p> <p>The Department must also ensure whether certain conditions listed under clause 86 have been met before using these powers.</p>	<p>The consultation document set out proposals for the introduction of a 'power of well-being' which would enable councils to take actions they aren't authorised to do to promote or improve the well-being of their district. Similar to the power provided in the Bill a council would not be able to use the power to do anything it is legally restricted to do.</p> <p>While there was general support for a power of well-being, suggestions were made for a general power of competence as an alternative.</p>	<p>Making reference to the general power of competence introduced in England under the Localism Act, and replacing the power of well-being, the Department stated that it proposes to introduce a similar power for councils here.</p> <p>Concerns were expressed in England that the power of well-being was not being used effectively. An evaluation in 2008 found that early uses of the power tended to emphasise economic and environmental goals. There was no evidence of local authorities balancing the economic, social and environmental impacts and in line with sustainable development principles.¹¹</p> <p>The Department explained that in relation to the use of the power it will be up to the individual council to ensure that there are no legislative restrictions to taking the proposed action. The council will be responsible for examining any resourcing implications.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Performance improvement</p> <p>Under an improvement general duty, Clause 87 requires councils to make arrangements to secure continuous improvement when exercising its functions in terms of strategic effectiveness; service quality; fairness (equity); sustainability; efficiency etc. (all of which are defined in clause 89).</p> <p>Clause 88 proposes that each council set itself improvement objectives for each financial year, covering the aspects defined in clause 89.</p> <p>Explanations of the aspects and how they will operate will be provided in guidance. The Department has the power to amend, add or remove aspects.</p> <p>When setting improvement objectives, councils must consult with rate payers, service users, and those with an interest in the district (clause 90).</p>	<p>The consultation referred to a 'best value duty' to secure best value through continuous improvement of council's performance of functions. Suggesting a balance be maintained between quality of performance and the cost with regard to efficiency, economy and equity; and duties should contribute to achievement of sustainable development etc.</p> <p>Respondents suggested that a framework should be driven by local government rather than central. Some councils felt that such a duty is not required for the delivery of continuous improvement.</p>	<p>The Department considers that, in order to ensure the effective delivery of continuous improvement across all councils a broad legislative framework is necessary. This framework will build on relevant duties on councils that already exist including sustainability and social clauses.</p>
<p>Performance indicators and standards</p>	<p>Similar proposals for performance indicators and standards were put forward in the consultation. There was majority support from respondents; however some expressed that PIs should be kept to a minimum with councils having freedom to add to PIs. It was felt by some that this is a local issue.</p>	<p>Department intends to undertake further research to determine the most appropriate mechanisms for developing and agreeing any regionally determined performance indicators with local government. Individual Ministers will determine if a regional Performance Indicator should be applied to a function that has been transferred to local government but for which they retain policy responsibility. The comments made about keeping these to a minimum are noted. Councils have, and will continue to have, the freedom to determine local PIs's.</p>
<p>Clause 92 gives the Department the power to prescribe performance factors (performance indicators) and standards against which a council's performance will be measured. Different indicators and standards can be set for different councils. The department must consult with councils, bodies etc before making these specifications.</p>	<p>Similar proposals for performance indicators and standards were put forward in the consultation. There was majority support from respondents; however some expressed that PIs should be kept to a minimum with councils having freedom to add to PIs. It was felt by some that this is a local issue.</p>	<p>Department intends to undertake further research to determine the most appropriate mechanisms for developing and agreeing any regionally determined performance indicators with local government. Individual Ministers will determine if a regional Performance Indicator should be applied to a function that has been transferred to local government but for which they retain policy responsibility. The comments made about keeping these to a minimum are noted. Councils have, and will continue to have, the freedom to determine local PIs's.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Improvement planning and information</p> <p>Clauses 93 to 95</p> <p>These clauses require councils to collect information each financial year to measure their performance against a previous year and compare it with other councils/ public bodies.</p> <p>Information on performance must be published before 31 October following each financial year. Councils must also publish any report by the Local Government Auditor (see Clause 96)</p> <p>Council's must publish an improvement plan which covers the general duty, objectives, and performance indicators and standards.</p>	<p>There was majority support for the publishing of an improvement plan; however concerns were expressed in relation to the Department's role in specifying the form and content of such reports. It was expressed that the Department should have an advisory role rather than prescriptive.</p>	<p>Ensuring a measure of consistency and comparability in the reports across all councils is a key feature of the new framework to provide accountability to ratepayers.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Improvement audits and assessments</p> <p>Clauses 96 to 100</p> <p>The Local Government Auditor is required to carry out an audit to assess whether a council has carried out its duties of publication of improvement information (clause 95), and whether a council is likely to meet the requirements in the coming year i.e. a forward-looking assessment (clause 97). This is to be published by way of a report for each council each year (clause 98). The council must respond to the report stating the actions it will take and when, which must go into the next Improvement Plan (clause 99)</p> <p>Clause 100 requires the Auditor to also publish an annual improvement report summarising findings and determining whether a department needs to intervene and use powers should a council fail to perform (see clause 103)</p> <p>Special Inspections: Clauses 101 to 102</p> <p>These allow the Auditor to conduct a special inspection of a council where the Auditor believes a council has failed to comply with this Part. The Auditor must produce a report for each special inspection and may recommend that the Department uses its powers of direction where it believes a council has failed to comply.</p>	<p>In relation to the Auditors role over auditing the improvement plan, responses were mixed. Half supported the idea while others were concerned over the impact on local democracy and addition of unnecessary bureaucracy and costs.</p> <p>Of those who supported the proposal, some felt that the role of the auditor should include recommendations as to performance indicators, and ensuring council plans include promotion of equality.</p>	<p>The Department is of the opinion that the role would not inhibit local democracy or add to bureaucracy as councillors will retain control of the strategic direction of their council and setting of local performance indicators. The role of the auditor will give external assurance that any Improvement Plan was prepared within legislative requirements, and ensure a consistent approach across councils.</p> <p>In relation to the suggestion that the auditor should make recommendations about performance indicators the Department feels that in fact the auditors contribution to performance improvement would strengthen the framework by providing the opportunity for shared learning.</p>
<p>Powers of direction: Clause 103</p> <p>This gives the Department powers to intervene in and direct a council which is failing, or is at risk of failing to comply with this Part of the Bill. It includes the actions a Department may use such as directing a council to prepare/amend and improvement plan; conduct a review of its exercise of particular functions etc.</p>	<p>Majority were in support of this proposal in the consultation. However some felt it should be used as a method of last resort or that it should be limited to the Environment Minister. Others felt that powers under section 129 of the Local Government Act (Northern Ireland) 1972 are sufficient.</p>	<p>The Department stated that it would address issues in relation to the timeframe for the use of the power in the primary legislation.</p> <p>It was also stated that powers should be available to all Ministers as other Departments will have policy responsibility for functions being delivered by councils.</p> <p>The Department is also of the opinion that the 1972 Act is not appropriate for the new framework.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Power to modify statutory provisions and confer new powers: Clause 104</p> <p>The Department can modify or exclude the application of enactments which apply to councils if they obstruct a council from complying with this Part.</p>	<p>Not discussed in consultation</p>	<p>Not discussed in consultation</p>
<p>Partnership Panel</p> <p>Clause 106</p> <p>Department is to establish a Partnership Panel and to appoint members who are to comprise NI Ministers and members of district councils. The Panel will advise Ministers on matters affecting their functions, make representations and give advice on matters affecting those involved in local government.</p>	<p>The consultation received widespread support for the proposal of a Partnership Panel to formalise relations between central and local government. Some respondents were of the opinion that the Panel should either include external representatives or engage with relevant interests on specific strategic issues. It was felt that the remit should include delivering customer focused services and collaboration across boundaries, and support arrangements should include professional advisors from local government.</p>	<p>In response the Department stated that it will work with local government in developing the practical operation of the Partnership Panel to ensure the collective consideration of strategic issues which will be strengthened by engagement with relevant organisations.</p> <p>The Department will also liaise closely with local government and other interested parties to develop a concordat to underpin a partnership approach between the Executive and councils.</p> <p>It is envisaged that the appointment of an elected representative, from each council (to represent their council as a whole) to the Panel will be made by the Department of the Environment following consultation with appropriate local government associations.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Control of councils by NI Departments</p> <p>Clauses 107-109</p> <p>The following clauses are concerned with extending sections 127-129 of the Local Government Act 1972 to all departments and not just the DOE.</p> <p>Clause 107: allows any department to require a council to make a report and give information on carrying out its functions, upon which the council has a duty to abide.</p> <p>Clause 108: provides power for any department to instigate an inquiry or investigation into administration of functions of any councils, committee or sub-committee.</p> <p>Clause 109: allows for any department to intervene in the operation of a council where it has failed to carry out its functions.</p>	<p>Responses to the consultation were mixed where majority were against the proposal as it was felt that such an extension could diffuse the supervisory powers and that the Departments should act as a channel for other departments who could provide a supporting and advisory role.</p>	<p>The Department did not agree with these concerns and stated that the proposed Partnership Panel, and any concordat between the Executive and local government, can provide a mechanism for raising concerns about the specific uses of the powers. It will be important for the supervision powers to be made available to those departments transferring functions to local government and that the department which has policy responsibility should have the supervisory power. The DOE is of the opinion that it does not need to be involved in such circumstances.</p>
<p>Amendments</p>		
<p>Clause 110 amends the Local Government Order 2005 by providing for the designation of a member of staff of the NI Audit Office (NIAO) as the local government auditor, and for NIAO staff to assist with functions.</p> <p>Clause 111 provides power for the Department to repeal any provisions in relation to councillor surcharges</p>		

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Miscellaneous</p> <p>Rates convergence Clause 114 amends the Rates Order 1977 to give a transition scheme for managing rates convergence where there are wide disparities in the level of district rates between merging councils</p> <p>Clause 115 amend the Local Government (Boundaries) Order 2012 to give clarity on which hereditaments new councils will have power to make a rate before they take on full responsibility for all functions in April 2015.</p> <p>Non-commercial considerations Clause 116 allows the Department to specify a matter that should cease to be a non-commercial consideration for the purpose of council contracts.</p> <p>Disposal of contracts and finances Clause 117 amends the Local Government (Miscellaneous Provisions) Act 2012 to supplement the controls on existing councils in the run up to reorganisation. This includes controls of the borrowing and reserves on existing councils by the new councils whilst operating in shadow form (See Shadow Councils).</p>	<p>There was concern expressed in relation to the effects of rates convergence and legacy debt issues and how these are going to be handled within the new councils. The Department proposes that existing district councils should be able to incur expenditure on behalf of their relevant successor councils. This would be recoverable from the new councils once they are established.</p> <p>The consultation also proposed the issuing of a certificate by the department whereby interests in, or rights over property, could be clarified. Respondents commented that any provision for a continuing interest should contain limiting covenants for property, to allow a council to apply for change of use.</p>	<p>In response to an Assembly question in relation to what progress has been made in funding rates convergence costs within the new councils, Minister Attwood stated that there will be a need for government assistance with rates convergence, and a need to provide soft loans, potentially with the interest being paid by central government, in respect of a council's funding for the transitional and transformative costs that fall to it. He also suggested the need for upfront assistance (around £40 million) where there are no cash-releasing benefits on the far side of RPA. Finally he explained that convergence will have to be managed so that it occurs over a period of time and in a way that does not place a burden on ratepayers.ⁱⁱⁱ</p> <p>The Department agreed that criteria and controls need to be put in place in relation to any expenditure to be incurred on behalf of the new councils. It suggested that these issues will be addressed through changes in the legislation.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Transfers of assets and liabilities</p> <p>Clause 121 and Schedule 10 requires the Department and any other department transferring a function, to make a scheme for the transfer of assets and liabilities and staff from a local government body or department to a new one.</p> <p>Compensation</p> <p>Clause 122 requires compensation to be paid to anyone suffering loss of employment or diminution of emoluments as a result of the new council or the transfer of functions from central to local government. Supplementary</p> <p>Clause 123 provide departments with power to make incidental, consequential, transitional or supplemental provisions for reorganisation and transfer of powers.</p>		<p>The Department responded that once asset transfer is affected, sole responsibility will pass to the new council. Where problems might arise with the transferee or recipient there will be a need to develop agreements or covenants to maximise and protect the assets in the broader Northern Ireland context. DSD is running local government reform workshops with new council clusters The Department has begun a process of engagement events with council representatives from each of the 11 new local government districts.^{iv}</p>

(Footnotes)

- i. A committee established under the principle of checks and balances to scrutinise the work of devolved decision-makers and make recommendations in relation to council policy review.
- ii. Evaluation of the take-up and use of the well-being power; Research summary; Dept for Communities and Local Government, 2008, p1
- iii. Assembly Question AQO 3287/11-15 to the Minister of the Environment (21/01/2013) <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/04-February-2013/#AQO%203287/11-15>
- iv. For more information on the workshops see 'Reform Inform' Issue 11 (July 2013) http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_newsroom.htm



Northern Ireland
Assembly

Research and Information Service Briefing Note

Paper XXX/XX

19 November 2013

NIAR 000-00

Suzie Cave

Single Transferable Vote: Operation in the new councils

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Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Introduction

The following paper is a supplementary to the briefing note on Single Transferable Vote (STV). Information on how STV may operate in the new councils was discussed with Departmental Officials. Detail on the specific operations of STV has not been confirmed as yet; therefore information provided in this paper may alter in any resulting guidance to come.

To fill positions of responsibility, councils will have to choose between nomination using D'Hondt or St Lague (both of which are very similar but use different formulas) or electing through Single Transferable Vote. Councils will decide on the model using Qualified Majority Vote (80%), however should agreement not be reached, then D'Hondt will be the default model.

In Practice

It is not clear as yet how STV will operate at the practical level within the new councils. However through discussions with Departmental Officials it is understood that STV will have to operate at a far larger scale compared to how it is used currently, this is due to the number of council positions of responsibility that have to be filled. These are listed in the original briefing note on STV.

There will be two main stages to election through STV:

Stage 1: Councils will nominate suitable candidates for a particular position.

Detail on how this will operate is not available as yet, however during discussion it was suggested that candidates will have to agree to be nominated (a mechanism will have to be provided to ensure this i.e. a proposer and a seconder). Whether parties will put candidates forward through their nominating officer is not known at this stage – however this may be thought about under Part 2 of Schedule 3 which states

“(3) The Department may by order make provision about elections under this Part or any matter relating to them.”

Stage 2: STV will be used to elect one of the nominated candidates for a particular position.

The process will be run over a four year period. This means councils will use STV to elect a person for a position for each of the four years e.g. Council Chair for yr.1, then again for yr.2, yr.3 and then finally for yr.4. This will be the same for each of the positions of responsibility requiring a separate STV to be run four times for each position.

It is not known at this stage whether the process will use a series of ballot papers.

The difference between how STV will operate at council level compared to Assembly elections is the fact only one person needs to reach the quota in order to fill the position instead of six. Should no one reach the quota, the candidate with the lowest votes is dropped and their votes redistributed. This process is continued until one candidate reaches the quota. Should more than one candidate reach the quota, it is not clear as yet whether the person with the highest votes is given the position. However it was suggested by the Department that the formula for calculating the quota could possibly be adjusted to ensure that it is only possible for one person to reach the quota (for the Assembly elections it is used to allow for six people to reach it).

Candidates can put their name down for a number of different positions- however they can only be elected for one.

Which Model?

At this stage it is hard to speculate which of the models councils will choose to use. The Department is however of the opinion that D'Hondt and St Lague may run the risk of smaller parties and independents forming a coalition that may in fact end up larger than the main party- however this may not be welcomed by the majority of the voting public. With STV, groups/parties may come together in more of an informal way by agreeing to support one another for a particular position. Therefore it was suggested by the Department that STV could allow for more flexibility to elect candidates across all parties, giving members the opportunity to vote for the most suitable candidate for a particular post, rather than restricting it to a specific party for a particular position (as is the case more so with D'Hondt).

However, because in the past D'Hondt has been known to favour the larger parties, the Bill aims to address this by running the process over a four year period to give smaller parties an opportunity to get a position of responsibility. Also, the Department has found that in the past the use of D'Hondt has varied to some degree across councils, therefore the Bill aims to create a form of consistency to ensure there is less variation from one council to the next.

The Department is currently working on further guidance for the operation of STV. The Bill gives more detail on the operation of D'Hondt and St Lague as both processes are more familiar; in fact the Bill aims to tighten up the use of D'Hondt and make it more of a fair process for all parties concerned. However, the main example of how STV operates is at Assembly and European elections which are not applicable at council level. Due to this, the Department informed that it appears that STV within the new councils will need to operate differently than it is currently understood to operate.



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

20 November 2013

NIAR 000-00

Suzie Cave

Commissioner for Complaints in other jurisdictions

This paper considers the roles of the Commissioner for Complaints in other jurisdictions, in particular, the system used under the Localism Act in England; however it also briefly explores the approaches used in Wales and Scotland.

Introduction

The Local Government provides for the production of a Code of Conduct for councillors in clause 56:

56.—(1) The Department may issue a code of conduct as regards the conduct which is expected of councillors (to be known as the Northern Ireland Local Government Code of Conduct for Councillors).

The Commissioner for Complaints may investigate allegations made in relation to a councillor (or former councillor) having breached the Code. It is important to note that the Code and any investigations relate to councillors or former councillors only. However in England, Scotland and Wales the remit for investigations into conduct is wider.

In England there is no Commissioner for Complaints similar to the proposals under the NI Local Government Bill. The Localism Act 2011 introduced a new standards regime by abolishing the Standards Board, requiring local authorities to produce their own ethical code and to deal with standards complaints internally. The Code and any investigations apply to councillors and public bodies as detailed in the section below. However, the case is different in Wales where complaints are dealt with by the Local Government Ombudsman, similar to the Commissioner for Complaints proposed under the Local Government Bill. However the role of the Ombudsman includes investigations into the conduct of councillors, council staff and public bodies (see section under Wales). In Scotland complaints are dealt with by the newly established Commissioner for Ethical Standards whose remit includes councillors, members of devolved public bodies and Members of the Scottish Parliament.

England

Prior to the 2011 Act, standards for councillors were handled by 'Standards for England', the independent standards board established under the Local Government Act 2000. The Government also published a model code of conduct in 2007 (under section 50 of the 2000 Act).¹ However the power was repealed, with regard to England, by Schedule 4 paragraph 49 of the Localism Act 2011. The local standards regime applies to councillors, not to local authority staff. A power existed in section 82 of the Local Government Act 2000 to introduce a national code of conduct for local authority employees. However, no such code was ever introduced. Despite this, many local authorities maintain and publish their own codes of conduct for staff.

Standards regime under the Localism Act

Under the standards regime established by the Localism Act 2011, local authorities must determine their own standards procedures. The Act provides that standards procedures must be consistent with the 'Nolan principles': selflessness, integrity, objectivity, accountability, openness, honesty and leadership (same principles of the Code of Conduct provided under the Local Government Bill). Local authorities must include a requirement to disclose any pecuniary interests.

Breaches

Most importantly, local authorities must also include mechanisms for investigating allegations that a member (or co-opted member of the authority, or of a committee or sub-committee of the authority) has not complied with the code of conduct, and provide arrangements under which decisions on allegations may be made. This must include the appointment

¹ See the Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159).

of an independent person whose views must be sought by the authority in the event of an allegation.

In a letter to all local authority leaders the Minister at the time, Robert Neill, said:

*All councils now have the opportunity to make a clean break from the bureaucratic standards arrangements of the old regime which so often led to petty or politically motivated complaints. I am sure you and your council will wish to make the most of this opportunity and put in place simple, fit-for-purpose arrangements in which all can have confidence.*²

Independent Person

Section 28 (7) of the Localism Act requires local authorities to appoint one independent person to advise the council before it makes a decision on an allegation. However there are restrictions on who can be appointed; in general the independent cannot be a councillor, officer or their relative or close friends. Former members of standards committees were allowed to be appointed until the 30 June 2013 as part of transitional arrangements to the new regime.³

The Act has also abolished the requirement for local authorities to have standards committees. However, local authorities may choose to operate a voluntary standards committee (or something similar). Membership would have to follow the political balance rules. Individual authorities determine how the independent person works as part their standards arrangement. During debate of the Localism Bill in the House of Lords, Baroness Hanham said:

*I want to make it clear that whatever the system and whether local authorities have independent members in that committee structure, they will still be required to have a further independent member [i.e. the independent person] who will act outside the committee system and will have to be referred to.*⁴

The Procedure

- Complaints are to be made to the local authority's Monitoring Officer in writing.
- The Monitoring Officer will assess every complaint against set criteria and after consultation with the independent person and the appropriate whip of the member's group a decision is made on what action to take.
- It may be decided that informal resolution is adequate without the need of formal investigation. Informal resolution may involve the member accepting their conduct was unacceptable and offer an apology, or other remedial action by the authority
- If it is decided that formal investigation is needed, the Monitoring Officer will appoint an investigating officer
- If the complaint identifies criminal conduct or breach of other regulations by any person, the monitoring officer has the power to call in the Police or other regulatory agencies.⁵

2 Letter to Local Authority Leaders from Bob Neill Secretary of State (June 2012). Accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5657/2169997.pdf

3 There are transitional arrangements in place as described in the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 <http://www.legislation.gov.uk/uksi/2012/1463/article/7/made> .

4 HL Deb 31 Oct 2011 c1051. The legislation requires local authorities to appoint an 'independent person'. A useful discussion of some of the principles involved is provided on the website of the Association of Council Secretaries and Solicitors; see <http://www.acses.org.uk/news/standards-%E2%80%93-sanctions-and-independent-persons-press-release>.

5 Lambeth Council, Making a complaint: Complaining about a member of Lambeth Council <http://www.lambeth.gov.uk/Services/CouncilDemocracy/CommentsComplaints/ComplaintAboutMember.htm>

Power of local authorities

The powers of the local authority in relation to allegations are for local determination, following advice from the authority's Monitoring Officer or legal team. These powers might include censure or the removal of a member from a committee, but the authority cannot disqualify or suspend members as this power was revoked (from 1 June 2012) by the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.

Public Bodies covered

The bodies covered by the standards regime are listed in section 27 (6) of the Localism Act 2011 where a "relevant authority" means:

- a county council in England,
- district council,
- a London borough council,
- a parish council,
- the Greater London Authority,
- the Metropolitan Police Authority,
- the London Fire and Emergency Planning Authority,
- the Common Council of the City of London in its capacity as a local authority or police authority,
- the Council of the Isles of Scilly,
- a fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
- a police authority (in England or in Wales) established under section 3 of the Police Act 1996,
- a joint authority established by Part 4 of the Local Government Act 1985,
- an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009,
- a combined authority established under section 103 of that Act,
- the Broads Authority, or
- a National Park authority in England established under section 63 of the Environment Act 1995."

The provisions in section 27 also cover co-opted members of local authority committees and joint committees of local authorities. These are specific legal entities. Members of partnerships would not be covered.

The Localism Act provisions do not cover council staff.

Wales

In Wales, complaints about councillor standards are handled by the Public Service Ombudsman for Wales. The governing legislation is the Public Service Ombudsman (Wales) Act 2005. This Act created a unified ombudsman for Wales, replacing the remit of the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman within Wales.

Schedule 4 of this Act also made the new ombudsman body responsible for complaints against councillors and council staff in Wales. This system was not changed by the new standards regime introduced by the Localism Act 2011, as it only applies to England.

The Ombudsman can consider complaints about the behaviour of members and staff of:

- County and county borough councils;
- Community councils;
- Health and social care councils;
- Fire authorities, and national park authorities; and
- Police and crime panels

For a full list of the bodies refer to Schedule 3 of the 2005 Act.

All of these authorities have a code of conduct which sets out how members must follow recognised principles in public life.

Complaints made about a councillor will go to the authority's Monitoring Officer to try to be resolved locally before going to the Ombudsman.

The Ombudsman cannot investigate:

- Complaints about the behaviour of individual employees of an authority (however if their behaviour led to unfair treatment or receiving of a bad service, a complaint can be made about the authority itself, for which a different method applies)
- Complaints not made in writing or made anonymously

For more details refer to the Ombudsman for Wales leaflet: How to complain that a Local Authority member has broken the code of conduct.

Scotland

The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 set up the Commissioner for Ethical Standards. The Order came into force on 1 July 2013, replacing the previous Commission for Ethical Standards, Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland.

The Role of the Commissioner for Ethical Standards

The Commissioner is an independent officeholder who can consider complaints about:

1. a councillor or member of a devolved public body who is alleged to have contravened the Councillors' or the appropriate Members of a public body's Code of Conduct. Where appropriate, the Commissioner will report on the outcome of these investigations to the Standards Commission for Scotland.
2. a Member of the Scottish Parliament who is alleged to have broken the Code of Conduct for MSPs. Where appropriate, the Commissioner will report on the outcome of these investigations to the Scottish Parliament.

The Codes of Conduct imposes requirements on Councillors, Members of devolved public bodies and MSPs on how to conduct themselves in carrying out their duties.⁶

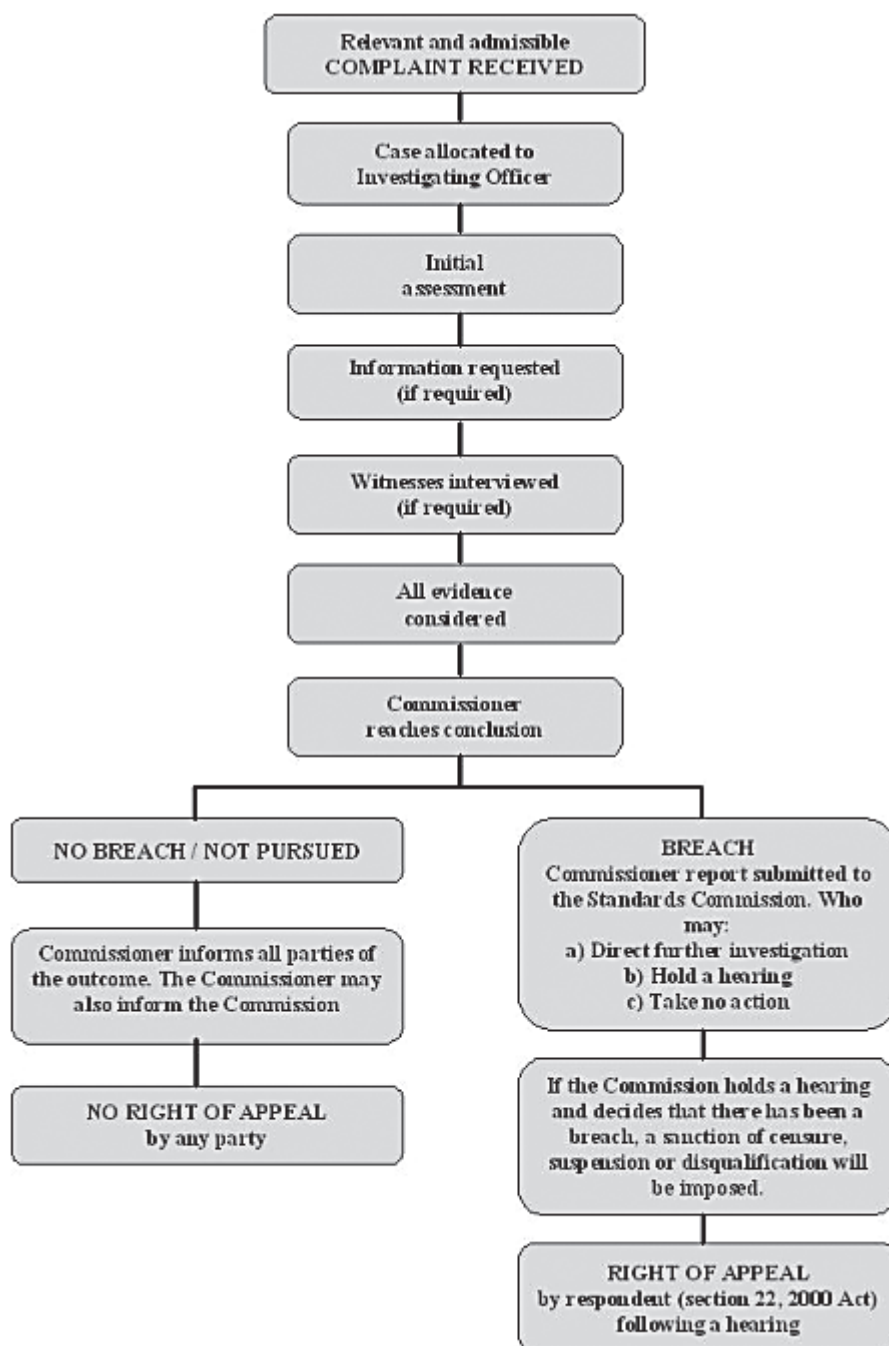
Where the Commissioner has concluded a breach of the Code has been found, the Standards Commission then decides whether or not to hold a hearing. If a hearing is held, the Standards Commission will decide whether there has been a breach and if so, what sanction (censure, suspension or disqualification) should be imposed. The Standards Commission also has responsibility for issuing general guidance in relation to the Codes.⁷

6 For information the three model codes of conduct can be viewed here <http://www.publicstandardscommissioner.org.uk/make-a-complaint/overview/>

7 Commissioner for Ethical Standards <http://www.publicstandardscommissioner.org.uk/about-us/overview/>

The Process

The following diagram illustrates how the Commissioner processes a complaint



Source: Commissioner for Ethical Standards⁸

Public bodies

A full list of the relevant public bodies is available from the Standards Commission's website. They include:

- National public bodies
- National park authorities
- Further education colleges

- NHS boards
- Regional transport partnerships
- Community justice authorities

For a full list see: <http://www.standardscommissionscotland.org.uk/content/which-bodies-have-codes>

What the Commissioner cannot investigate

The following is outside the remit of the Commissioner:

- complaints about a council or public body as an organisation;
- complaints about corporate failure to meet service standards;
- complaints about misconduct by an employee of a council or public body;
- complaints about misconduct by a community councillor;
- complaints involving private conduct (that is when a councillor is not acting as a councillor);
- complaints about a councillor before they were elected or member before they were appointed;
- complaints which are not about the type of behaviour covered by the relevant Codes.



Northern Ireland
Assembly

Research and Information Service Briefing Note

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NIAR 000-00

Suzie Cave

Call -in

This paper considers the roles of the Commissioner for Complaints in other jurisdictions, in particular, the system used under the Localism Act in England; however it also briefly explores the approaches used in Wales and Scotland.

1 Local Government Bill

Call -in trigger

Clause 45 of the Local Government Bill allows for the reconsideration of a decision or recommendation made by the council or any committee of the council; also known as the process of call-in. The trigger for call-in requires that 15% of the members of the council (this percentage can be altered through regulations) must request for reconsideration, based on one or both of the following two grounds:

1. That a decision was not reached.

This is based on the failure of the process and is similar to the call-in used in English local authorities. According to the Department, it can be used if a decision hasn't been reached by the policy process, or where the framework has not been followed to reach a decision.

Once the call-in is requested, it goes for internal scrutiny and then it is returned back to the group to make the necessary changes.

2. That the decision would disproportionately affect any section of the inhabitants of the district in an adverse way.

As yet the only clarity on the meaning of "section" - is any section of the community/district that has a specified description.

According to the Department, this part is key to the new protection provided under the Bill. Where in the past the make-up of councils has not been equally proportionate to all sides of the community, this section is included to form a safety net to ensure that one section of the community is not impacted adversely compared to others.

The Department is of the opinion that if call-in is not limited to these grounds, there could potentially be the situation where call-in is requested on every decision where one party is not particularly happy with it. Therefore the Bill aims to strike a balance by providing enough protection without bringing the council to a standstill on a frequent basis.

Barrister/Solicitor

A barrister/solicitor is only used for reconsideration of a decision in relation to part 2 above (disproportionate impact on community). The clerk of the council sends it to a solicitor or barrister before reconsideration of the decision. The role of the solicitor/barrister is not to say whether the decision is right or wrong, but to assess whether the people who called it have a case e.g. what could be the impact of it, is it a valid call-in etc.?

Once an opinion has been reached by the barrister/solicitor, it is returned to the group where qualified majority vote (requiring >80%) is used to make the final decision.

The Department plans to develop some form of consistent criteria to be used by councils for the use of a solicitor/barrister, and also a set of parameters a solicitor/barrister must use to judge a call-in against.

England

Legislation

Call-in forms part of the system of executive decision-making in local authorities and was introduced by the Local Government Act 2000. The legislation was consolidated in schedule 2 of the Localism Act 2011.

The relevant clause states:

(4) The power of an overview and scrutiny committee under subsection (2)(a) to review or scrutinise a decision made but not implemented includes power—

(a) to recommend that the decision be reconsidered by the person who made it, or

(b) to arrange for its function under subsection (2)(a), so far as it relates to the decision, to be exercised by the authority [i.e. to allow an overview and scrutiny committee to examine the decision].¹

The 2000 Act required local authorities to establish a separate decision-making executive – either an elected mayor and cabinet or a leader and cabinet, with a series of overview and scrutiny committees monitoring their decision-making. Call-in was one of the tools available to the overview and scrutiny function to ensure that executive decision-making was monitored.

The 2000 Act allows the appropriate Overview and Scrutiny Committee (OSC) to compel the Executive or authority to reconsider any ‘key’ decision by its members, or a key decision by an officer of the council. It is intended to be used only “in exceptional circumstances”, where the procedure is seen as a last resort through which an OSC and/or councillors may demand the scrutiny of a decision they believe to be contrary to the principles of decision making defined in the legislation (similar to part 1 of the reasons for call-in in the Local Government Bill)

The call-in system requires a means of defining when a decision has taken place. This is provided in paragraphs 12 and 13 of the Local Authorities (Executive Arrangements)

1 Section 9F (4) of the Localism Act 2011. The text derives from section 21 (3) of the 2000 Act.

(Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089).² These paragraphs require 'executive decisions' in meetings of the executive, or by individual members of the executive, to be recorded. There is also a category of 'key decisions' under paragraphs 8-10 of the 2012 regulations. Details of key decisions must be published 28 days in advance of their being made.

Variation of the process

Call-in functions have been established in a variety of ways across different local authorities. For instance, an authority might require that only overview and scrutiny chairs were able to instigate a call-in; or that a request signed by five councillors, from at least two political parties, would be required. A research report specifically on The call-in procedure was produced by the Centre for Public Scrutiny in 2006.³

The report showed the variations used across local authorities to instigate a call-in, which include:

- 251 authorities (70%) allow 5 working days in which a decision may be called in before it is implemented.
- 171 authorities (47%) allow only OSC members to call-in a decision.
- 131 authorities (37%) allow the Chair of an OSC Committee to call-in a decision alone.
- 193 authorities (51%) allow non-executive councillors who are not members of an OSC to call-in a decision.
- 122 authorities (35%) require at least 3 authorised signatories to call-in a decision.
- 54 authorities (14%) require cross, or multi-party support for a decision to be called in.
- 5 authorities (2%) allow the public to call-in a decision.

Scotland

Conversation with the Scottish Parliament Information Service (Spice) would suggest that there is no equivalent to 'call -in' of committee decisions by a full council.

The standing orders of each council set out how the Council and its committees operate. However, as an example, taking the standing orders for procedures for the Scottish Borders Council, there does not appear to be any form of mechanism for the reconsideration of a decision made by the Council or any of its committees.⁴

2 These regulations are made under the Localism Act 2011. Similar regulations were made under the Local Government Act 2000 when the call-in power was originally introduced.

3 Centre for Public Scrutiny (2006) The call-in procedure <http://cfps.org.uk/publications?item=234&offset=20>

4 To view the Scottish Borders Council Standing Orders, please refer to http://www.scotborders.gov.uk/downloads/file/5068/procedural_standing_orders



Northern Ireland
Assembly

Research and Information Service Briefing Note

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Suzie Cave

General Power of Competence in England

The following paper considers the General Power of Competence under the Localism Act 2011. As requested by the Environment Committee, it provides information on the use of the power by local authorities throughout England. The power came into force in 2012, therefore reviews and information on its implementation is relatively limited.

Introduction

A general power of competence (GPC) for local authorities in England and Wales was introduced by section 1 of the Localism Act 2011. It came into force on 18 February 2012 (via the Localism Act (Commencement no. 3) Order 2012 – SI 2012/411). It gives local authorities “power to do anything that individuals generally may do” and is seen as a wider statement of their powers than the previous wellbeing powers (this is limited to the enhancement of wellbeing in a council’s district, whereas the GPC gives councils the same freedom as any individual provided the act is within the law). Another difference is the fact that with the power of wellbeing councils must find existing enabling legislation for the action they wish to take, whereas the GPC requires councils to check there is no legislation restricting them from carrying out the action. In other words, the GPC enables councils to assume they have the power to act unless they are specifically prevented from doing so.

However, there are boundaries to the GPC. It may not be used to raise taxes, though it can be used to raise charges for services or to do things for a commercial purpose. It also cannot be used to do something that local authorities are expressly forbidden to do in other legislation.

Use of the Power in England

In relation to information examining the use of the power the Local Government Association (covering England) published a paper in July 2013 entitled *The general power of competence: empowering councils to make a difference*. The LGA paper looks in detail at the usage of the GPC by councils – the paper shows that councils are currently using the power to promote innovation in a number of areas:

Extending services and support into new areas

Allowing councils to do anything an individual can do (unless specifically prohibited) in legislation has given greater confidence to do new things and to use different approaches. A number of councils have used the power to give them the specific legal basis and confidence to extend their services beyond areas traditionally seen as their responsibilities. It is seen as power of first resort, rather than one of last resort such as the power of well-being.

Example: Oxford City

The GPC has given the district council of Oxford City the confidence to develop a school improvement support programme (previously regarded as the preserve of an upper tier council). Concern had been raised by major local employers that young people were not developing the necessary skills they require. Working with the two local universities, local schools and a specialist education consultancy, the city council has put in place a programme of improvement support for schools.¹

According to the LGA Clerks of town and parish councils have found it positive to be able to advise members that it is possible for their councils to do more in line with council and community priorities. It has been found that even when the power is not used it has saved time and resources in searching for more specific powers.

Another area that has been stimulated by the GPC is the number of councils now leading on energy switching schemes. Councils have been able to secure better energy deals, with energy switching companies, for domestic users by taking advantage of the buying power created by amalgamating residents from within their area and others. Estimates from some councils participating suggest savings of over £150 per household a year are possible. One

¹ Local Government Authority (LGA) *The General Power of Competence: Empowering councils to make a difference* The general power of competence: empowering councils to make a difference

example involves 12 councils across England, including Hertfordshire County Council and South Holland District Council and over 8,500 households.

Supporting regeneration and the local economy

A number of councils are finding the GPC helpful in building greater economic growth and resilience in their local communities.

Example: Newark and Sherwood “Think BIG” (to help local businesses grow)

Both councils used the GPC to help smaller businesses in their areas to grow. With finance as a key challenge for most small businesses, the council established a £2 million fund financed by the New Homes Bonus. The fund called “Think BIG” (Business Investment in Growth) provides loan finance to local businesses with growth potential, where they have been unsuccessful obtaining funding from other sources such as banks. To date, four loans have been granted worth £ 285,000 in total and have safeguarded 40 jobs with a potential for 43 more. The average turnover of the businesses supported is £672,500.²

Example: Local Authority Mortgage Scheme

Hertfordshire County Council has used the GPC to provide the basis for its participation in the Local Authority Mortgage Scheme (LAMS), working in partnership with most of the district councils in the county, Lloyds TSB and the Leeds Building Society.

The scheme offers help to first time buyers by giving access to a 75% mortgage with only a 5% deposit, the balance of the funding coming from the indemnity scheme. The indemnity lasts five years during which time the council earns interest on the amount of the indemnity. The funding plus interest accrued is returned to the county council. The scheme began in March 2012 and aims to help over 500 first time buyers. Other councils have reported that they have used the GPC as the basis of loans or grants to local employers to help secure jobs and support to the community.³

A seminar held by the Local Government Information Unit (LGIU) on the GPC in 2011 identified examples which illustrated how councils used the power to set up social enterprises under the models available.⁴

A social enterprise:

- undertakes trading activities (50% > of income);
- has a social purpose;
- reinvests its profits (50% > reinvested);
- is independent;
- has an asset lock;
- is accountable for social goals

Social enterprises include 1) charities that trade, 2) community interest companies, 3) mutual, and 4) co-operatives.

2 ibid

3 ibid

4 Local Government Information Service (2011), Ideas from our General Power of Competence seminar <http://www.lgiu.org.uk/2011/10/18/ideas-from-our-general-power-of-competence-seminar/>

Examples from the seminar of councils using the GPC include:

Lambeth's 'Cooperative Council' model

Lambeth was one of the councils originally involved in the Local Authorities' Mutual Ltd (LAML) judgement, which ruled that local authorities could not use the Power of Wellbeing to establish a mutual insurance company⁵. However using the GPC, the Council launched its 'Cooperative Council' vision using a wide range of service delivery models including mutual, shared services, federated services, joint ventures with 3rd Sector and social enterprise. It was stated that the General Power of Competence is important for councils in helping them to achieve their vision as it does not specify how councils should deliver services, but clarifies their freedom to do things their own way.⁶

Essex

The Post Office. The Post Office announced that it would be closing a number of its branches in Essex. The County Council looked into ways of delivering these services differently using the GPC. There were various models, which generally involved contracting the service to an existing sub-postmaster. Different levels of service were offered, from re-provision of the existing service, to pop-up services in the local pub or other community centre and pay-point terminals providing basic postal services. The first Post Office reopened in 2008 and Essex has since been approached by 150 councils hoping to replicate the project.

Essex Cares. Essex was the first local authority to set up a traded service focusing on social care. 850 staff moved across from the council to the new organisation, which was set up as an independent company owned by its shareholders. It offers support in the home and the community. It made a profit of £3-3.5 million in 2010, which was reinvested in the service and has reduced the cost of services for self-funders. It has been very successful from an organisational perspective: absenteeism is down, the turnover of staff has slowed and user satisfaction is now at 99 per cent.⁷

Constraints to the power

While welcoming the GPC, the LGA noted that a number of councils mentioned some constraints which had or could present barriers to its wider use.⁸ The main issues identified were:

Limited company structures

Under clause 4 of the Localism Bill, only limited company structures are permitted for using the GPC for trading activities; these are companies limited by shares or guarantee or industrial or provident societies. For example, several councils and a Fire and Rescue Service have wanted to extend their services using more modern community interest company structures, to achieve greater community engagement or to develop governance structures less influenced by politics for commercial reasons. However the councils have used different

5 In 2006 and 2007 a number of London local authorities entered into arrangements for mutual insurance against various classes of risk, including property, liability and terrorism. The aim of the arrangements that the London local authorities entered into was to reduce the cost of premiums to its members and to raise the standard of risk management. In pursuing these objectives they were acting solely in the public interest. For more detail see <http://www.bailii.org/uk/cases/UKSC/2011/7.html>

6 Local Government Information Service (2011), Ideas from our General Power of Competence seminar <http://www.lgiu.org.uk/2011/10/18/ideas-from-our-general-power-of-competence-seminar/>

7 *ibid*

8 Local Government Authority (LGA) The General Power of Competence: Empowering councils to make a difference The general power of competence: empowering councils to make a difference

powers to proceed as it is felt that the GPC could not be used as such structures do not fit the requirements of the Localism Act.

Limits to charging

Under clause 3 of the Localism Act charging is only permitted for a discretionary service (i.e. not one which it is required to provide by statute) and on a cost recovery basis where charges are not to exceed the costs of provision i.e. where no profit is to be made.

Limitations on the use of state aid

This is in terms of both undertaking trading activities and in supporting local business and employment. It is felt that the limits may have more bearing in regenerating deprived communities where more support is required to try and reduce the risks associated with development projects.

Checks for limitations

There is a requirement to check for pre- and post-commencement limitations i.e. any restriction/limitation imposed by existing statutory legislation. The drawback to this is the length of time it takes, and in some cases may lead to the identification of a more specific power which can be used in place of the GPC. However it has been suggested that where common barriers are identified it may be appropriate for the Secretary of State to use the powers under clause 5 of the Localism Bill to amend, repeal, revoke or disapply such provisions causing limitations.

Does not allow for creation of byelaws or enforcement activity

The power does not permit this as it simply extends councils' powers to do what individuals can normally do. This has caused misunderstanding amongst members of councils.

Timing

The GPC has been introduced at a time of great financial constraint, therefore the use of the GPC has been quite narrow; used mainly to minimise the impact of spending cuts or support improved efficiency. Therefore more creative use of the power may have been limited due to council priorities. Some councils have commented that other parts of the Localism Act have attracted more interest such as the Community Right to Build and the Community Right to bid for assets of community value.

Lessons learned

The LGA made the following recommendations based on the experience of councils using the GPC:

- Be clear about what it is that wants to be achieved and that it is in line with the priorities of the council and local community. It should be used as a tool to facilitate, and as an end in itself.
- Develop and support an environment which promotes an innovative and entrepreneurial approach.
- View the potential of the GPC as lever to tackle excessive caution or fixed ways of doing things.
- Check for any pre- and post-commencement limitations (and consider modifying the approach if needs be)
- Where used as a basis for charging, ensure that charges are not being made for a statutory service, that the recipient agrees to receive the discretionary service, and charges are on a cost recovery basis only.

The general findings from the seminar held by the Local Government Information Unit in 2011 include:

- The General Power of Competence won't automatically result in more innovative services, but it will offer policy officers leverage with other directorates. It could help to shift the debate from 'can we do this?' to 'how can we do this?'
- There may be winners and losers. Those councils that are already taking an innovative approach will be in a good position to take advantage of the new power. Some councils may not be interested, or may not have the capacity to invest in new models of service delivery. This is a concern for districts. The current financial context is also making it difficult for councils to take a long-term strategic approach. Finding space to innovate is a challenge.
- There is a danger that councils will use the challenge to run services in a different way as an opportunity to pass failing services over to the community. Mutuels/social enterprise should not be regarded as a panacea for dealing with unsuccessful services.
- Using the new power will be primarily down to the culture of the organisation, rather than the legislation itself. There are already tools available under the current powers and councils can use these immediately.
- For the sake of clarity, councils should refer to the new power in any decision paper that intends to make use of it.



Northern Ireland
Assembly

Research and Information Service Briefing Note

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Suzie Cave

Statutory Bodies in Community Planning: Scotland

This paper is in response to a request from the Environment Committee on the contribution of statutory bodies to community planning in Scotland. The paper describes the connection made between statutory planning partners under the Local Government Bill in Northern Ireland, for comparison with the detail given on the situation in Scotland.

Background

Local Government Bill NI

Under Clause 70 of the Local Government Bill, the Department of the Environment (DOE) is given the power through subordinate legislation to specify the bodies who are to be the community planning partners of a council. However there is no provision in relation to their level of contribution and accountability to the process:

70.—(1) The Department may by order specify the bodies or persons who are to be the community planning partners of a council.

(2) The Department must not make an order containing provisions under subsection (1) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(3) The Department must not make an order under subsection (1) unless it has consulted—

(a) the bodies and persons specified in the order as community planning partners of a council;

(b) district councils; and

(c) such other bodies and persons as the Department considers appropriate.

(4) Subsections (2) and (3) do not apply to an order under subsection (1) which is made solely in consequence of a change of name of a body or in consequence of a body ceasing to exist; but such an order is subject to negative resolution.

New guidance on community planning

In October 2013 the DOE published “Guidance to Councils: Community Planning Foundation programme”.¹ The aim is to assist statutory transition committees, the new councils and their community planning partners during shadow period in preparation for the statutory community planning duty in April 2015. The guidance sets out key principles necessary for community planning to work effectively.

In relation to community planning partners it highlights the duty put on them to participate and that partners will be identified through subordinate legislation. However it does not give any more detail on the direct level of contribution required from these partners.

The guidance states that one of the key principles “participation and engagement” is essential to community planning in developing a two way relationship with communities and community planning partners. However it notes that there is no fixed approach to ensure engagement or participation and that it will be up to councils to select the appropriate method.²

The guidance does mention the need for monitoring accountability for the delivery of actions by local, central government and key agencies, so as to ensure buy-in to the process. However there is no direct reference made to statutory partners and their duty.³

Also, the guidance details that community planning partners, along with councils will be responsible for monitoring progress against planning objectives, and will produce a statement

1 DOE (2013) Guidance to Councils: Community Planning Foundation Programme. Available at http://www.doeni.gov.uk/local_government_reform

2 Ibid (page 13)

3 Ibid, (page 25 paragraph 59).

on progress every two years. This in itself may require a level of commitment and continued contribution from partners.⁴

However, the guidance is non-statutory, therefore anything mentioned in relation to statutory partner's contribution and accountability that goes beyond the detail in the Bill means statutory partners are not obligated to it.

Scotland

In Scotland community planning is described by Audit Scotland⁵ as

*the process by which councils and other public sector bodies work together, with local communities, the business and voluntary sectors, to plan and deliver better services and to improve the lives of people who live in Scotland.*⁶

Community planning was given a statutory basis by the Local Government in Scotland Act 2003 which provides that:

- councils have a duty to initiate, facilitate and maintain community planning;
- NHS boards, the police, fire and rescue services, and enterprise agencies (Scottish Enterprise and Highlands and Islands Enterprise (HIE)) have a duty to participate in community planning. This duty was later extended to Regional Transport Partnerships; and
- Scottish ministers (through the Scottish Government and its agencies) have a duty to promote and encourage community planning.

Other bodies which are not statutory bodies can be invited to take part in the process by councils i.e. colleges, higher education institutions, business groups, voluntary organisations and community groups.⁷

Role of Statutory bodies in Scotland

Partners have a duty under the 2003 Act to participate in community planning, however the Act does not specify the level of contribution that is expected of them to ensure they participate to a consistent and satisfactory level. This being said, a number of methods have been used to try and address this through the Community Planning Partnerships, Single Outcome Agreements (SOAs) and more recently a Statement of Ambition, both of which require partners to make more of a commitment. In March 2013 Audit Scotland, in its review on community planning, made a number of statements and recommendations needed to ensure a consistent contribution across all partners involved in community planning.

CPPs

Community Planning Partnerships (CPPs) have been established by all councils to lead and manage community planning. The structure and areas they cover vary depending on the size and geography of a council, its economy, socio-demographic factors and local political priorities. They are not responsible for delivering public services, but they are required

4 Ibid (page 3, paragraph 12)

5 Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. It provides services to the Auditor General for Scotland and the Accounts Commission. Together they ensure that the Scottish Government and public sector bodies in Scotland are held to account for the proper, efficient and effective use of public funds.

6 Audit Scotland (2013) Improving Community Planning in Scotland http://www.auditscotland.gov.uk/docs/central/2013/nr_130320_improving_cpp.pdf

7 Scottish Government, Local Government in Scotland Act 2003 Community Planning: Statutory Guidance. Available at <http://www.scotland.gov.uk/Publications/2004/04/19168/35271#3>

to engage with communities, report on progress and publish details on implementation, outcomes and improvement.⁸

Single Outcome Agreements

In 2007, the Scottish Government and the Convention of Scottish Local Authorities (COSLA) signed a concordat which brought about the introduction of Single Outcome Agreements (SOAs). These had a direct impact on the implementation of community planning as they outlined each CPP's strategic priorities and set out how they contribute to achieving national outcomes.⁹

For more detail see the example from Fife at the end of this paper which shows how the SOA contributes to ensuring contribution from all community planning partners

New Statement of Ambition

Following a review of community planning and SOAs in 2012, the Scottish Government and COSLA published a Statement of Ambition setting out improvements and expectations for community planning. One aspect of this Statement is to ensure that the Scottish Government and CPP partners show strong and sustained leadership to deliver the suggestions made; this includes ensuring that health boards and other public bodies are held to account for their contribution to CPPs.¹⁰

The Statement has three core principles, one of which is “Strengthening Duties on individual partners.” The aim of this is:

- To maximise the contribution that public sector bodies make to the delivery of local outcomes and to sharpen partners’ focus on the core purpose of community planning; and
- To improve partnership working- the letter stated that where it is agreed that a partnership or integrated approach is required, a body would be expected to deliver this as part of its objectives. Scottish Ministers will hold appropriate individual partners to account for the effective discharge of the shared duty.¹¹

Audit Scotland

In its review of community planning in 2013, Audit Scotland made the following observations and suggestions with regards to community planning and its relationship with and role of statutory bodies:

Governance and accountability

Governance and accountability arrangements for community planning have been weak where individual partner organisations have not been routinely or robustly held to account for their performance as a member of the CPP. Audit Scotland is of the opinion that as a result of this there are no consequences for not participating fully, or sufficient incentives to try and change behaviours. With little evidence that community planning is integrated within the

8 Audit Scotland (2011) The Role of Community Planning Partnerships in Economic Development

9 Scottish Government: Single Outcome Agreements <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/CP/SOA2012>

10 Single Outcome Agreements – Guidance to Community Planning Partnerships, Scottish Government and COSLA, December 2012. Available at <http://www.scotland.gov.uk/Topics/Government/local-government/CP/SOA2012/SOA2012>

11 Scottish Government and COSLA (2012) Review of Community Planning Update letter to local authorities. Available at <http://www.scotland.gov.uk/Topics/Government/local-government/CP/cpreview>

formal governance structures of CPP partners, CPPs have no real authority to make decisions that commit partners to action.¹²

Furthermore, it has been observed that statutory bodies such as NHS and Scottish Enterprise have participated with varying degrees of commitment to community planning due to different accountability arrangements. Therefore it has been suggested that more clarity is needed within CPPs about who is accountable to whom, for what and by when.

Service and financial planning

CPPs need to ensure that all partners align their service and financial planning arrangements with community planning priorities. Audit Scotland suggested that budget setting and business planning decisions by CPP partners (i.e. councils and NHS boards) take full account of community planning priorities and SOA commitments.

Leadership

Audit Scotland found inconsistent leadership across three previous CPP audits they performed. This was particularly in relation to the level and range of NHS and other national bodies' engagement with the CPP process. However it noted that the Scottish Government is seeking to deal with this and has set out more clearly its expectations of how those national bodies should be involved in community planning.

Direction and Expectations

Due to clearer direction and expectations from the SOA and the National Community Planning Group, councils appear to be operating community planning as more of a shared enterprise. Audit Scotland suggests that this should be reinforced with a clear set of expectations for how national bodies should take part in community planning underpinned by statutory duties set out in legislation, such as the Community Empowerment and Renewal Bill.

Behavioural change needed

Appreciating that legislation alone is not sufficient to create behavioural change, it is suggested that clear and consistent messages should be sent to public sector leaders, non-departmental public bodies and agencies. These should communicate the expected roles in supporting community planning, whilst promoting the process as core to the operation of their business.

Example: Fife

Fife's Community Plan 2011- 2020 is the overarching strategic plan for Fife. It provides a framework for other strategies and plans to deliver the outcomes in the community plan.

The plan is based on detailed analysis of future risks and opportunities for Fife for which partners are needed to implement the changes that are required to minimise risks whilst realising opportunities. According to Fife, this is only possible through effective engagement and partnership working with individuals, families, communities and private, voluntary and public sectors.

The Community Plan identifies shared outcomes to which the partners sign up to, and these partners include:

- Fife Council;
- NHS Fife;
- Police Scotland;

12 Audit Scotland (2013) Improving Community Planning in Scotland. Available at http://www.audit-scotland.gov.uk/work/all_national.php?year=2012

- Fife Voluntary Action;
- Scottish Fire and Rescue Service;
- Scottish Enterprise;
- Skills Development Scotland;
- Fife College;
- St Andrews University;
- South East Scotland Transport Partnership (SEStran); and
- Scottish Government.

For more information on Fife's Partnership structure see the Fife Partnership Resource Pack

Fife's Community Plan and Single Outcome Agreements

Fife's Community Plan 2011– 2020¹³ sets out three high level outcomes (SOAs), each with a number of long term outcomes. These outcomes are:

1. Reducing inequalities

- Making Fife's communities safer;
- Meeting the need for suitable housing choices;
- Reducing low income households;
- Increasing the capability of Fifers to take action and make a difference to their communities;
- Strengthening communities through regeneration;
- Raising educational attainment and reducing educational inequality;
- Improving early years development of children in Fife; and
- Improving the health of Fifers and narrowing the health inequality gap.

2. Increasing employment

- Extending employment and skills opportunities;
- More dynamic businesses;
- Developing a modern business infrastructure;
- Improving the knowledge and research base; and
- Growing businesses and employment in key sectors (including investment in renewables and tourism).

3. Tackling climate change

- Adapting to climate change;
- Reducing carbon emissions (including reducing energy use, more sustainable transport and less waste).

Fife's community planning partners have signed up to these shared outcomes. The Community Plan details that the lead partnership groups will work together and with the people and communities of Fife to deliver these objectives.

13 Fife's Community Plan 2011-2020 available at <http://www.fifedirect.org.uk/publications/index.cfm?fuseaction=publication.pop&pubid=45778BA5-EA1B-D330-48D91223343EEE18>



Northern Ireland
Assembly

Research and Information Service Briefing Note

Paper XXX/XX

15 January 2014

NIAR 000-00

Suzie Cave

Statement of Ambition Scotland

This paper is in response to the Environment Committee requesting more information on the Statement of Ambition introduced in Scotland under its community planning regime. The paper finally considers the status of the Statement in terms of the weight given to it.

Research and Information Service briefings are compiled for the benefit of MLAs and their support staff.

Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Introduction

Following a review of community planning and Single Outcome Agreements (SOAs)¹ in 2012, the Scottish Government and COSLA (Convention of Scottish Local Authorities) published a Statement of Ambition setting out improvements and expectations for community planning in relation to new SOAs.²

One aspect of this Statement is to ensure that the Scottish Government and community planning partners show strong and sustained leadership to deliver the suggestions made; this includes ensuring that health boards and other public bodies are held to account for their contribution to Community Planning Partnerships (CPPs).³ This is illustrated in the Statement's three core principles, one of which is "Strengthening Duties on individual partners." The aim of this is:

- To maximise the contribution that public sector bodies make to the delivery of local outcomes and to sharpen partners' focus on the core purpose of community planning; and
- To improve partnership working- the letter stated that where it is agreed that a partnership or integrated approach is required, a body would be expected to deliver this as part of its objectives. Scottish Ministers will hold appropriate individual partners to account for the effective discharge of the shared duty.⁴

Status of the Statement

The statement however is not statutory in nature; it merely sets out clear shared aspirations for Community Planning, and how the existing Community Planning/Single Outcome Agreement framework needs to develop in order to meet those aspirations. The Scottish Government and COSLA have stated that many of the changes detailed in the Statement can be introduced without legislation; however there are a number that will require legislation and formal consultation around specific recommendations.⁵

1 For detail on SOAs see Scottish Government: Single Outcome Agreements <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/CP/SOA2012> and RaiSe paper Statutory Bodies in Community

2 The Statement of Ambition can be accessed here: <http://www.scotland.gov.uk/Topics/Government/local-government/CP/soa>

3 Single Outcome Agreements – Guidance to Community Planning Partnerships, Scottish Government and COSLA, December 2012. Available at <http://www.scotland.gov.uk/Topics/Government/local-government/CP/SOA2012/SOA2012>

4 Scottish Government and COSLA (2012) Review of Community Planning Update letter to local authorities. Available at <http://www.scotland.gov.uk/Topics/Government/local-government/CP/cpreview>

5 Letter to CPPs from Scottish Government and COSLA <http://www.scotland.gov.uk/Topics/Government/local-government/CP/cpreview>



Northern Ireland
Assembly

Research and Information Service Briefing Note

Paper XXX/XX

16 January 2014

NIAR 000-00

Suzie Cave

Councillor Conduct: Remit and Appeals

The following paper is in response to a request from the Environment Committee for further information on the remit and appeals process for investigation into councillor conduct in other jurisdictions. With the main focus on Wales, the paper also explores the arrangements under the Localism Act in England for further comparison.

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Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Introduction

The following paper considers the remit and the appeals process against a complaint made on councillor conduct in Wales and England. It appears that while the remit both in England and Wales covers co-opted members, there is no indication that non-elected members to public bodies are included in Wales. However the definition for a co-opted member in the English legislation includes a person who is not elected but is a voting member of a committee. In relation to appeals, in England there is no right of appeal against a decision made by a local authority's Monitoring Officer. However this is not the case in Wales where appeals against a decision can be made to the Ombudsman.

Wales

Remit

In Wales investigations into breaches of the code of conduct are handled by the Public Service Ombudsman. However low level complaints made by one member against another can be dealt with locally by the local authority's Standards committees.¹ The legislation that underpins the work of the Public Services Ombudsman is the Public Services Ombudsman (Wales) Act 2005. The Ombudsman provides an investigating role, whereas adjudications are handled by an Adjudicating Panel². The Local Government Bill seeks to bring these two roles together to have the Commissioner for Complaints investigating and adjudicating.

The Ombudsman in Wales can consider two types of complaint:

- 1 about a public body and its services – this includes:
 - local authorities (including community councils);
 - health boards and NHS trusts;
 - the Welsh Government and bodies that it sponsors; and
 - housing associations.³
- 2 that a 'local authority member' has broken that authority's code of conduct, this also includes co-opted members.⁴ In relation to staff, if their behaviour has affected the service provided or resulted in unfair treatment – then a complaint can be made against the authority.⁵

'Local authority member' means members of:

- county and county borough councils;
- community councils;
- fire authorities and national park authorities; and
- police and crime panels.

1 The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales. <http://www.ombudsman-wales.org.uk/en/publications/Guidance-policies.aspx>

2 The Adjudicating Panel for Wales is an independent body set up under the Local Government Act 2000. The Panel's role is to form tribunals to consider breaches of a local authority's code of conduct. The Panel will also hear appeals by members against decisions of their authority's Standards Committee. <http://wales.gov.uk/apwsubsite/APW-PDC/?lang=en>

3 Section 7 of the Public Services Ombudsman (Wales) Act 2005. Also, for further details see *Public Service Ombudsman – Want to make a complaint about a public body?*

4 Stated in section 69 of the Local Government Act 2000, as amended by the Public Service Ombudsman Act 2005

5 Section 7(6) of the Public Service Ombudsman Act 2005. For further details see *Public Service Ombudsman – How to complain that a local authority member has broken the code of conduct*

While the remit also covers co-opted members; here is no indication that this includes non-elected members to public bodies.

Appeal Mechanism

It should be noted that appeals in relation to decisions made by a local authority's Standards Committee, regarding lower level complaints, can be made to the Adjudication Panel of Wales (as detailed in footnote 2)⁶

If someone is unhappy with a decision made by the Ombudsman which may include the decision not to investigate a complaint; to discontinue the investigation of a complaint; or the actual outcome of an investigation, they should appeal to the Ombudsman either by writing to him directly or through the officer dealing with the case.

The complaints procedure can be used to complain about: the outcome of an investigation; the decision not to investigate a complaint; or the decision to discontinue an investigation. However the complaints procedure is not limited to the above, and can be used for other areas, such as: undue delay in responding to correspondence; or that a member of staff has been rude or unhelpful; or that the Ombudsman's office have not done what it said it would.⁷

The Appeal Process

The Ombudsman's Complaints Manager will arrange for an appropriate senior member of staff to look into the complaint. Once a complaint has been made to the Complaints Manager, he will send an acknowledgement within two working days of receiving a letter or email. That acknowledgement will give the name and contact details of the person who will be responsible for responding. That person will not have been involved previously in the matter which is the subject of complaint. They will give serious consideration to the issues raised and will investigate as appropriate.

The Ombudsman's office will send a full reply to all complaints within 20 working days of the complaint arriving. If that is not possible, for example if the matters raised require more detailed work, the complainant will be notified.

In general, the Ombudsman expects any complaint about his service to be made reasonably soon after the problem has arisen, and in any event within twelve months.

If a complainant is still not satisfied with the response they should write again to the Complaints Manager stating that they wish to appeal to the Ombudsman, explaining why they are still dissatisfied with the response. The Complaints Manager will acknowledge the appeal within two working days of receiving it. The Ombudsman will personally consider the appeal and will aim to send a full reply within 20 working days.

The Ombudsman's decision is final. There is no appeal against the final decision of the Public Services Ombudsman for Wales but it can be reviewed on the basis of new information. Also, as a public authority, decisions of the Ombudsman can be judicially reviewed. Applications for judicial review have to be made promptly, within three months of the decision.⁸

For specific examples of cases see The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales from page 10 onwards.

6 The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales (p.7) <http://www.ombudsman-wales.org.uk/en/publications/Guidance-policies.aspx>

7 How to complain about us, Public Services Ombudsman for Wales website

8 *ibid*

England

Remit

The general process for investigating a complaint against a councillor differs greatly compared to the provisions under the Local Government Bill. Under the standards regime established by the **Localism Act 2011**, local authorities must determine their own standards procedures. (for more detail on the complaints process see Research Paper *Commissioner for Complaints* (20th November))

Under section 27 local authorities must also include mechanisms for investigating allegations that a member (or co-opted member of the authority or of a committee or sub-committee of the authority) has not complied with the code of conduct.

Under section 27 (4), a “co-opted member” is defined as someone who:

- (a) is a member of any committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

Therefore, a person who was not elected, but who is a voting member of a committee, joint committee or sub-committee, of a local authority, must be covered by the local standards regime.

Appeals

The Localism Act does not make reference to any form of an appeals mechanism against a decision made on the conduct of a councillor, nor does any associated guidance documents.

This is further illustrated in guidance documents provided by individual local authorities on their complaints arrangements, for example Oxford City Council states

There is no right of appeal for you as a complainant or for the member against a decision of the Monitoring Officer or of the Standards Committee. If you feel the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.⁹

Other examples of this can be seen on Kent County Council's complaints arrangement guidance.¹⁰

9 Oxford City Council : Complaints Handling Arrangements <http://www.oxford.gov.uk/PageRender/decCD/StandardsCommittee.htm>

10 Kent County Council, *How to make complaint* <https://shareweb.kent.gov.uk/Documents/council-and-democracy/contact%20us/KCC%20How%20to%20make%20a%20complaint%20website%20version.pdf>



Northern Ireland
Assembly

Research and Information Service Briefing Note

Paper XXX/XX

16 January 2014

NIAR 000-00

Suzie Cave

Suzie Cave and Christopher Buchanan

The Environment Committee requested information to clarify the situation in relation to the exemption of council staff from becoming councillors. The paper considers the current legal position in Northern Ireland and England and Wales in this respect. It also details a European Court of Human Rights challenge in 1998 against the exemptions introduced in England in 1989

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Introduction

Since 1972 there have been restrictions on council employees holding elected positions in councils in Northern Ireland. The same has been the case to a lesser extent in Great Britain. The aim of these restrictions is to avert any potential conflicts of interest and maintain political neutrality in a council's workforce.

Councillor disqualification in Northern Ireland

2.1 Local Government Act (Northern Ireland) 1972

The Northern Ireland Local Government Act 1972 substantially reorganised local government in Northern Ireland and introduced a blanket ban on any person who 'holds paid office or other place of profit in that or any other council' from being elected councillor.¹

Correspondence with the Electoral Office of Northern Ireland has confirmed that this remains the case for council employees in Northern Ireland.

Councillor disqualification in England & Wales

3.1 Local Government Act 1972

England and Wales also saw a change in local government organisation in 1972 with its own Local Government Act; applying less strict disqualifications for council employees becoming councillors. The 1972 Act only disqualifies council employees from becoming councillors in the councils in which they are employed, but not other council areas.²

3.2 Local Government and Housing Act 1989

In response to concerns about the politicisation of council employees in England and Wales, the Widdicombe Inquiry was set up to produce proposals to mitigate the problem.³ The Local Government and Housing Act 1989 took forward a number of proposals, including the prohibition on council officers in 'political sensitive' posts in engaging in political activity and standing for elected office stating:

'A person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of a local authority if he holds a politically restricted post under that local authority or any other local authority in Great Britain.'⁴

Section 2 of the Act outlines the main positions considered to be politically sensitive:

- (a) the person designated as the head of the authority's paid service;
- (b) the statutory chief officers;
- (c) a non-statutory chief officer;
- (d) a deputy chief officer;
- (e) the monitoring officer.

Sections 3 and 4 outlines further specific criteria that would class a person as being in a politically sensitive post based largely on salary and role.

1 Local Government Act (Northern Ireland) 1972

2 Local Government Act 1972

3 *The Guardian* 20 June 1986

4 Local Government and Housing Act 1989

3.3 European Court of Human Rights challenge

In 1998 a challenge to the Local Government and Housing Act was brought to the European Court of Human Rights in the case of Ahmed vs. United Kingdom. The petitioners all held politically sensitive posts, and felt that the requirement for them to cease political activity was an interference with their Article 10 and 11 rights of freedom of expression, assembly and political participation.⁵ However the court found that the restrictions placed upon politically sensitive posts were valid and not a disproportionate interference with the applicants' Article 10 and 11 rights.⁶

The applicants also argued that being restricted from standing in and taking part in electoral campaigns violated their rights under Article 3 of Protocol 1 providing for free elections.

The court decided that the respondent state (United Kingdom) could preclude those holding politically sensitive positions, from standing for election in the pursuit of impartiality for senior officers. This was also acceptable as the restrictions only applied for as long as the person held the politically sensitive post, and did not prohibit party membership.⁷

4 Arrangements under the Local Government Bill

Through correspondence with the Department, it was suggested that consideration is being made into including restrictions/exemptions in the Bill in relation to who can run for council. These may be similar to those provided in England, however different terminology may be used. For example, instead of exemption on council officers with a 'political sensitive' post, the NI Bill may provide exemptions for senior officers or anyone providing an advisory role. However, further clarification on defining exempted roles will be needed.

The Department did inform that a briefing note on this issue will be provided to the Committee in order to provide further clarity.

5 <http://sim.law.uu.nl/sim/caselaw/Hof.nsf/1d4d0dd240bfee7ec12568490035df05/3e9909f1f3a9f340c1256674002838cc?OpenDocument>

6 <http://sim.law.uu.nl/sim/caselaw/Hof.nsf/1d4d0dd240bfee7ec12568490035df05/3e9909f1f3a9f340c1256674002838cc?OpenDocument>

7 As above



Northern Ireland
Assembly

Research and Information Service
Briefing Paper

Paper 000/00

7th February 2014

NIAR 000-00

Suzie Cave

Call-in: Protection of minorities in divided societies

The following paper is a response to a request from the Environment Committee on call-in procedures in divided societies and the consideration of minorities.

The paper explores examples from the UK and internationally in relation to commitments made under the Constitution for Kosovo.

Introduction

The following paper relates to the protection of minorities in divided societies in relation to decision making at the local government level. The paper explores the arrangements and provisions provided throughout local authorities in England which show some difference. This is largely due to that fact that under the 2000 Act, which was consolidated by the Localism Act 2011, local authorities are required to establish their own separate decision-making executive, with a series of overview and scrutiny committees. Reconsideration of a decision (or call-in) can only be used if it is felt that a decision was not reached due to failure of the process; there is no similar element in relation to the 'disproportionate impact on a section of the community' that is provided under the Local Government Bill for Northern Ireland.

However, while there is no requirement written into national legislation, it appears that a number of local authorities in England have used a variety of arrangements at their own discretion to ensure that their communities have a say and can influence decisions being made. It should be noted that many of these arrangements are not specifically for the minority sections of a particular community; rather they are for the community as whole. There is also no evidence to suggest whether minority groups avail of these opportunities or not.

Finally in providing international context, the paper explores at the situation in Kosovo, where due to a divided past has had to ensure inclusion of minority groups in decision making in general at both the Assembly level and municipal level.

England

Oldham

Oldham, which is notorious for its segregated community based on race and religion hit the headlines in 2001 for riots led by Muslim Asian Youths which spread to Barnley and Bradford.

According to a study by the Joseph Rowntree Foundation (2007) the tensions emanate from economic decline and high levels of inactivity in the area as whole, resulting in inter community tensions with certain minority groups feeling polarised and disadvantaged.¹

The study found that deprivation and disadvantage played a pivotal role in neighbourhood relationships. Racial tensions were driven by struggles for resources such as housing and employment, and residents feeling 'unfairness' of resource allocation.

Community Call-in

Oldham Council is slightly unique compared to other local authorities in England in that it offers 'Community Call-in'. This allows local residents to challenge a decision taken by their District Executive. If a decision is successfully called in it is put on hold while the Council's Overview and Scrutiny review the decision and make recommendations. However if Overview and Scrutiny decide to make no recommendations, the decision is enacted as originally intended.

Planning and licensing decisions are exempt from Community Call-in because these decisions are covered by national legislation that the council must adhere to.

Community Call-in requires 100 signatures from residents of the district area, however only 50 are required if the call-in is sponsored by a Ward Member of the effected ward. The petition must be sent to the Overview and Scrutiny within ten days of the decision being published in the Executive's minutes.

1 M. Hudson, J Phillips (JRF), 2007, Social Cohesion in Diverse Communities
<http://www.jrf.org.uk/publications/social-cohesion-diverse-communities>

Under the Localism Act 2011, local authorities are given a power to offer petitions, and according to correspondence with the Centre for Public Scrutiny (CFPS)², the Community Call-in appears to be a unique combination of the council's petition powers and call-in powers.

The CFPS also explained that this mechanism is unusual as it not only creates further delay on the implementation of any Executive decision (5 days is the limit for normal call-in, whereas the community call-in extends this to 10 days for the petition), it also gives the Council uncertainty over decisions as they will not know whether they will be subject to Community Call-in or not.

Scrutiny Request

A number of local authorities give the local residents the opportunity to suggest a topic for scrutiny by their councils' Overview and Scrutiny, however in this instance suggestions are not limited to decisions already made by the council, for example:

Bradford

In Bradford, within the function of Overview and Scrutiny, the Improvement Committee has the power to recommend that a decision made by the Executive or an Area Committee, but not yet implemented, be "called-in" for consideration as requested by members of the council.

Suggestions for scrutiny can also be made (by email) to the Improvement Committee by members of the public, interest groups or businesses. However, for a suggestion to warrant review, it must fit the following criteria:

- Affect a group of people living within the Bradford District Council area;
- Relate to a service, event or issue in which the Council has a significant stake or over which the Council has an influence;
- Not relate to an individual service complaint;
- Not relate to matters dealt with by another Council committee, unless the issue deals with procedure; and
- Must come from a resident of the District³

Peterborough

Peterborough City Council offers an online Scrutiny Request form for local residents to request the appropriate committee to review a subject or matter of concern in the city. It can cover any aspects of public services provided in the City and not just those provided by the Council itself.⁴

Councillor call for Action

The Councillor Call for Action came into force on 1st April, 2008 under the Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008, which formed part of the implementation of the Local Government and Public Involvement in Health Act 2007. While this is a mechanism available to all local authorities, according to information provided by the Centre for Public Scrutiny, this has not been widely used nor had the impact it had hoped for.⁵

2 Correspondence made on the 4th February 2014. For information on the CFPS see <http://www.cfps.org.uk/>

3 City of Bradford Metropolitan District Council Your Council [online] http://www.bradford.gov.uk/bmdc/government_politics_and_public_administration/scrutiny/can_members_of_the_public_become_involved (accessed 5th February 2014)

4 Peterborough City Council How you can get involved [online] http://www.peterborough.gov.uk/council_and_democracy/overview_and_scrutiny/how_you_can_get_involved.aspx (accessed 5th February 2014).

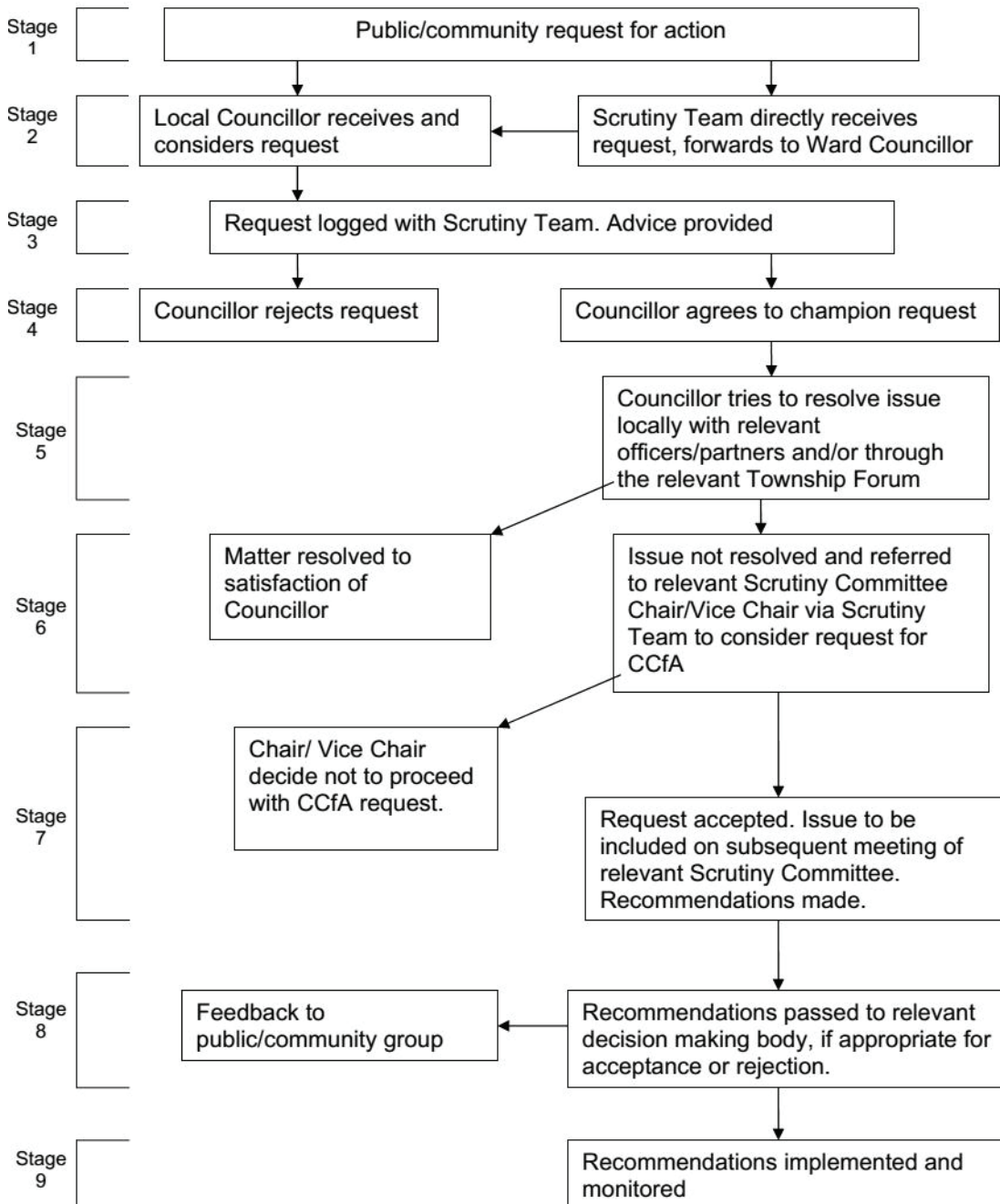
5 Telephone conversation with Centre for Public Scrutiny 4th February 2014

Wigan Council offers a Councillor Call for Action (CCfA) which allows councillors to resolve issues and problems on behalf of residents. A councillor can use a CCfA to formally request a scrutiny committee to consider further investigation and recommend a course of action.⁶

However this is to be last resort, where the councillor must have tried other means available to resolve an issue before using the CCfA

The following diagram shows the process used by Wigan Council:

Councillor Call for Action – Protocol



Source: Wigan Councillor Call-in Protocol⁷

6 Wigan Council, Councillor Cal-in Protocol [online] <http://www.wigan.gov.uk/Council/Councillors-and-Committees/Scrutiny.aspx> (accessed 5th February 2014)

7 The Protocol is available at the link on the right side of the page <http://www.wigan.gov.uk/Council/Councillors-and-Committees/Scrutiny.aspx>

North East Lincolnshire County Council also provides Councillor Call for Action; its Protocol can be viewed here (<http://www.nelincs.gov.uk/council/councillors-democracy-elections/councillors-information-and-advice/councillor-call-action/>)

International considerations: Kosovo

Kosovo was a region of Yugoslavia up until the break-up of that state in the 1990s. Its status varied as regards levels of autonomy, never being a constituent republic of the Yugoslav federation, but in the late 1980s, Kosovo was absorbed into Serbia.

The region has a majority ethnic Albanian population and a minority Serb population, although the balance of populations has been a matter of dispute over the years. Certainly by the 1990s, the Serb community comprised around 10% of Kosovo. There are also smaller numbers of other ethnic groups: Roma, Ashkali, Egyptian, Bosniak, Turkish and Gorani.

In the course of a conflict between the Kosovo Liberation Army (KLA) and Serbian forces 1998-1999, and in the context of failed peace talks in Rambouillet in France, NATO intervened against Serbian forces, leading to international administration of Kosovo under the auspices of UN Resolution 1244 and the establishment of a Kosovo Assembly. Kosovo declared independence on 17 February 2008 and formal international supervision ended on 10 September 2012, when Kosovo achieved sovereignty under the constitution of 15 June 2008.

Provisions for Minorities

Provisions for minorities at municipal level are written into the Constitution of Kosovo⁸ which determines the operation of the Kosovo Assembly. Chapter III sets out the rights of minority communities and outlines the establishment of certain bodies and arrangements to advise and ensure on the consideration of minority issues.

At the municipal level this includes:

Article 62

In municipalities where at least 10% of the residents belong to the minority (or non-majority) communities, the Vice President post of the Municipal Assembly for Communities (similar to a local council committee on communities at Northern Ireland level) is to be reserved for a representative of these communities.

This post is:

- given to the non-majority candidate with the most votes for election to the Municipal Assembly;
- to promote inter-community dialogue and raise expressed non-majority concerns and interests in meetings of the Assembly and its work; and
- responsible for reviewing claims by communities or their members that the acts or decisions of the Municipal Assembly violate their rights, and refer these matters to the Municipal Assembly for reconsideration of the act or decision.

Should the Municipal Assembly choose not to reconsider the act or decision, or if the Vice President is unhappy with the decision, the Vice President may submit the matter directly to the Constitutional Court to decide whether or not to accept the matter for review.



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

12 February 2014

NIAR 000-00

Suzie Cave

Call-in operation in England and Wales

The Environment Committee requested information on the use of call-in by local authorities in England, with interest in examples of its operation. The following paper refers to reviews of call-in powers conducted for both England and Wales.

1 Introduction

Review of council executive decisions and the use of call-in is provided for in the Local Government Act 2000 for both England and Wales and consolidated in the Localism Act 2011. The process is the same in England and Wales in that overview and scrutiny committees of local authorities monitor the decisions of the executive. They can 'call-in' a decision which has been made by the executive but not yet implemented. Reconsideration of a decision is based purely on the fact that a decision was not reached due to failure of the process; however, there is no similar element in relation to the 'disproportionate impact on a section of the community' that is provided under the Local Government Bill.

It should be noted that the *Local Government (Wales) Measure 2011* introduced a number of provisions aimed at strengthening the role of councils' overview and scrutiny committees; however it did not change the remit for call-in.¹

In general the use of call-in throughout England and Wales has been described as relatively limited since it was introduced.

This paper explores the utilisation of call-in across local authorities in England and Wales. The information derives from reviews of the use of the mechanism conducted by the Centre for Public Scrutiny (CFPS) for England, and the Welsh Local Government Association (WLGA). However it was made clear through discussions with the CFPS that obtaining information on actual worked examples from local authorities may prove to be difficult due to the fact that this information is not publically available and councils may be reluctant to share it for confidentiality reasons.

2 England

A research report specifically on '*The call-in procedure*' was produced by the Centre for Public Scrutiny in 2006.² The report considered the following:

- the length of initial call-in period
- the persons who are able to call-in a decision
- the post call-in procedure: including time allowed for consideration of the issue by OSCs and reconsideration by decision-makers.

In summary of the findings of the survey, the Centre for Public Scrutiny stated that "*call-in has not made the impact we might have anticipated.*" The whole study included information from 378 of the 388 local authorities in England. However part of the study included a Scrutiny Survey of which 166 local authorities were surveyed. Out of the 166, only 91 authorities (55%) reported any decisions being called-in. Out of these only 38 reported any amendments as a result. In the Centre's opinion the low take up of the procedure is probably due to the proactive nature of scrutiny activity rather than an unwillingness to hold decision makers to account.³

- The key findings of the entire study include:

Time limits:

- 70% allow 5 working days in which a decision may be called in before it is implemented

1 The provisions are summarised in the Explanatory Notes to the Measure here: <http://www.legislation.gov.uk/mwa/2011/4/notes/division/2/8>

2 Centre for Public Scrutiny (2006) *The call-in procedure* <http://cfps.org.uk/publications?item=234&offset=20>

3 *ibid*

Criteria for call-in:

- 47% allow only OSC members to call-in a decision
- 37% allow the Chair of an OSC Committee to call-in a decision alone
- 51% allow non-executive councillors who are not members of an OSC to call-in a decision
- 35% require at least 3 authorised signatories to call-in a decision
- 14% require cross, or multi-party support for a decision to be called-in e.g. District (15%), Unitary (17%) and Metropolitan authorities (18%)
- 2% allow the public to call-in a decision

Restrictions:

- 8% impose financial restrictions on the decision eligible for call-in, with £25,000 being the most common amount
- 9% limit the number of decisions that may be called-in per annum, with 12 being the most prevalent amount
- 4% limit the number of decision that a single member may call-in, or be party to calling-in, per annum, with 4 being the most likely restriction

2014 Review

The Centre for Public Scrutiny (CFPS) have completed a more recent review of the use of call-in across local authorities in England, however the report has not been published yet. Having said this through correspondence⁴ with CFPS, they were able to provide an overview of the key points from the study.

The study suggests that:

- the number of decisions amended, expressed as a percentage of the number of decisions called-in has been falling nationally since 2009. In fact the absolute number of call-ins seems to be falling in general. The study proposes that this may suggest that councillors and Overview and Scrutiny Committees are finding more effective ways of influencing decision-making, such as through pre-decision scrutiny.
- In terms of the impact of the political balance within local authorities it seems that it has little effect on the use of call-ins. There also appears to be no link between the perception of the existence of party politics and the use of call-in.
- High bars on (for example) the number of councillors, or type of councillors, required to be involved for a call-in to be valid may make it difficult for call-ins to be brought by particular councils. These bars may be imposed for political reasons, although this is speculation.

Example

Information is not readily available on direct examples of how local authorities use call-in. According to CFPS, local authorities may be reluctant to share such information for politically sensitive reasons. However, for the purposes of this paper, CFPS have agreed to develop a composite that draws on a number of examples they have come across during their research. It should be noted that this is not a specific example, but is merely fictional by pulling a number of examples together to give an insight of how call-in may work within a typical local authority in England.

Refer to Annex 1: Call-in – Example of Operation provided by CFPS (page8)

4 Telephone conversation with CFPS 4th February 2014

- One authority allows for eight working days, one allows for seven working days and another authority allows for seven working days within the date of the meeting at which the decision was taken.
- Finally, one authority differentiates between officer decisions and Cabinet decisions with regard to the time permitted for call-in - three working days following publication of decision for officer decisions and for Cabinet decisions the call-in period ends at 5.00pm on the Monday following the decisions.

Call-in triggers

Responses to this question varied considerably with authorities employing a range of varying criteria. The two most common approaches were:

- In four authorities, a Chair alone can call-in a decision, but a decision can also be called-in by either four or five Members of the Committee (the number varies between authorities) without the support of the Chair.
- In three authorities any single non-executive Member may call-in a decision

The following different approaches were each employed by individual authorities:

- a Chair alone can call-in a decision however a decision can also be called-in by any group leader other than the Leader of the Council or any three councillors from more than one political group from the appropriate committee (one authority);
- any single member can initiative a call-in, however the Chair's approval on the proposed call-in is always required;
- a call-in must be supported by the majority of the membership of a scrutiny committee;
- 5% of the total number of councillors must support the call-in;
- any member of the relevant Overview & Scrutiny Committee can call-in a decision;
- Any five councillors can call-in a decision;
- Any three non-executive members can call-in a decision;
- A decision can be reviewed if the relevant scrutiny committee agrees to undertake the review;
- Any five members of the appropriate committee can call-in a decision; and
- The support of the Chair or the Vice Chair, and two members of the Principal Scrutiny Committee are required to call-in a decision.

None of the authorities that responded allowed local residents, business or voluntary groups to call-in executive decisions. It is worth noting however that there are precedents for the public being able to instigate a call-in procedure in a small number of English authorities.

Cross Party sign agreement

- In 12 authorities call-ins do not have to be signed / made by members of more than one political party.
- In one authority call-ins must be made by members of at least two political groups.
- In two authorities call-ins did not need to have cross party support if called in by the Chair of the relevant scrutiny committee, but did need cross party support of called in by members of the Committee as opposed to the Chair.
- In one authority call-ins did not require the support of more than one political group if called-in by the relevant scrutiny chair or any group leader (other than the leader of the Council) regardless of scrutiny committee membership.

Financial Restrictions

- Two Authorities imposed a financial restriction on the decisions that can be subject to call-in. Decisions involving expenditure or reductions in service under a value of £10,000 in any one financial year may not be called in.
- One authority will not call-in decisions involving expenditure or reduction in service under a value of £25,000.

Other restrictions

Nine Authorities do not place any form of restriction on decisions of the Executive that can be subject to call-in other than exemptions for items classed as urgent.

Of the remaining 9 that responded, they place the following restrictions:

- A call-in may only be used when it is felt the decision is contrary to the policy framework or budget; a belief that the Cabinet of individual member has failed to follow agreed procedures or legal obligations
- A call in may not be used if:
 - if it is not clear which Executive decision is being called-in
 - the call-in request provides too little information to enable Committee members or the decision taker to adequately prepare for the meeting
 - the decision has previously been called-in
 - the decision had previously been called-in within the previous six months
 - if the call-in would result in an unlawful delay in the making of the budget
 - where the call-in states 'inadequate consultation' as a reason for call-in and paperwork is able to show consultation with the appropriate Executive Member, local members, appropriate officers or the Scrutiny Committee or if the matter is covered in the Service Improvement Plans or Wales Programme for Improvement
 - where the call-in states that the decision "Didn't take something into account", if by reference to the paperwork recording the decision it can be proved that the matter was taken into account
 - if the call-in relates to routine business matters such as the approval of minutes or the creation of or appointment to Cabinet Members to Cabinet Sub-Committees
 - if the call relates to matters that are subject to recommendations by Cabinet to Council
 - if the call-in relates to matters that have already been considered by Council or a Scrutiny Committee where the Cabinet have substantially followed the recommendations of the Council or the Scrutiny Committee.
 - if the reasons given for call-in are considered to be unreasonable, insufficient, frivolous or vexatious

Limit to number of call-ins made per year

- 14 authorities that responded do not place any limits on the number of items that can be called-in.
- Of the remaining four, they impose some of the following restrictions:
 - each Overview & Scrutiny Committee may only call in a maximum of three decisions in any three month period
 - a maximum of 3 decisions per three month period can be called-in
 - each committee may only call-in 3 issues per 3 month period
 - the Principal Scrutiny Committee is limited to 10 call-ins per annum but this can be exceeded if the Managing Director in consultation with the Leader so determines

due to what in the Managing Director's opinion are exceptional circumstances. Also decisions which do not involve expenditure may be called in up to 5 times in any single 12 months period by an individual Scrutiny Committee. Decisions involving expenditure or reductions in service over a value of £10,000 in any one financial year may also be called in up to 5 times in any single 12 months period.

One authority sets a limit on the number of call-ins to which an individual member can be party to, in this authority the limit is one call-in per member per three month period

Annex 1: Call-In – Example Of Operation

Introduction

This is a composite example of how call-in works in an “average” English authority. It is based on a number of examples of which CFPS is aware through its previous research, and draws on national research carried out in 2006 and 2013.

This is a fictional composite example because it is not possible to set out a real-world example in sufficient detail without risking that the positions of various players in the call-ins mentioned would feel that their views have been accurately represented. Call-in is a politically contentious issue whose operation rests significantly on the political and organisational culture of the authority involved. This should be borne in mind when reading this composite, and in extracting lessons from it for application in Northern Ireland.

The background

Ceal Valley Council is about to take a major decision, involving the sale of council-owned playing fields near a railway station of the largest town in the area, Market Horton, for the construction of new homes. The land is being sold with planning permission, based on plans on which the council consulted widely with the local community. Despite this, there is significant local opposition to the proposal. The council expects to earn £3.1 million from the sale towards its capital budget. Developers are to make a community infrastructure levy (CIL) contribution to the council in lieu of the provision of affordable homes on the site.

Councillors on the authority’s Community and Environment Scrutiny Committee were keen to look at the plans before the decision was made, but were advised by officers that it would be inappropriate to do so as the decision related to a planning application.

Call-ins may not be brought in relation to planning or licensing decisions. However, decisions like this – which relate to a land disposal contingent on a planning application – are not caught by that exclusion. Authorities in NI will need to think about how they apply the exceptions to call-in, where they apply.

Pre-decision scrutiny – many councils have systems in place which allow councillors to look at decisions before they are made. This can operate in the committee system, under a streamlined system or with the executive/scrutiny split. Pre-decision scrutiny can involve councillors looking at a decision several months before it is planned to be made (in order to contribute to the development of the decision or the policy underpinning it). Alternatively, it can involve looking at a planning decision a week or so before it is planned to be made (which tends to be a more formal exercise). Both are designed to minimise the likelihood and impact of potential call-ins.

Here, an attempt to carry out pre-decision scrutiny has been prevented by the connection of the work to a live planning application. Officers will need to take great care in advising members on the intersection between local authorities’ new planning powers and the call-in arrangements.

The planning application was granted six months ago and the council now needs to make a formal decision to dispose of the land. This is an executive decision which is set out in the council’s Forward Plan (see below).

Given the financial implications, the decision is a “key decision” which will be made by a Cabinet member and subject to a call in (however, see below).

The decision is submitted to the Cabinet Member on 10 February. The council’s call-in procedures state that, following submission of the decision to the CM for approval, it may be subject to call-in. Accordingly, in line with procedure, the decision notice is circulated to the Chairman of the relevant overview and scrutiny committee at the same time.

The CM makes the decision and sends the signed decision notice back to the officer in Democratic Services responsible for handling member decision-making, who publishes the decision online with a covering note, advising that the decision has five clear working days for a call-in to be made. The notice is published on 17 February.

The call-in itself

The Chair of the Community and Environment Scrutiny Committee, Cllr Mokal, is a member of the opposition party. He wishes to call the decision in because his party are politically opposed to the leadership’s plans, and because he feels that this opposition has not yet been expressed formally (other than through a motion at a council meeting a few months ago when the proposals first emerged).

Cllr Mokal looks at the council’s requirements for a call-in to be valid, which can be found in the overview and scrutiny procedure rules in the council’s constitution. They state the following.

<p>Article 4.4: Call-in</p> <p>a) A key decision made but not implemented may be called-in by councillors under 4.4(c) below.</p> <p>b) i) If a call-in request is valid, a meeting of the relevant Overview and Scrutiny Committee must be convened to meet within ten working days of the request being accepted as valid. The committee will consider the request at the meeting, taking evidence as necessary, and make recommendations to the Cabinet Member or Executive advising whether the decisions should be amended or withdrawn entirely.</p> <p>ii) The Executive must respond to the committee’s recommendations within a timescale set by the Committee.</p>
<p>Definitions:</p> <p>Key decision made but not implemented. Under the English local government regime councils until recently were obliged to prepare a Forward Plan setting out all forthcoming decisions on a rolling basis. The requirement has since changed but most councils still prepare a Forward Plan of sorts. When a key decision is made by an individual Cabinet member or Cabinet as a whole, there is a period of five working days before the decision is formally implemented. This is the available window in which a call-in request may be made. The detailed definition of “key decision” is set out in the section below.</p> <p>Convening to meet within ten working days. The nature of call-in is such that most authorities place a timescale within which a call-in meeting must be held. This requires a committee to be convened at short notice and papers to be prepared and circulated very quickly. For this reason most councils have a standardised approach for the conduct of call-in meetings, and for the information circulated to those meetings in advance, although the chair does usually have discretion.</p> <p>Taking evidence as necessary. Most constitutions are not so explicit, but the committee is not limited just to looking at the decision itself. Usually, the Cabinet Member will be invited to give evidence to the committee. Sometimes the chair may seek to invite other witnesses as well (see below)</p> <p>Making recommendations. The committee has three principal options – to recommend that a decision be upheld, to recommend that it be amended or to recommend that it be withdrawn entirely.</p> <p>Executive response. Under the legislation operative in England when an overview and scrutiny committee makes a recommendation it defines how it wants the executive to respond to it, including the timescale for response. Usually, in the case of a call-in the response will be submitted quite quickly. The response does not need to be considered by the committee for the decision to be implemented, or for the executive to take any other related action.</p>

Cllr Mokal firstly needs to ascertain that the decision is a key decision that may be called in. Not all decisions made by Cabinet members are automatically key decisions – which are, and which are not, will depend on the council’s scheme of delegation for Cabinet member decisions and its general definition of what a key decision is. The definition of “key decision” used by Ceal Valley Council is fairly standard. It is:

An executive decision which is likely:

- a) to result in expenditure or savings which are significant with regard to the service to which the decision relates or,
- b) to have a significant impact on people living and working within at least two council wards.

The judgment about whether this decision is, or is not, a key decision was one reached by the Monitoring Officer some months ago. The council’s economic development department, which is managing the land disposal, argued that it was not, because it results in a capital receipt which is neither an “expenditure” or “savings” in the technical sense of the term. Furthermore, it only affects one ward, so cannot be classified as a key decision on that ground either. The Monitoring Officer however disagreed. He realised that a decision to classify the decision as not being a “key decision” would cause political and legal difficulties for the authority; he was aware that opposition councillors would be likely to want to call the decision in and that call-in could provide a framework for this disagreement to play itself out in a more constructive manner. He advised the Cabinet Member and the department that, although it was possible to interpret the rules either way (given a certain degree of latitude) he was inclined to come down on the side of it being a “key decision” under either definition, because:

- a) A capital receipt for the council of this value still constituted a significant financial implication for the authority, even though it may technically be neither expenditure or a saving;
- b) The sale of the land with planning permission would have a direct and significant impact on the centre of Market Horton; the site abuts a ward boundary and this impact would hence be felt across two wards at least.

This is an expansive reading of the “key decision” definition. It would be equally possible to interpret them more narrowly and to state that the decision was not, in fact, key. However, given the marginality of the arguments on both sides, the Monitoring Officer has decided to come down on this side of the fence. This reflects the argument that a call-in will allow political argument to be given an airing in a formal way. Not to provide that opportunity could have risked unpredictable political consequences for the council, given the high profile of the decision. Planning for a call-in delay earlier in the process means that such an issue can be predicted and planned for – particularly when any unexpected delays could have had implications for the sale itself.

Article 4.4(b)(i) of the constitution (see above) makes reference to the call-in being “valid”. Now that Cllr Mokal is satisfied that the decision is indeed a key decision he must ensure that he makes the request in the right way.

Validity of call-in is covered elsewhere in the council’s constitution.

c) A call-in is valid when it is notified to the Head of Legal and Democratic Services using the appropriate form, after the decision has been made and before it is implemented, with the request signed by the Chairman of an Overview and Scrutiny Committee and at least two other councillors on that committee.

This, again, is a fairly standard call-in validity requirement. However, in planning how validity will be defined, it is important to consider the political balance of the authority and the parties which hold chairs. In an authority where the majority party hold all the committee chairs, and where the majority is such that there are (for example) only two opposition members on each committee, the requirements set out above would make it essentially impossible for a call-in to be brought (assuming that call-ins will not be brought by members of the majority group).

In this instance, there are three opposition members on the committee other than Cllr Mokal himself and they decide to request a call-in, in the way set out in the constitution. They do this on 19 February.

The request is received and approval (on 20 February) by the Head of Legal and Democratic Services. An officer in the council's Democratic Services team convenes the meeting, agreeing a date with members and preparing the agenda. Ceal Valley convenes special meetings for call-ins.

Some councils have separate call-in committees, which convene as and when to hear call-ins. Some councils (such as Ceal Valley) convenes special meetings of the relevant overview and scrutiny committee to hear call-ins. Some others place call-ins on the agenda of normal committee meetings. These councils usually have a provision in their rules of procedure for a call-in – when valid – to be considered at the “next available” meeting of the relevant committee. However, this can produce lengthy delays.

Cllr Mokal advises that he wants the decision report to be submitted to the committee, along with relevant background papers. He asks that the Cabinet Member be present, the council's Director of Economic Development and Regeneration and the developer to whom the land is being sold. He has also asked that the council's Director of Children's Services, the Director of Public Health and the Director of Transport and Infrastructure be present. He advises that the attendance of these people is necessary in order to explore in full the implications around the sale of the land and the likely social and environmental impact of the development itself.

Councils in England have broader areas of responsibility than those in NI. Some of the functions exercised by the Directors above would, in NI, be carried out by regional bodies or by the NIE.

The Council's Monitoring Officer speaks to Cllr Mokal. He advises that it is important to separate out the two connected issues – the sale of the land, and the development covered by the planning application. He advises that the social and environmental impact of the development itself has been dealt with by the planning committee, and that as such there is no power to revisit that decision. The focus of the call-in must be on the decision to sell the land itself. Cllr Mokal disagrees – he considers it impossible to separate out the two issues. Eventually they agree on a compromise. The committee will focus on the council's duty to obtain “best consideration” for the land in the sale (ie, for the council to ensure that it raises the maximum possible amount of money, in the context of its wider legal obligations). This will allow the committee to look in brief at the impact that the planning permission, already obtained, has had on the value of the land, and whether that means that “best consideration” has been achieved.

It is not uncommon that call-ins will be requested and brought on issues which will provoke committees to wish to explore issues beyond the decision itself. Monitoring Officers and others advising members generally use their judgment to discuss how call-in meetings should be focus so as to reduce the risk that the committee will look at issues beyond their legal purview.

Cllr Mokal also agrees that he will accept a written summary of the opinions and evidence of the wide range of officers that he wished to invite to the meeting. This is to ensure that evidence focuses on the point of “best consideration” (in terms of the extent to which the likely social impacts of the development affected the way that the planning permission was granted, which itself affected the value of the land). This suggestion was put to Cllr Mokal for two reasons – firstly, to reduce the risk that officers will be drawn into a situation where they are expected to comment on the planning application itself, and secondly to ensure that the meeting has the opportunity to conduct its work within the time available.

Cllr Mokal suggests that the meeting be held in a community hall adjacent to the development site to garner more public interest.

Members requesting a call-in will often see the meeting as an opportunity – rightly – to have a wide-ranging public debate, involving taking evidence from a number of interested parties. However, because call-in meetings are often convened at short notice and because they have to result in a clear recommendation for the executive, there is a limit to how much they can consider.

Call-in meetings are frequently held outside the town hall, particularly where the subject in question relates to an issue of specific local interest.

The agenda for the meeting, with the papers, is sent out on 26 February, with the meeting itself scheduled to take place on 5 March. This is within the 10 working day limit which the council has set for holding call-in meetings.

The meeting itself

There has been wide public interest in the decision and around fifty members of the public attend. There is a standard item on the committee agenda for public questions to be put to the committee.

Using a form of words agreed by the Monitoring Officer, Cllr Mokal opens the meeting and advises that the focus must sit on the council’s sale of the land – not specifically on the planning application. He explains the position around planning appeals and why the committee cannot legally explore this aspect of the decision. He does however explain the point around “best consideration” and asks that any public questions focus on this issue. He advises that questions from the public will be put to officers at the meeting (rather than being immediately answered by him or other committee members).

Inevitably many questions refer to the rights and wrongs of the planning decision itself. Cllr Mokal passes a note to the Monitoring Officer asking that officers attending to give evidence try to provide answers to those questions in such a way that ensures that the focus remains on the question of the land disposal rather than the planning decision.

The meeting proceeds. Before the meeting, Cllr Mokal and the committee held a short pre-meeting to ensure that the limited time available would be used effectively. There is obviously political disagreement about the call-in but because Cllr Mokal knows about this, and knows how it will be expressed, he can plan for it and ensure that discussions don’t get too heated. Consequently, questioning remains fairly sharp and focused – although the meeting is tense. There is some heckling from the public gallery and some political argument amongst the

committee themselves. However, the pre-meeting means that there has been at least some discussion about these issues beforehand.

When all the evidence has been received from the witnesses, and members have considered the papers, Cllr Mokal sums up. He does not have a majority on the committee and knows that if he suggests that the decision be withdrawn/overturned, he will be voted down. Equally, he knows that at this late stage, it is unlikely that the council will seek to renegotiate terms with the developer. He also knows that despite this, there is political capital to be made in leading a vote that will see the committee pass a motion criticising the executive decision on a cross-party basis.

He therefore proposes two motions. The first is that the decision be overturned. This fails, as he expected. The second motion is that the decision stands, but that the committee criticises the way that the council has gone about the land disposal decision, and in particular its failure to consider wider social economic, and environmental impacts when deciding what constituted “best consideration”. The motion suggests that the council reviews and overhauls its methodologies for making these decisions in future. The motion is couched in such a way that means it is carried by the committee.

Cllr Mokal was minded to make the second motion before the meeting, and broached it in the pre-meeting. He suggested separately to the Cabinet Member that a scrutiny review looking at “best consideration” and social value issues could help the council to manage these large-scale disposals better in future.

Therefore he was relatively confident that he would succeed in getting it past.

There is a political dimension to call-in that will require chairs to think strategically about what they wish to get out of the process and how it will be achieved. It's important that officers are aware of this dimension and that they acknowledge it in how they approach their engagement with the process.

After the meeting

The decision is implemented and the land sold. The executive responds to the call-in recommendations the following day, noting the criticisms made and suggesting that the issue of “best consideration”, and wider issues around social value, be considered by a scrutiny task and finish group.

Call-ins are not always as productive as this example. This example rests on a relatively open executive who accept the need to make some kind of constructive response to call-in recommendations. The need to broker this response (highlighted above) highlights again the importance of political astuteness – on the part of members and officers – in order to ensure that call-in can be a constructive process.



Northern Ireland
Assembly

Research and Information Service Briefing Paper

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NIAR 000-00

Suzie Cave

Breaches of the Code of Conduct for Councillors

This briefing note is in response to a request for information from the Environment Committee and considers the sanctions available in both England and Wales in relation to breaches of the code of conduct for councillors.

Introduction

The following briefing note is in response to a request from the Environment Committee on the levels of sanctions available to deal with breaches of the code of conduct for councillors in both England and Wales. Concern has been expressed in relation to sanctions and appeals where it has been suggested that the greater the gravitas and the level of sanction, the stronger the case for an appeals mechanism.

By way of a brief overview, it appears that in England where the power to censure or disqualify a member has been removed, there is no right of appeal against a decision made by a local authority's Monitoring Officer. However in Wales where appeals against a decision can be made to the Adjudication Panel for Wales¹, councillors may face suspension for up to 12 months or even disqualification from office for five years.

Sanctions provided in England

The powers of the local authority in relation to allegations are for local determination through investigation by the local authority's Monitoring Officer or an independent investigator. According to the understanding of the Office of the Northern Ireland Commissioner for Complaints, the adjudication function, following investigation, is undertaken by a sub-committee of the authority in the following way:

- A sub-committee of the relevant committee (this could be the audit and governance committee or a standards committee) will hold a determination hearing to determine the complaint.
- If it is determined that there has been a failure to comply with the authority's code of conduct, the determining panel has no statutory power to sanction the member, as this power was revoked (from 1 June 2012) by the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.²
- However, a motion to censure may be put to full council or a recommendation made to the member's political group that the member is either removed from committee(s) or not appointed in the future.

Sanctions provided in Wales

In Wales investigations into breaches of the code of conduct are handled by the Public Services Ombudsman for Wales. The Ombudsman provides purely an investigating role, where the imposition of sanctions is a matter for an authority's standards committee in relation to certain levels of sanction or for the Adjudicating panel for Wales (AWP)³ for higher levels of sanctions⁴:

1. At standards committee level:

Statutory provisions relating to determination, by standards committees, of alleged breaches of the local government code of conduct are set out in the Local Government Investigations

1 Ombudsman for Wales Code of Conduct for members of local authorities in Wales: Guidance (p.7)

2 Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 <http://www.legislation.gov.uk/uksi/2012/1463/contents/made>

3 The Adjudicating Panel for Wales is an independent body set up under the Local Government Act 2000. The Panel's role is to form tribunals to consider breaches of a local authority's code of conduct. The APW is a panel chaired by a legal chair that sit when required to hear cases and appeals. Members are from a wide variety of backgrounds including local government and legally qualified solicitors. The Panel will also hear appeals by members against decisions of their authority's Standards Committee. <http://wales.gov.uk/apwsubsite/APW-PDC/?lang=en>

4 Information received through correspondence with the Commissioner for Complaints Office Northern Ireland (11/02/2014)

(Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001⁵. The Regulations⁶ provide for a standards committee, having determined that a member of the authority has failed to comply with the authority's code of conduct, to determine that the member should be censured or suspended, or partially suspended, for a period not exceeding six months

2. At the Adjudicating Panel level:

Statutory provisions relating to adjudication by the AWP are set out in Part IV of the Local Government Act 2000. The Act (section 79) provides for a case tribunal established by the AWP, having decided that a member of the authority has failed to comply with the authority's code of conduct, to decide that the member should be suspended, or partially suspended, for a period of not exceeding one year, or to be disqualified for being or becoming a member for a period not exceeding five years.

The APW hears appeals from decisions of standards committees and there is a further right of appeal from a decision of APW to the High Court.⁷

Levels of sanctions imposed in Wales 2002-2012

The Office of the Northern Ireland Commissioner for Complaints has provided data on the levels of sanctions imposed in Wales over a ten year period. The data was provided to the Ombudsman Association Legal Interest Group by the President of the Adjudication Panel for Wales in March 2013.

Note: this data this data has not been widely disseminated and it was agreed the Committee could use it for information purposes only.

In summary the data shows:

- The most common sanction awarded over the 10 years was suspension (this may not exceed 12 months⁸) - 49% for normal Case Tribunals (Fig 1) and 60% for Appeal tribunals (Fig 2).
- The most common type of breach of the code was 'bringing office/authority into disrepute' - 27% (Fig 3)
- Only one disqualification for five years was given, and two for three years (Fig 4)

For more up to date examples of cases - refer to the Adjudication Panel for Wales Annual Report 2012-2013 available at <http://wales.gov.uk/apwsubsite/APW-PDC/Publications/apw-annual-report-12-13/?lang=en>

5 Local Government Investigations Regulations 2001 <http://www.legislation.gov.uk/wsi/2001/2281/regulation/9/made>
6 Regulation 9
7 Information provided by the Commissioner for Complaints Office Northern Ireland (11/02/2014)
8 For more information on the different sanctions available see the AWP Sanctions Guidance <http://wales.gov.uk/apwsubsite/APW-PDC/guidance/sanctions/?lang=en>

Figure 1: Case Tribunal decisions October 2002 to March 2012

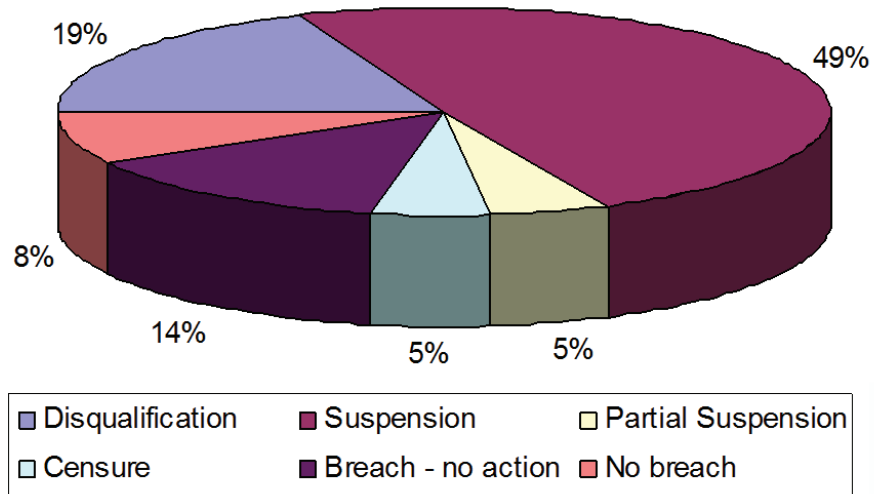


Figure 2: Appeal Tribunal decisions - October 2002 to March 2012

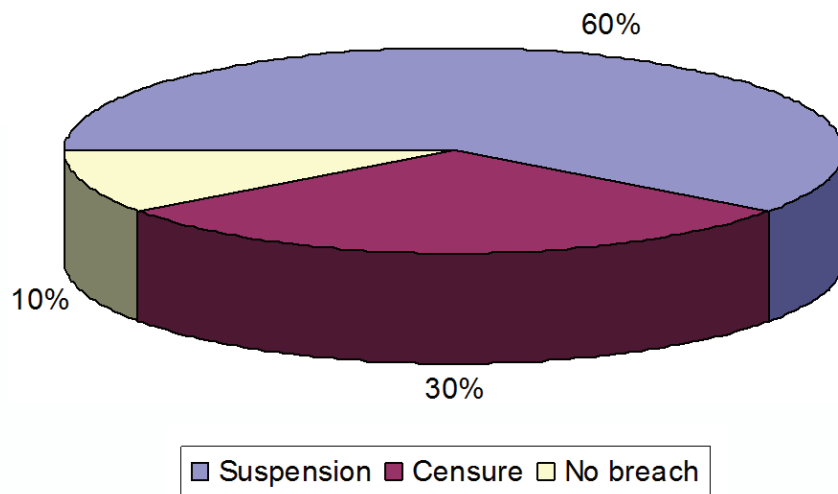
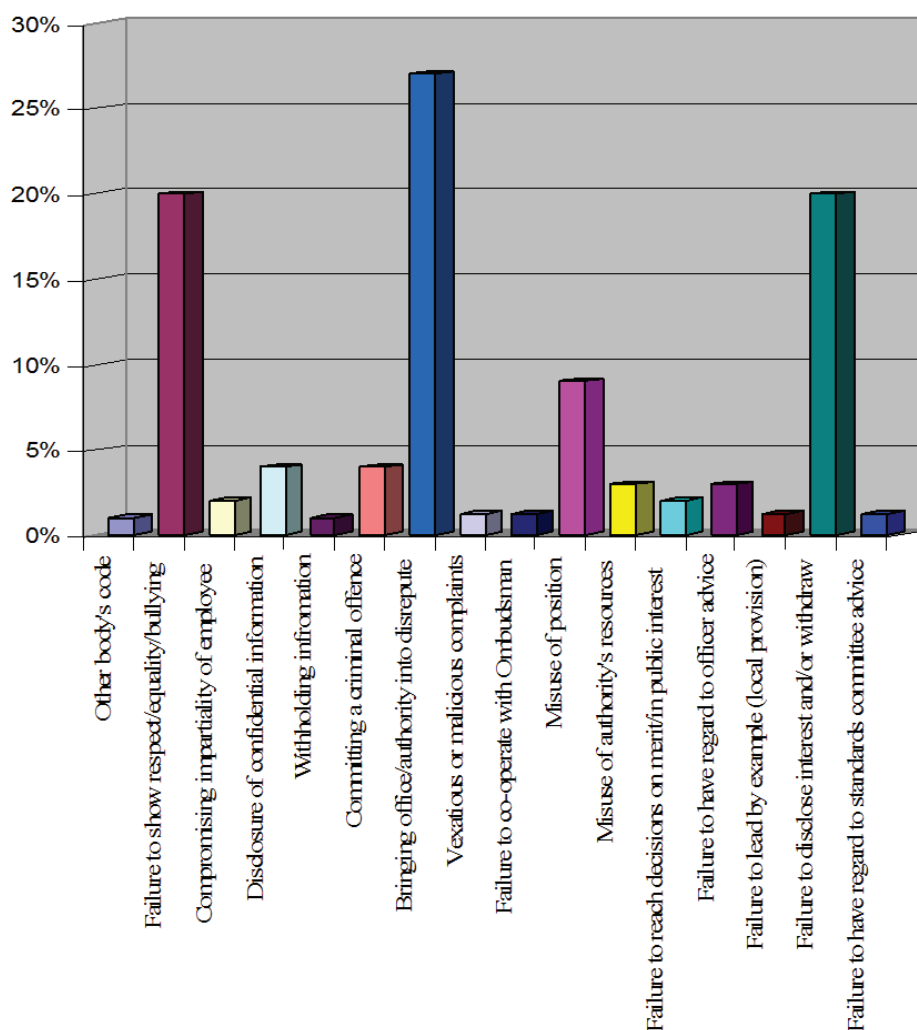


Figure 3: Breaches by type October 2002 - March 2012



Summary of Sanctions Imposed by Case Tribunals and Appeal Tribunals in the Period October 2002 to March 2012

Sanction	Period	No. of Decisions
Disqualification	5 years	1
	3 years	2
	2 years 6 months	1
	2 years	1
	1 year 6 months	1
	1 year	3
Suspension	12 months	7
	9 months	4
	6 months	5
	4 months	1
	3 months	2
	2 months	4
	1 month	3
Partial Suspension	3 months	1
	7 weeks	1
Censure	-	6
Breach – no action	-	5
No Breach	-	4
Withdrawn	-	2




Northern Ireland
Assembly

Appendix 6


Other Papers

Kess Presentation on Community Planning and Spatial Planning



Knowledge Exchange Seminar Series (KESS)

...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland



Creating a Constructive Interface between Community Planning and Spatial Planning

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Lecturer in Spatial Planning and Development, University of Ulster

Aims of the presentation

- To disentangle different understandings of planning
- To explain the context, rationale and purpose of community planning
- To present a comparative analysis of community planning models in Scotland and Wales
- To provide a series of discussion points and recommendations to inform how a constructive interface between community planning and spatial planning could be created



Introduction

- Unique opportunity in Northern Ireland to develop a symbiotic relationship between community planning and spatial planning
- Need to assert a longer term, more strategic approach to service delivery and space/land use
- Better integration of these operations have the potential to achieve better outcomes for communities/citizens
- Success will require a new civic infrastructure and culture change



Knowledge Exchange Seminar Series (KESS)

Research Methodology and Framework

The evidence informing this paper has been gathered through a combination of:

1. Individual and collective academic research and review of existing scholarly literature relating to land use planning reform and local government moderation;
2. Analyses of policy documents, strategies and reports, on community planning in Scotland and on community strategies and collaborative working in Wales;
3. Engagement with land use planning reform and community planning implementation;
4. Observation of meetings and other events on local government reform and community planning.



Knowledge Exchange Seminar Series (KESS)

Definitions and themes

- **Land use planning:** the regulation and forward management of land and property development in the broader public interest
- **Strategic planning:** the territorial management of land use and development with a regional, more comprehensive perspective
- **Spatial planning:** beyond land use to embrace sector planning, regeneration and local service delivery, and promote connectivity
- **Community planning:** promotes the social, economic and environmental well-being of their area through identifying long-term objectives for achieving sustainable development



Knowledge Exchange Seminar Series (KESS)

“there is no single model, or definition, of community – communities are as **diverse** as their members or residents, which is one of their **key strengths**”

“capacity of a community to: **identify, analyse, collaborate, and solve** pressing societal needs and issues through the efforts of engaged citizens and organisations **working across boundaries**”

Community? Planning

“community implies having **something in common**. Their common interest in things gives them a common interest in each other. They **work together**. ”

“is the **process** that councils, other public sector organisations, businesses and voluntary and community groups take to **work together** with local communities to **plan and deliver local services**, which can make a difference to people's lives”



Knowledge Exchange Seminar Series (KESS)

Community Planning in Northern Ireland

- New integrative model of collaborative working to mainstream the principles of sustainable development into local governance
- Inform the design and implementation of quality local services
- Offers a conduit to consider:
 1. the ethics and operation of a new civic culture by modernising the state and the machinery of government
 2. democratic renewal and civic renaissance
 3. opportunities for developing social learning
- A laboratory to test how a constructive interface between community planning and spatial (land use) planning might be operationalised



Knowledge Exchange Seminar Series (KESS)

Learning from elsewhere: Scotland

- Local Government in Scotland Act 2003 provides the legislative framework for community planning
- Community Planning Partnerships bring together key players responsible for devising integrated programmes of local service delivery
- Community planning provides:
 1. the over-arching policy and priority framework in a given jurisdiction
 2. vertical connections between national priorities and those arrangements at regional, local and neighbourhood levels of governance
 3. a means to promote community engagement (with respect to public services)
 4. flexibility for different models of delivery



Knowledge Exchange Seminar Series (KESS)

Learning from elsewhere: Wales

- Community Planning initiated by the Local Government Act 2000
- Ambition to: (1) transform local authorities; (2) enhance the quality of life of local communities; (3) achieve sustainable development through strengthening community leadership role of local government and policy coordination to deliver quality services
- Community Planning (Process)
- Community Strategies (Product)
- Local Services Boards (Practice)
- Local Services Agreements (Outcomes)



Knowledge Exchange Seminar Series (KESS)

Learning from elsewhere: Wales

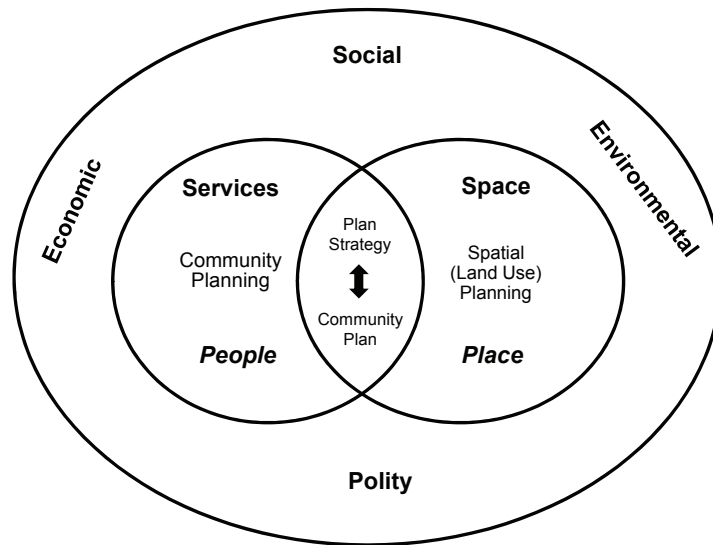
- The alignment between spatial planning and community planning in Wales can be articulated as follows:
 - “the Wales Spatial Plan (WSP) sets the agenda for the long-term strategic development of an area;
 - Community Strategies identify longer term strategic priorities necessary to improve and sustain local quality of life and wellbeing; and
 - Local Service Boards are the focus for joining up critical services to meet the needs of citizens.”

(Welsh Assembly Government, 2007; 14)
- Dynamic and shifting strategic and local context
 - Wales Infrastructure Investment Plan (WIIP)
 - move towards a model of Single Integrated Plans (SIPs)
 - focus on measuring impact and distinguishing lines of accountability



Knowledge Exchange Seminar Series (KESS)

The interface between community planning and spatial planning



Knowledge Exchange Seminar Series (KESS)

Conclusions

- Northern Ireland is on a 'learning' journey
- Structural, organisational, procedural and cultural change
- Planning enterprises require a robust understanding of the relationship between *people* and *place*
- Councils need to take a more strategic, local authority-led approach that involves citizens in place-shaping to deliver sustainable change
- Develop a 'spatial fix' to address barriers that exist in linking service delivery (Community Planning) with spatial management (Spatial Planning)



Knowledge Exchange Seminar Series (KESS)

Recommendation

- Need to create some critical space during the implementation of local government reform to establish strategic agendas
- Introduce a Strategic Statement of Intent for each new Council as an integrative vehicle for regional reporting
- Articulate ways in which land use planning (development plans) and community planning (service delivery) address inherited problems
- Support the performance improvement dimension of the Local Government Bill to monitor the symbiotic exercises of community planning and spatial planning
- Be part of the remit for the Partnership Panel to discuss and disseminate best practice



Knowledge Exchange Seminar Series (KESS)



Northern Ireland
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Knowledge Exchange Seminar Series (KESS)

...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland

Improvement, Collaboration and Efficiency Report supplied by NILGA

Ms Anna Lo MLA
Chair of the Environment Committee
Room 378
Parliament Buildings
Ballymiscaw
Stormont
Belfast
County Down
BT4 3XX

26th November 2013

Dear Ms Lo,

Please find enclosed for the attention of the Environment Committee, a copy of the Improvement, Collaboration and Efficiency (I.C.E.) Report, as received from the independent specialist, Mr Martin Horton.

The sector approved this Report unanimously at a NILGA Full Members and Regional Governance Group combined meeting, on 22nd November 2013.

A core team of elected members and officers will now be charged with taking the Report's recommendations further.

A meeting with Minister Mark H Durkan is in the process of being organised in regard to practical and political next steps.

It is vital, as I am sure you will agree, to bring together some key, parallel initiatives related to improvement, audit, resource provision, capacity building and performance management for the local government sector.

I assure you that NILGA will keep your Committee updated on progress of this work.

Yours sincerely



Derek McCallan

Chief Executive, Northern Ireland Local Government Association (NILGA)

Enc. Improvement, Collaboration and Efficiency (I.C.E.) Report

Improvement, Collaboration &
Efficiency



**PEER REVIEW OF
IMPROVEMENT, COLLABORATION AND
EFFICIENCY
(I.C.E.) PROGRAMME**

FINAL REPORT

MAH Associates

November 2013

Improvement, Collaboration &
Efficiency



CONTENTS

1. Introduction
2. Current Context
3. Review Work to Date
4. Background to I.C.E.
5. The Case for Change and Final Report - what I.C.E. set out to achieve
6. Impact and Progress - what has happened because of I.C.E.?
7. Issues - what has hampered progress
8. What next for I.C.E.
9. Recommendations
10. I.C.E. Looking Forward - a proposal for debate

Improvement, Collaboration & Efficiency



1. INTRODUCTION

The I.C.E. Programme has been in existence since mid 2011. It has been designed and led by local government, through NILGA and SOLACE, as a voluntary initiative with the intention to:

- Identify, share and implement opportunities for improvement, collaboration and efficiency across local government
- Be a lead for voluntary, local government led reform and transformation, open to all 26 councils
- Be a means whereby local government can achieve its vision of delivering world class local government

This peer review and report was commissioned jointly by NILGA and SOLACE to assess the progress and impact of I.C.E. **both** against the original intentions set out in the "Case for Change" consultation paper (January 2011) **and** in the current context of the emerging Local Government Bill and the reform of Local Government.

The scope for this review included the need to pay particular regard to issues of:

- **The impact** of I.C.E. across the Local Government sector and within Councils
- **The efficacy of governance arrangements**
- The degree to which there has been **political and operational buy in** to the concept and implementation of I.C.E.
- The **capacity** made available to properly implement I.C.E. both at a regional level and within Councils
- **I.C.E. in the future**

This is therefore not simply a review of a discrete programme but also an assessment of the degree to which I.C.E. provides a foundation for the future convergence and transformation of Local Government.

2. CURRENT CONTEXT

The reform of local government in Northern Ireland will result in the reduction of the current 26 councils to 11 new, larger councils in April 2015. The new councils should be stronger, more efficient and will want to deliver more effective services. They will be citizen focused, responding to the needs,

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aspirations and concerns of their communities. In partnership with others, they will guide the future development of their areas.

In addition to the reduction in the number of councils, the reform programme will also result in the transfer of functions and considerable powers from central government to local government, together with the creation of new formal responsibilities for local government such as community planning.

The new councils will cover larger geographical areas, serving a bigger population base. They will also deliver significant new functions, including spatial planning, regeneration and community planning, and **they will operate within a new governance framework.**

In moving forward, there will be major challenges and opportunities in relation to implementing both transition and transformation and creating new fit-for-purpose organisations which can deliver against the following vision for local government as agreed by the NI Executive:

“... a strong, dynamic local government creating communities that are vibrant, healthy, prosperous, safe, sustainable and have the needs of all citizens at their core...”

Local government reform therefore provides a real opportunity to redefine the role of local government and the services it provides; further enhancing the ability of councils to shape local places and meet local needs and priorities.

Elections to the eleven new councils are due to take place in May 2014. They will operate in ‘shadow’ mode until they take on their full suite of powers and functions in April 2015. These will effectively be councils in waiting with the powers to take forward the necessary preparatory work for the new councils commencing in April 2015.

This is a truly challenging agenda for Local Government and will be taking place alongside legislative changes that will introduce, among other things, new governance and political management arrangements and an updated service delivery and performance improvement regime for the new councils.

In this context, I.C.E. has been cited both by the local government sector and within the NI Assembly (Hansard recording of the second reading of the LG Bill) as a key governing framework for improvement, collaboration and efficiency and also people and organisational development and systems convergence work in ensuring service continuity and supporting improved service delivery within the new 11 council model in 2015.

3. REVIEW WORK TO DATE

This review has been conducted on the basis of the following activity:

- Desk research of the I.C.E. literature including the original "Case for Change" and Consultation Final Report, operational reports and work stream papers and a review of "governance" records
- Meeting with NILGA Office Bearers and Executive members and officials
- Meeting with Regional Governance Group (RGG) members
- Meeting with 8 Chief Executives and telephone discussions with 3 Chief Executives
- Meeting with DoE Officials
- A survey of 26 Councils to which there were 18 responses (including Members and Officials) representing 13 Councils
- An interim presentation of findings to the RGG meeting on 3 October, 2013
- An on-going "real time review" of key, associated strategic documentation and policies, including the Local Government Bill and the workings of the Regional Transition Committee and Regional Transition Operating Board

4. BACKGROUND TO I.C.E.

The I.C.E. programme was originally conceived as a local government response to the 11 Council, Business Services Organisation (BSO) model proposed by PwC in October 2009 as part of the, then, RPA process and based upon projected savings of £438 million over a 25 year period. This proposition was unanimously and strongly opposed by the sector.

From the outset, I.C.E. was conceived as a voluntary, sector led, initiative sponsored by NILGA and SOLACE to support continuous improvement and delivery of value for money services to meet citizen expectations against an austerity economic backdrop.

This origin and subsequent timeline has been an important factor in the development of I.C.E for a number of reasons:

1. The initial response to BSO was widely supported across the sector. However, the development of the I.C.E. Case for Change almost exactly coincided with the decision of the NI Executive to pause the RPA process (in June 2010). This had the effect of dividing the local government response and approach to the need for I.C.E. A large

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number of councils stressed that this made the need for I.C.E. even more significant as a vehicle for delivering citizen focussed transformation and change. A small number appear to have taken the view that, in the absence of RPA, there was less need for sector wide activity. This pattern of engagement has been evident throughout the life of I.C.E. to date.

2. The re-emergence of RPA has exacerbated the point made above. A core of councils and both NILGA and SOLACE corporately have stressed the role of I.C.E. in helping transform local government whilst a smaller number cite that the capacity needed for transition and convergence under RPA has meant that I.C.E. has ceased to be a priority for them. Both of these views come together as the recommendations in Sections 9 & 10 show.
3. The headline projected savings of £438 million over 25 years in the BSO proposition was matched by projected I.C.E. savings of between £257m and £570m, **again over 25 years**. These numbers appear to have affected expectations of what might be reasonably achieved in the first few years of a long-term programme. This debate on the volume of realised savings in the very short term has been a consistent feature of the perception of the degree to which I.C.E. has been considered successful or otherwise. This absence of a realistic assessment of short-term planned gains has been compounded by the absence of routine gathering of financial data.
4. In addition to point 3 above has been a lengthy and distracting disagreement as to the use of any savings. Since the re-emergence of RPA, senior Assembly politicians have argued that I.C.E. savings should be used to fund the reform of local government. Not surprisingly this has been resisted by a great many in local government and, more importantly, the debate itself has **distracted from a focus on the development of I.C.E. and has been used by some to reinforce an argument against engaging in I.C.E.**

5. THE CASE FOR CHANGE AND FINAL REPORT - WHAT I.C.E. SET OUT TO ACHIEVE

The Case for Change - Consultation Paper (January 2011) and the I.C.E. Consultation Final Report (June 2011) set out a comprehensive, best practice architecture and operating framework for the improvement and transformation of local government. The documents stand comparison with the best of improvement practice developed across the UK prior to 2011 and over the past few years. They presented an overarching vision for local government, an overall framework for action and detailed analysis of priority opportunities. The ambition was for:

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- Councils working together to achieve significant efficiency savings
- New opportunities to deliver services in new collaborative ways
- Regional on-line support toolkit for participating councils, and,
- A council led improvement, collaboration and efficiency programme

In consulting on how to achieve these ambitions councils were presented with a range of specific measures and asked if they supported and would adopt them. The list below is the key activities to be undertaken and the figures in brackets show the number of supportive councils from 19 responses:

- **Regional and local adoption of the I.C.E. framework (19/19)**
- **Implementation of a service review and improvement process (19/19)**
- **Development of key performance indicators and benchmark/baseline data (19/19)**
- **Development of I.C.E. guidance pack (19/19)**
- **Integration and alignment with council frameworks and processes (18/19)**
- **Publication of I.C.E. plans and annual statements by participating councils (18/19)**
- **On-line resources and information exchange (19/19)**
- **Training and support (19/19)**
- **Invest to save (19/19)**
- **Investment in specialist capacity to support the programme (19/19)**

A critical document in support of these measures was contained in the Case for Change, namely the Interim Support Pack. This was presented as a *draft* operating toolkit to support councils in the implementation of the I.C.E. Framework. As will be discussed later, an impediment to the development of I.C.E. has been the absence of any assigned capacity to further develop and fully utilise this Support Pack.

The stated potential benefits of I.C.E. were:

1. Improved customer satisfaction due to better targeted services and facilities
2. Improved ratepayer satisfaction due to increased value for money
3. Improved career enhancement opportunities, staff skilling and staff morale
4. Improved performance management

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5. Improved partnership relationships and greater sharing of knowledge across local government and other sectors
6. Increased potential to improve and standardise service provision and to promote new service delivery models

In regard to benefits 1 -3, there do not appear to have been any measures built into the I.C.E. Programme to date to assess progress made.

For benefits 4 -6 there is evidence of progress that, in the absence of I.C.E. would not have otherwise happened. However, due to the absence of full, 26 council, engagement this has not been sector wide.

The I.C.E. Final Report was published in June 2011 and was followed by an Induction Meeting of the Regional Governance Group (RGG) on 23/11/11 and Inaugural Meeting of RGG on 25/01/12. In reviewing the early reports to and minutes of these initial RGG meetings it is apparent that the focus of attention was almost wholly placed on work-stream activity. Of the key supporting activities outlined above only a draft communications strategy was put to the RGG. Furthermore, it was minuted that,

"It was also noted that there was no bureaucracy around the ICE Programme and that there were no resources available to support extensive implementation structure" (RGG Meeting 25/01/12).

This *capacity deficit* has meant that throughout the period to date I.C.E. has not been able to put in place the regional support, training or tools to underpin programme development, the absence of which has hampered the ability of I.C.E. and the RGG to manage and measure progress. Without doubt, the "full on" requirements of RPA have been a significant reason why the drivers of I.C.E. have been unable to find new resource to put the required capacity in place. It is also the core reason why, today, it is the subject of absolutely critical analysis that will take it to a different level of performance.

As stated, the initial focus of activity was placed on a proposed forward work plan for the following ICE Work-streams:

- Support Services
- Customer Facing Services
- Information Technology
- Human Resources
- Procurement

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As will be discussed later and, even in the absence of supporting machinery, these work-streams have been able to make good progress.

Viewed in the current context of moving to 11 councils by 2015 the I.C.E. Framework and operating models/Support Pack remain a highly relevant means by which progress can be made.

To give one example, Part 12 of the LG Bill is concerned with performance improvement. I.C.E. has within it comprehensive performance improvement and management architecture and tools to provide the means by which local government implements Part 12. What is needed is the capacity to bring up to date, fully develop and resource the Framework and Support Pack as originally envisaged.

It is our understanding that NILGA will seek to put a case to the Environment Committee that proposes how local government performance improvement can be self-managed.

6. IMPACT AND PROGRESS - WHAT HAS HAPPENED BECAUSE OF I.C.E.?

An important qualifier to this section is the overall pattern of engagement with I.C.E. While all 26 councils originally signed up to the Programme, the number of councils actively engaged has reduced during the life of the programme to date. Indeed, even at the inaugural RGG Meeting a few councils raised the problem of sparing resources for I.C.E. whilst having to manage the RPA process. Over the past 12 months 8 councils (represented by a member or official) have not attended a single RGG meeting and only 10 councils have attended 3 or all 4 of the meetings held.

Therefore it is evident that the impact and progress made has been down to the voluntary efforts of a minority of members and officials who have continued to promote the importance of I.C.E. and to put time and effort into making things happen.

Improvement

This element of I.C.E. is the most difficult to assess. As previously stated, measures were not put in place and therefore there has been no routine reporting of progress. At a discrete level there is evidence reported by councils that a few have utilised the I.C.E Framework at a local level and have sought to link improvement to their annual planning and performance

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management processes. Furthermore, the Framework has been used by a number of councils to enable model policy development and to facilitate the sharing of model documentation and templates.

In the absence, though, of follow through on the development of, for example, key performance indicators and benchmark/baseline data or the publication of local, annual, I.C.E. plans as agreed originally it is difficult to comment on progress towards the improvement benefits cited in the Final Report.

A number of respondents cited a reluctance to put resources in to a perceived bureaucratic and burdensome process. The I.C.E Framework though envisaged a simple, effective, means to communicate success / barriers, and explain improvement in cash and kind (cost and value) terminology. A simple Balanced Scorecard is but one example used in industry and public service.

Collaboration

There is a strong sense (even from those least engaged with I.C.E.) that real progress has been made in this area both at a regional level and also (in terms of RPA) at a local/cluster level.

From individual meetings with members and officials and from the survey the overwhelming response has been to highlight a healthy improvement in the volume and quality of collaborative working.

I.C.E. has facilitated a strong foundation for the future based on the positive experience many have had in:

- Sharing knowledge and experience
- Gaining new knowledge, skills and experience through participating in work stream activity
- Working collaboratively on a regional agenda to change local government - balancing the need to protect local priorities and needs with a recognition of the need to contribute to sector wide activity
- Improvements in developing a positive attitude to cluster level working

Not surprisingly, those who have been most engaged appear to have got most out of the experience. However, even those most critical of I.C.E. in terms of progress on improvement and efficiency report that it has provided a positive framework for collaboration and that there has been a noticeable change in the local government culture.

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These auger well for the next period of change. Changing plans, processes and structures is relatively straightforward when compared to the **challenge of altering long established and entrenched cultures**. One might take many months, the other will take years.

I.C.E. has provided an experience of and accelerated the benefits of collaborative working.

Efficiency

Assessment of impact and progress in this area has been made more difficult by the absence of collective reporting to the RGG. This lack of clarity has been commented upon at a Ministerial level and is recognised as a critical omission by the RGG.

This has, also, been a contentious area for reasons already outlined, namely, the absence of an agreed, realistic, assessment of what might have been achieved in the first few years of a long term programme and the pressure to make and show early, significant, savings as a means to fund the RPA process.

The evidence, though, is that this element of the I.C.E framework has made real progress.

From the outset, focus was placed on the 5 work-streams which have, to date been working on:

- Support Services -
 - Collaborative procurement for Insurance Services
 - Model for Legal Services (currently paused)
 - Collaborative security contracts
- Customer Facing Services -
 - SRI Pilots
- Information Technology -
 - Systems convergence work
 - Gartner refresh of sector wide IT Strategy
- Human Resources -
 - A platform to launch a Leadership Capability Framework
 - Development of a Performance Culture Model
 - Future Industrial Relations Model
 - Workforce Data analysis
 - Proposal to progress to a shared on-line recruitment portal
- Procurement -

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- LG Procurement Strategy
- Procurement Service Delivery Model
- Development of I.C.E. Procurement Toolkit including a Supplier Charter

Whilst at all times, and in the spirit of I.C.E. as a collaborative venture, efforts have been made to engage all 26 councils, progress in these areas has been made primarily through the voluntary effort of a relative few combined with limited RGG oversight and challenge.

All resourcing has been made available from within existing capacity with lead CEOs contributing time and support from within their councils and NILGA absorbing secretariat costs.

In terms of "quick wins" savings are reported through, for example, shared procurement of insurances (£140k), and shared recruitment practice (£250k).

More importantly these work-streams have been laying the groundwork for medium to long term change and, since the re-emergence of RPA, been mindful of the need to work in a way that anticipates the needs of 11 new councils and new arrangements.

An example of this is the work of the Customer Facing Services work-stream covering Building Control, Environmental Health and Waste Management/Cleansing Services.

In these three service areas, groups of officials have been utilising the Service Review and Improvement Process developed through I.C.E. and undertaking a thorough analysis of their services through the following stages:

1. Defining current and desired service
2. Assessing performance - the gap between current and desired position
3. Identifying alternatives - options for improvement and efficiency
4. Preferred option(s) - determining a preferred approach and gaining approvals

The three service areas have reached this fourth step and, in the last month put forward propositions for change. The proposals indicate potential savings of:

- Building control - £1.022 million per annum
- Environmental Health - £3 million per annum, and

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- Waste Management and Cleansing Services - a 10% reduction on a current net cost of £97.6 million (i.e. £9.8 million).

These are significant proposals and savings can be estimated at £14 million. But, these proposals are worthy not just in terms of savings but in that their basis has been grounded in an assessment as to how these services can best be delivered differently under the new, 11 councils, arrangements. The I.C.E. Service Review and Improvement Process is a robust approach that has been tested and which should provide a ready-made vehicle for ongoing convergence work. When linked, for example, to the work being undertaken also by SOLACE and NILGA in regard to future delivery of EU Structural Funds (worth £1.1 billion in NI) community impact and reduced bureaucracy can be applied here, too, with savings of substantial amounts, showing the effectiveness of local government and showing how development of collaborative delivery solutions by councils can get things done better, locally. NB: In relation to the waste management SRI, it is noted that some more work is required in relation to exploration of legacy issues such as long term contracts, and that business case work previously undertaken by the DOE relating to waste disposal authority models should be further explored.

7. ISSUES - WHAT HAS HAMPERED PROGRESS?

I.C.E. has made a difference and had an impact on the culture of local government. Undoubtedly more could have been achieved over the past 2 years. A number of factors cited below appear to have hampered progress. Critical to the future, a number of these factors, unless addressed, will continue to affect sector wide activity and the success of transition, convergence and longer term transformation.

- **Lack of capacity** - from the outset I.C.E. has relied on voluntary activity on the part of members and officials. This has limited the ability to further develop and operationalise the key supporting tools and processes contained in the Interim Support Pack. This has been compounded by the initial move from the Final Report to RGG and work-stream activity without the production and agreement to an overarching implementation/operational plan. A further by-product of this initial step can be seen in the minutes of RGG meetings where members have been managing process rather than leading sector wide change.

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- **Reluctance** on the part of some councils to accept common approaches compounded by parochialism, "not invented here", and a fear that local sovereignty will be put at risk. Allied to this has been an unwillingness to give things up at a local level as part of sharing a sector wide responsibility for change. Survey responses and interviews show these to be genuinely held positions by some, questioning a perceived lack of evidence to show the benefits of engagement and sharing.

- **Why bother?**
 - RPA has gone away/won't happen/wait and see
 - RPA is back on the agenda so we don't have time for I.C.E.
 - Genuine doubts as to the realism of ICE in the light of a perceived unwillingness to tackle the issue of reducing staff numbers
 - Not seeing the part ICE can/should play in the next generation of LG

- **Ministerial expectations** of the volume and speed at which savings could be realised compounded by the lack of central and routinely gathered data.

- Those willing to engage in spite of the difficulties vs those finding reasons not to engage

- **Governance issues:**
 - A desire to consult with and engage 26 councils slowing down process
 - The inability of RGG to take decisions binding on councils
 - Ongoing (as reflected in RGG minutes) frustration on the part of members in relation to their engagement with the various work-streams
 - The absence of an overarching strategic plan leading RGG meetings into more detailed operational discussions and the blurring of the distinction between political leadership and operational management
 - The link between RGG members and their councils. Where members have been representing councils not engaged in I.C.E. they have had few means of making things happen at a local

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level. Not surprisingly most progress has been made where both the individual CEO and member have been most engaged

- Mixed patterns of CEO behaviours and responses
- **Degree of trust:**
 - Between Councils
 - Between Members and Officers
 - Between Officers
 - Between local government and central government
- **Changing external environment:**
 - The politics of mergers
 - Larger councils – self-sufficient
 - Smaller councils – we have too much else to do
 - The shifting focus to 11

Moving forward will require that these "soft" issues are raised and addressed. Building trust, encouraging open challenge, achieving shared commitment to action through binding decision taking processes, holding individuals and organisations to account for their action/inaction and paying attention to results through regular monitoring and measurement of outcomes need to be built in to I.C.E. as it moves forward. For these reasons, I.C.E. must maintain – if it is to progress and succeed – a regional dimension to its governance, resourcing and development as well as a regional / local member and officer leadership team, utilising existing bodies, clarifying and supporting the role and responsibility of each part and invigorating the communication and delivery around them.

8. WHAT NEXT FOR I.C.E.?

A small number of respondent members and CEOs believe that I.C.E. has no future and, at least, should be suspended until post May 2015 if not abandoned altogether. Their view is that I.C.E. has made little impact to date and requires resources which should be better engaged on the transition and convergence of 26 councils to 11.

The majority of respondents believe that I.C.E. has made progress, particularly in terms of collaborative working and efficiency measures and has a key part to play in both the transition to 2015 and the necessary transformation of local government post 2015. They believe that I.C.E. should

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not continue as a separate, discrete programme but rather needs to be built in to the transition and transformation machinery for the future.

Our view in conducting this review in the current regional context is that the "Case for Change" is even more relevant today than it was in 2010/11.

I.C.E. has within it a philosophy and operating framework which could efficiently and innovatively form the core of RTC / STC activity over the next 6 months and for the work of newly elected shadow councils in May 2014. It could also be a key corporate driver of the Local Government Association and the Chief Executive's Society.

Building a foundation for improvement, collaboration and efficiency through and beyond transition is a necessary pre-cursor to achieving transformational change in the future. I.C.E. can play a central part in ensuring this happens.

9. RECOMMENDATIONS

Section 10, below, provides a wider reaching proposal for the future development and improvement of local government and local public services.

Notwithstanding this there are short term actions (Section 9) that should be considered to improve the performance of I.C.E.

RECOMMENDATIONS – SHORT TERM (until April 2014)

1. Following RGG Meeting of 22/11/13, develop terms of reference to constitute I.C.E. within the *existing* RTC body, and ensure effective and formal decision taking and communication on I.C.E. within and between STCs, Councils and NILGA (elected members)
2. Determined by RCEG, support (1) above and develop a work plan which prioritises key short term gains including convergence of ICT platforms, develop budgets for these, and seek investment from both councils and other sources including the NI Executive to achieve same (officers and departmental officials)
3. Determined by NILGA in partnership, engage in evidence provision from mid-November 2013 at the Environment Committee that will present a Performance Management system reflecting the 2010 Case for Change but brought up to date, and gain wider political support.
4. Determined by SOLACE in partnership, engage in consistent communication with STCs and Councils to ensure preemptory work on the culture change mentioned above, and placing within I.C.E. key

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emerging activities, such as delivery of new mechanisms to spend EU Funding and analysis of new burdens affecting councils in the run up to RPA.

5. SOLACE to undertake an urgent I.C.E. "impact audit" to provide a comprehensive summary of actions, achieved savings and pipeline savings to date.
6. Through the Transfer of Functions WG and political mechanisms, develop within I.C.E. the means by which it can best support work in relation to transfer of functions - from initial due diligence through to service design and implementation
7. Co-ordinate with STCs and develop a central clearing house of knowledge, data and approaches being developed and utilised in the approach to May 2014 and through the shadow year to 2015. This should include the development of key performance indicators and benchmark/baseline data to support convergence within clusters and generate shared knowledge and learning between clusters.

MEDIUM TERM – through 2014

8. Utilise the I.C.E. experience to build a communication, engagement and learning strategy to ensure the future success of collaboration across 11 councils. This should involve working with members and officials as they work to converge at both cluster and sector wide levels and could well combine with, for example, the work identified by the Local Government Training Group.
9. Assess and plan to secure the necessary dedicated and specialist resources needed to properly utilise I.C.E. and fully support councils post May 2014
10. Update and bring on-line the Interim Support Pack and supporting tools including a facility for sharing on-line resources and information exchange
11. Prepare a post May 2014 I.C.E. strategy and operational plan to be agreed by the RGG and STCs to establish the role, governance and resourcing for I.C.E. going forward, as part of the proposed programme for Local Government as communicated by NILGA.

10. I.C.E.: LOOKING FORWARD - A PROPOSAL FOR DEBATE

This section provides a wider reaching proposal for the future development and improvement of local government and local public services and the role that I.C.E. might play.

The I.C.E. Programme has the opportunity to embed itself as a key, underpinning, local and regional improvement model of design, delivery,

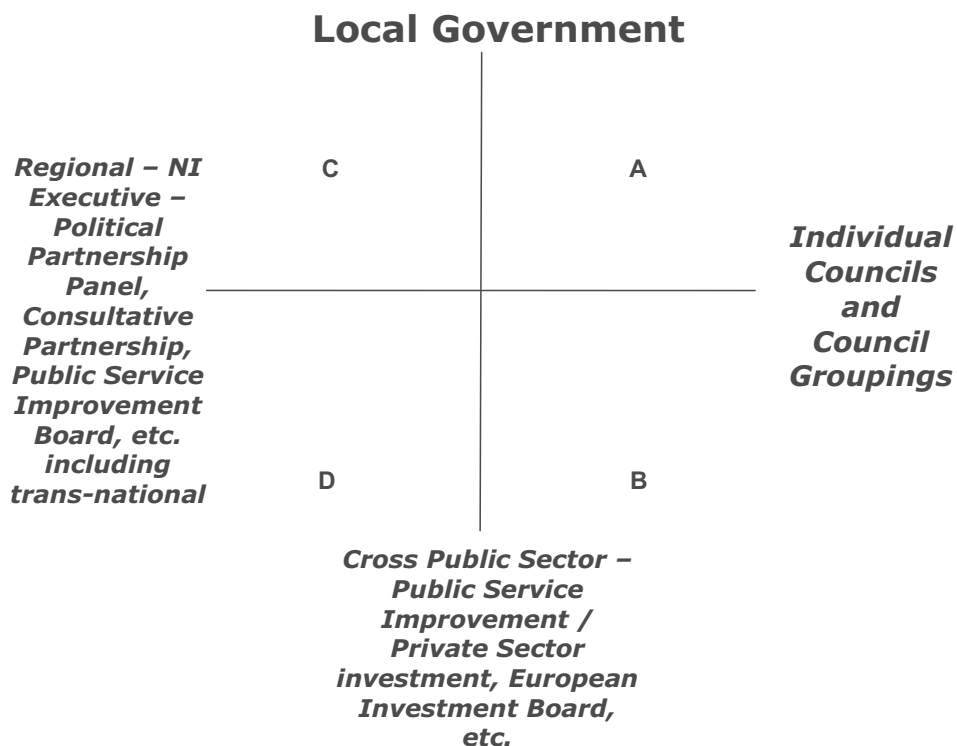


monitoring and continuous transformation for Northern Ireland’s councils, offering self help, self governance and a formal support for the linkages established in the LG Bill for local government to the rest of government.

This opportunity is as much to do with **timing** (an election to Shadow Councils in May 2014 and the commencement of new councils with Community Planning and Local Development Planning powers in April 2015), and **political opportunism** (public service improvement in a wider cross party, cross departmental, NI Assembly level) as it does **performance** to date. I.C.E. has proven that it can work, should continue and has made real differences to political / operational culture (how things are done, why and with what), service quality and service costs.

The model below is suggested as a means to frame a debate as to the role I.C.E., under the auspices of NILGA/SOLACE, as pivotal regional drivers of the political and operational future, can play going forward through **not only** the transition to 11 Councils but, well **beyond 2015, to the transformation of local government.**

So, what does the model look like? **NB** to be developed.



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The model illustrates both the regional to local dimension for improvement, collaboration and efficiency and also a local government to regional / cross public sector dimension. This latter dimension brings into focus the emerging debate on not only the **future shape of local government but also the relationship with a wider public sector in ensuring citizen focused services and achieving real efficiency.**

A. Council/Local Government:

With a dedicated, dynamic and regionally positioned driving team, accessing requirements from and gaining from advice and input by all councils, I.C.E. will act as a central “clearing house” for the acquisition and sharing of improvement, collaboration and efficiency **knowledge and learning**. What might this mean in real life?

- Gather and share examples of good practice; materials, approaches, programmes, information on suppliers and evaluation of impact
- Consider applications for support to develop and test new ways of developing current and future services, particularly those which look to share resources across Councils
- Provide a central hub for the development and dissemination of shared data sets, KPIs and aggregated performance improvement and efficiency measurement
- Support activity in Councils where political and managerial leadership capacity is key to resolving organisational performance issues
- Gather and share development infrastructure. For example competency frameworks and talent management frameworks where the cost of procurement, design and implementation can be reduced by avoiding duplication of effort or sharing in the investment
- Seek financial assistance and project management skills sets for non-core, multi-dimensional infrastructure and / or human resource / community projects
- Fund external evaluation of a sample of Council approaches/programmes to assess impact and share learning.

B. Council/Wider Public Sector:

I.C.E. recognises the critical part councils will have to play if local government is to realise the opportunities afforded by changes in the structure and delivery of wider public services, for example, the **changing agenda on community planning**. Critically, I.C.E. will support councils as they break

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down territorial barriers to shared investment and collaborative approaches to public service improvement and development.

- Support to test new approaches that use community planning as the vehicle for developing collaborative approaches to improving customer focused and citizen centered services
- Seek financial assistance and project management skills sets for non-core, multi-dimensional infrastructure and / or human resource / community projects
- Offer advice in advance of key political negotiation and representation activity required of NILGA and in regard to key strategic and policy / operational activity required of SOLACE.

C. Region wide/local government:

I.C.E. will support the work of those working closely with regional bodies and the Assembly to ensure that **regional programmes are designed and implemented to best meets the needs of local government**. Where regional programmes are considered essential, I.C.E. will support take up at a local level. I.C.E. will also identify those approaches most efficiently developed and delivered at a regional level (or developed regionally but delivered locally) and invest accordingly.

- Setting and agreeing priorities and policies for improvement, collaboration and efficiency programmes and activity and planning for regional investment
- Further development and effective utilisation of the I.C.E. **Programme Support Pack** (as contained in the Case for Change) as a shared framework for change
- In collaboration with the DoE provide the operational framework to underpin the performance management section of the Local Government Bill, offering such a framework to the local government sector for agreement
- Support for political and managerial leadership capacity building
- Gather and share information on local I.C.E. progress and identify future priorities for action
- Communicate regularly in Bulletin form and through social media

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D. Region wide/wider Public Sector:

I.C.E. will engage in bringing together stakeholders from across the wider public sector and seek to influence a greater degree of shared investment in design and development of approaches to improve collaborative working. I.C.E. will also continue to support activity to bring together political leaders and officials from across public services to share learning, build understanding and relationships and a common language of collaborative working and public service improvement.

- Input via NILGA and Councils into the proposed Political Partnership Panel, with support by SOLACE
- Pilot programmes at a council / cross – council level, using community planning as a vehicle to improve local public sector performance, evaluate impact and disseminate learning – for example, utilising EU Structural Funds in areas of common output such as enterprise, rural development and social economy work.

These are not definitive or exhaustive lists. They assume that I.C.E. has a role to play in each of the segments as defined above and that within that role there will be a number of targeted activities.

The default position is that Improvement, Collaboration and Efficiency is, ultimately, best driven by the councils. But this model recognises that **the scale of the challenge**, the value that each council holds (and which could help others) and the barriers that a lack of collaboration can place in the way of success requires action that the I.C.E. is best placed to provide.

The timing is critical and must be designed pre 2015 to provide an overarching framework and support to the work of 11 clusters as they manage transition and convergence now, through the Shadow Councils and, post 2015, as the new councils build a new and transformed local government at the centre of local public services.

A number of key, initial, outputs are suggested below, for I.C.E., consultation and potential roll out:

- A clear statement of purpose and rationale going forward
- Consultation and agreement on the role I.C.E. and the I.C.E. framework should play in supporting transition and transformation
- An analysis of the shared leadership challenges facing councils in the light of the new economic reality and the RPA process

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- A statement of expectations: what councils can expect from I.C.E. and what I.C.E. expects from councils
- A suggested list of priority issues and proposed actions from Region wide to local and from local government to wider public services
- A rationale for that which is best and most efficiently done Region wide versus that done at a council or sub regional level
- An agreed leadership role in working across the wider public sector and influencing others to collaborate and drive improvement and efficiency
- An invitation to a wider debate as to the appropriate role of I.C.E. in taking forward a programme of activities and providing appropriate support under each of the 4 segments
- An assessment of the capacity and resourcing needed to properly support the transition and transformation process
- Consultation and approval to affirm a dedicated resource team, as an I.C.E. project co-ordination and secretariat team, drawing in resources as required from internal council and external sources, on a well governed, lean, flexible, council owned framework (an example being the Scottish Improvement Agency).

It is **recommended** that the RGG, co-ordinated by SOLACE and NILGA, and the RTC and STCs consider the appropriateness of the model, discuss and agree role definitions for each segment and prioritise activity.

In terms of ongoing Governance the time is right to consider longer-term arrangements.

The RGG has served a valuable purpose in leading I.C.E. through a difficult beginning and against a background of uncertainty and anxiety in relation to RPA. In June 2014 the current STCs will cease to exist as the new shadow councils come into effect.

It is **recommended** that a new Regional Improvement & Transformation Committee is constituted from September 2014.

This would be made up of members of the 11 shadow councils drawing also on regional policy input from political parties through NILGA and from regional performance input from SOLACE and – on occasion – from other public service improvement bodies.

It could be facilitated, as now, by NILGA and SOLACE. It should have agreed terms of reference and provide sector leadership and oversight of the

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convergence and transformation process and the further development of the I.C.E. programme as a vehicle for ongoing improvement, collaboration and efficiency.

The relationship of this committee and of the group referred to below with the Local Government Auditor will need to be considered.

It should propose the development, by June 2015, of a Regional Improvement Group for local government, and in so doing create a business case and resource plan for it, mindful that such a group could quite easily incorporate some of the work of existing bodies and draw on the experience from other jurisdictions. Most importantly, such a Group should be lean, innovative, communicative, and be built upon trust, sustainability and the governance referred to above.

Local Government Association



Localism

The General Power of Competence

Empowering councils to make a difference



Foreword



This paper is published at a critical time for local government. Councils have taken significant cuts to their funding during a period of economic austerity with yet more to come and face continued pressure

on funding alongside increased demand. Yet, as this paper demonstrates, through the use of the new General Power of Competence (GPC) they have sought to continue to deliver services efficiently and in new ways.

The Local Government Association (LGA) has been a driving force behind the introduction of a general power of competence; in March 2010 we presented a Draft Local Government (Power of General Competence) Bill to Parliament. This helped shape the Power that was introduced under the Localism Act 2011.

Although it has only been in place for a short time we have seen what councils can do when they are given greater freedom to make a difference.

Giving more power to local councils to enable them to make changes locally is vital if we are going to be able to design and deliver more efficient public services and help local areas innovate and, in particular, promote growth in their local area.

The LGA recently launched a new model for local government to address the question of democratic fairness and provide a blueprint for revitalising our democracy.

Entitled 'Rewiring Public Services', it contains ten key propositions that will radically transform local government and its relationship with Whitehall and Westminster.

What has become clear is that those working in local government agree we need a fundamental rethink about the current system, both to safeguard the future delivery of services and to make sure that local government is sustainable. The use of the General Power of Competence by councils in this paper shows that a new, locally led approach can yield positive outcomes and change for our communities.

However, despite the impressive examples in this paper, use of the General Power of Competence is limited by significant constraints set by central government. Local government needs far greater independence from central interference. The command and control, parent child relationship must be changed if local government is to be fully empowered to make a difference for local people.

But notwithstanding these constraints the GPC is an improvement on what we had before. I would therefore encourage councils up and down the country to make full use of the freedom it does give to innovate and think differently about how we can serve our communities.

Councillor Sir Merrick Cockell
LGA Chairman

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Key messages

These are challenging times for councils. They are playing a major part of the national deficit reduction plan. Grant to councils is being cut by 33 per cent in real terms during the four years of the Spending Review 2010 period, from April 2011 to March 2015. The spending review for 2015/16 continues the pressure to produce savings, with a reduction of 10 per cent in real terms of the grant going to local government. The continuing sluggish economy is putting further pressure on council's revenue streams and services.

In response to these factors, councils recognise that radical service transformation is required and that they have a key role to play in promoting and facilitating local economic growth. This difficult economic and financial environment presents both opportunities and barriers to the provisions included in the Localism Act 2011.

Among these provisions, the General Power of Competence (GPC) is an important legislative statement that councils have the power to do anything an individual may do, unless specifically prohibited. The GPC is welcomed across the sector, as a wider statement of their powers than the previous wellbeing powers. But to date it may be characterised as an evolutionary rather than a revolutionary change.

The LGA, on behalf of the sector, campaigned for a power such as the GPC. This was in recognition of the unique position of councils as locally elected bodies to act in the best interests of their communities, and their track record of delivering efficiencies and innovation and in providing good value for money. Further progress in such areas could have been at risk if the uncertainties around council's powers to act were to remain.

This paper explores whether councils have been taking advantage of the GPC since its introduction in February 2012, and if they have, how and to what purpose; if they haven't, why was this; the barriers councils may still be experiencing and any lessons which can be drawn. It is hoped that it will encourage wider use of the power by providing examples of how councils are using it to make a difference.

Using the power to innovate

Councils demonstrated innovation to meet community needs and financial pressures prior to the Localism Act 2011 and will continue to do so. Some councils believe they can bring about, and have in practice achieved, significant innovation using pre-existing powers. For other councils, the debate leading up to the Localism Act and the GPC itself has been an important spur to innovation.

There is wide recognition that the right mindset – an entrepreneurial approach, a willingness to take managed risks and ‘think outside of the box’ are at least as important as the existence of a power or otherwise in enabling innovation.

Giving greater confidence to change

Councils generally share the view that the GPC does give greater confidence to work in new ways, and develop new services and partnerships. It is also a symbolic statement which promotes innovation and frees up thinking, whether or not the power is used to provide the specific legal basis for the actions taken.

There are some indications that this growth in confidence may have been felt most by smaller councils – districts and town/parish councils rather than ‘upper tier’ councils which have enjoyed a wider range of powers and resources to begin with. There are examples of the use of the GPC in partnership across the different tiers of local government.

The GPC is also a challenge to the instinctive caution of some in local government, by clearly showing that just about anything is possible (unless specifically prohibited) and not constrained by the need to ensure that it is permitted by specific legislation. Members may see this as an opportunity to challenge the caution of some officers – even though the caution might nonetheless be valid. The GPC may provide statutory officers the assurance they require to endorse some more innovative and radical approaches.

Constraints on the use of the GPC

In addition to limited resources, councils report a number of constraints on the use of the GPC in practice.

- **Trading restrictions:** the types of company structures which may be employed in trading or other activities under the GPC are restricted to companies limited by shares or guarantee or industrial or provident societies. This prevents the use of community interest companies or similar, which councils may find more appropriate in some circumstances.
- **Charges** made under the GPC may only be made for discretionary services and should be set at a level which simply recovers costs and does not generate a profit or surplus, which limits the ability of the power to raise additional revenue.
- **Legal restrictions:** the need to check for pre- and post-commencement limitations can take time, and may lead to a more specific power being used anyway. The GPC does not extend the ability of councils to create byelaws or undertake enforcement.

It is important to recognise that the GPC is a means to an end. Councils do not – nor should they – seek out opportunities to apply the new power. Rather they should begin with what they want to achieve and then see if the GPC is a tool which will help them to get there.

If the power is used in this way, in support of reasonable and accountable decision making in line with public law principles, with an awareness of the remaining limitations on the power, then it should be robust and less susceptible to successful legal challenge such as those which gave rise to increased uncertainty around the application of the previous wellbeing powers in some situations.

Notwithstanding the constraints, there are encouraging signs that councils will continue to use the GPC, and take advantage of the environment for change which it is helping to foster, to deliver further innovation despite the unfavourable financial climate.

For the avoidance of doubt, this paper is not intended to nor does it constitute legal advice. Councils will need to obtain their own independent legal advice on any matters of a legal nature arising in connection with the General Power of Competence.





What is the General Power of Competence?

The General Power of Competence (GPC) was introduced by the Localism Act 2011 and took effect in February 2012. In simple terms, it gives councils the power to do anything an individual can do provided it is not prohibited by other legislation. It applies to all principal councils (district, county and unitary councils etc). It also applies to eligible¹ parish and town councils. It replaces the wellbeing powers in England that were provided under the Local Government Act 2000.

The scope – and some limitations – of the General Power are set out in sections 1 to 6 of the Localism Act 2011.

In summary, the GPC enables councils to do things²:

- an individual may generally do
- anywhere in the UK or elsewhere
- for a commercial purpose or otherwise, for a charge or without a charge
- without the need to demonstrate that it will benefit the authority, its area or persons resident or present in its area (although in practice councils will want to realise such benefits).

But there are some limitations on the General Power, either because they are not things which an individual can do or because they are excluded by the Act. The GPC will not:

- provide councils with new powers to raise tax or precepts or to borrow
- enable councils to set charges for mandatory services, impose fines or create offences or byelaws, over and above existing powers to do so
- override existing legislation in place before the Localism act 2011, so-called 'pre-commencement limitations' (however powers enacted after commencement of the GPC will only limit the GPC if this explicitly stated in the legislation).

Where using the GPC for charging or trading purposes, the recipient should agree to the service being provided, the income from charges should not exceed the cost of provision and, where things are done for commercial purposes, this must be done through a specified type of company.³

Notwithstanding the limitations outlined above, the GPC remains a broad power.

¹ An eligible council is one which has resolved to adopt the GPC, with at least two thirds of its members being declared elected and the Clerk must hold an appropriate qualification (Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012).

² Further discussion of the legal implications of the GPC can be found in the Local Government Association (LGA) essay 'Power to make a difference', October 2011: <http://tinyurl.com/nppcc4b>

³ Either as required by the Companies Act 2006 or a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 or the equivalent in Northern Ireland.

As part of the Government's wider localism agenda, the GPC is intended not only to increase local authority powers but to give greater confidence in the scope of those powers and to signal that how those powers are used is a matter for local authorities (Department for Communities and Local Government, November 2011).

It should encourage more managed risk taking by councils. In enacting the GPC, the Government intended to remove the uncertainty which had arisen around the scope of the previous wellbeing powers – to promote the economic, environmental and social wellbeing of a council's area – where the courts had found that these powers did not enable councils to enter some arrangements such as a mutual insurance company across several councils – the so-called London Authorities Mutual Ltd (LAML) case in 2009⁴.

What is the GPC being used for?

Although at the time of writing the GPC has been in place for a little under a year and a half, since February 2012, it is still possible to discern some emerging patterns in how the power is being used. The key benefits of the GPC to councils can be summarised under the following headings:

Extending services and support into new areas

Stating that councils can do anything an individual can do (unless specifically prohibited) in legislation has given greater confidence to do new things and do things differently – the default setting is now 'yes

we can unless...' rather than 'we can't unless specifically permitted'. The ultra vires issue becomes less of a concern. For instance, the GPC has already given a number of councils the specific legal basis and confidence to extend their services and support beyond the arena traditionally seen as the responsibility of the authorities like them.

Oxford City – helping to tackle poor attainment in primary schools

The GPC has given Oxford City Council (a district council) the confidence to develop a school improvement support programme to raise attainment and assurance to statutory officers that it had the power to do so. The city council is thus making a contribution in an important service area previously regarded as the preserve of an upper tier council

Major local employers were concerned that local young people did not have the skills they require. Consultation with schools identified that the root of the problem lay in under achievement in primary schools, especially in the most deprived areas of the city. Working with the two local universities, good local schools and a specialist education consultancy, the city council has put in place a programme of improvement support for schools. The programme has two main elements – leadership and teaching skills – and represents an investment of £1.6 million over four years. For more information and contact details please refer to the case study included in the Annex to this report available at: www.local.gov.uk/localism-act

⁴ Brent LBC v Risk Management Partners Ltd and London Authorities Mutual Ltd and Harrow LBC as interested parties, Court of Appeal 2009 (which took a narrow view of the scope of wellbeing).

Parish and town councils, in particular, have found being eligible to adopt GPC (as outlined in the previous section) a major boost to their confidence to act and also that of their members in general. They have used the GPC to provide the basis for taking on responsibility for services previously provided by one of the principal authorities for the area, for example because these are being withdrawn as a result of financial pressures and a review of priorities. Clerks to town and parish councils have found it positive to be able to advise members that it is possible for their councils to do more things, where this is aligned to council and community priorities and at reasonable cost. Even when not used to support new services or innovation, it has saved time and resources in searching for more specific powers.



Parish councils – ensuring continuing youth service provision and improving community facilities

Adopting the GPC has given town and parish councils the confidence and power to take on additional services, including where principal authorities have had to reduce provision.

Crewkerne Town Council has taken over the running of youth clubs previously provided by Somerset County Council, to be offered through a purpose build sports and community centre.

Sprowston Town Council has acquired a former youth and community service building from Norfolk County Council which it is refurbishing to provide a multi-use community centre.

In both instances, the GPC gave councillors the power and confidence to act and the Town Clerks the assurance that they could recommend this course of action. These services were priorities for both councillors and the community. The GPC enabled Crewkerne to fund the youth service by avoiding the limitations on discretionary spend imposed by s137 of the Local Government Act 1972. Sprowston used other provisions in the Localism Act 2011 – the Community Right to Bid – to enable it to acquire the building from Norfolk County Council.

For more information and contact details please refer to the case study included in the Annex to this report available at: www.local.gov.uk/localism-act

A further area that has been stimulated by the GPC is councils leading on energy switching schemes (although some councils have proceeded with such schemes without explicit reference to the GPC).

Taking advantage of the buying power presented by bringing together residents from within their area and others, councils have been able to secure better energy deals for domestic users. Working with specialist energy switching companies, this is helping households to limit the costs of a major element of family budgets in difficult times, whilst securing reputational benefits for the authorities.

Estimates from some of the councils participating suggest savings of over £150 per household a year are possible.

One such scheme involves 12 councils from across the country, including Hertfordshire County Council and South Holland District council, which both cited GPC in support of the scheme. Over 8,500 households have participated in this particular switching initiative.

Regeneration and supporting the local economy in difficult times

A number of councils are finding the GPC helpful in building greater economic growth and resilience in their local communities, providing both a legal power on which to act and / or giving greater confidence to work in new and innovative ways.

Newark and Sherwood – thinking ‘BIG’ to help local businesses grow

For Newark and Sherwood District Council, the existence of the GPC gave a further stimulus for innovation and encouragement to think about doing new and different things.

The district is a growing community, with 14,000 new homes planned. It has many smaller businesses, which the council wants to help realise their growth potential. Consultation with local businesses and other stakeholders identified the availability of finance as a key challenge. The council therefore established a £2 million fund, financed by the New Homes Bonus. Called ‘Think BIG’ (Business Investment in Growth), the fund aims to provide loan finance to local businesses with growth potential, where they have not been able to secure the funding elsewhere such as from the banks. Acting on the advice of an independent panel of experts, following 20 applications, four loans have been made to date worth £285,000 in total. The average turnover of businesses supported is £672,500. These loans have safeguarded 40 jobs and there is the potential to create 43 new jobs.

Hertfordshire County Council has used the GPC to provide the basis for its participation in the Local Authority Mortgage Scheme (LAMS), working in partnership with most of the district councils in the county, Lloyds TSB and the Leeds Building Society.

The scheme is intended to support the local housing market and economy through help to first time buyers and key workers in particular. The scheme indemnifies lenders and enables buyers to access the terms of a 75 per cent mortgage with only a 5 per cent deposit, the balance of the funding coming from the indemnity scheme. The indemnity lasts for five years (the period of greatest risk) during which time the council earns interest on the amount of the indemnity.

The funding plus interest accrued is then returned to the council. Including £12 million from the county council, councils in Hertfordshire have made available £16.5 million in funding to the scheme. Begun in East Hertfordshire in March 2012, the scheme aims to help over 500 first time buyers into the housing market. Other councils reported that they had used the GPC as the basis of loans or grants to local employers to help secure jobs and support the wider local economy.

Delivering greater value for money

The GPC saves time on searching for more specific powers – making it easier for lawyers to say ‘yes’ given the existence of the GPC as a power of first resort. More importantly, it frees up time to think about should we do this, how best do we do it and how do we manage the risks – rather than expending time and effort on determining do we have the power to do this. However, councils still need to check that pre- and post-commencement limitations do not apply and adhere to established public law principles in decision making.

Several councils cited the broader definition of the General Power compared to the previous wellbeing powers (where it was necessary to identify a specific link to the economic, environmental or social wellbeing of the area) as providing a more secure legal basis for entering shared services or similar arrangements. It had reduced the uncertainty arising from previous litigation in this area, such as the LAML case. It is also important that the GPC gives private sector and other potential partners greater confidence in the validity of contractual and other relationships, reducing the risk that they will be declared void by the courts and supporting longer term partnerships.

Many councils stress that the GPC is a simpler power that those previously intended to help councils promote general wellbeing. The wellbeing powers in the Local Government Act 2000 required councils to demonstrate a link to the economic, environmental or social wellbeing of the area. The courts took a restrictive interpretation of this and ruled that it did not provide a basis for mutual and similar arrangements intended to reduce councils costs – such as the LAML case.

The GPC is much simpler than the earlier powers under s137 of the Local Government Act 1972, which covered activities ‘incidental to their functions’. This stated that ‘councils may incur expenditure which, in their opinion, is in the interests of and will bring direct benefit to, their area or any part of it or all or some of its inhabitants’. Moreover, such expenditure ‘had to be commensurate to the benefit arising’. For town and parish councils, there was a maximum amount for such spending which does not apply to the GPC⁵.

⁵ Set by DCLG at £6.80 per registered elector for 2012/13 in accordance with the provisions of the Local Government Act 1972

Further innovative and other uses of the GPC

The GPC has the potential to counteract bureaucratic inertia and what can be the instinctive caution of local government in some cases, but it needs an entrepreneurial mindset to be given full effect. Some members see it as a tool to challenge officers' caution – this puts a responsibility on political leadership to make sure that councils take advantage of the GPC, alongside respect for the statutory officers' responsibilities to ensure sound, lawful decision making.

The Royal Borough of Windsor and Maidenhead has established a Challenge Prize, endorsed by its Big Society Panel in September 2012, to promote innovative solutions by members of the community to problems identified by local residents.

A total of £20,000 has been allocated to support the challenge prize process. One council had used the GPC as the basis for supporting a successful legal challenge to the proposed closure of the Leeds Children's Heart Surgery Unit, which is outside that authority's own area.



Stoke City – sustainable energy and regeneration

Stoke on Trent City Council is using the GPC to provide the legal basis for the development of a range of initiatives to take forward the green energy agenda through a council owned holding company and to promote regeneration.

It sees access to sustainable energy at predictable prices as a powerful factor in attracting and sustaining employment including the development of a new central business district. The GPC gives greater confidence to both the council and potential partners from the private sector and elsewhere when entering into long term agreements. The council has provided a loan facility to help The Princes' Regeneration Trust access other sources of finance to restore the Middleport Pottery as part of a regeneration project.

For more information and contact details please refer to the case study included in the Annex to this report available at: www.local.gov.uk/localism-act

In April 2013, Birmingham City Council adopted a Living Wage for Birmingham policy, which extended the living wage to contractors to the council in support of the wellbeing of citizens, productivity and the wider city economy. The report to the city council's Cabinet included reference to the GPC as an enabling power for such action, although in this instance the Public Services (Social Value) Act 2012 was also important as this addressed what would have been 'pre-commencement limitations' on the GPC arising from the exclusion of non-commercial matters under the Local Government Act 1988.

Breckland and South Holland – increasing scope to apply the GPC

Breckland has recently used it (in conjunction with other legislation such as the Local Government Act 2003) to provide the legal justification for a scheme to charge for the provision of new and replacement wheeled bins. Both councils see scope for further use of the power.

Breckland and South Holland District Councils have a shared management team and see increasing scope to apply the GPC. Breckland's policy to charge for the provision of new and replacement wheeled bins is intended to both help recover the costs of the service and to promote further re-cycling. They needed to design the scheme so that the council retained ownership of the bins to best manage the waste management stream whilst still securing users agreement to a discretionary service.

Both councils have participated in energy switching schemes. There will be increasing scope to apply the GPC as the councils develop radical transformation plans in response to the challenging financial environment and both will continue to foster the entrepreneurial approach from members and officers that this will require. For more information and contact details please refer to the case study included in the Annex to this report available at: www.local.gov.uk/localism-act

These examples from both Birmingham and Breckland illustrate the important observation from a number of councils that the GPC is not used in isolation – it is often used in conjunction with other powers to achieve wider policy objectives, including other provisions in the Localism Act 2011.

A number of councils referred to the GPC as the basis for making grants to voluntary and other organisations and other instances where it was used in place of the previous wellbeing powers.

Building on existing innovation

Local government has a track record of innovation, which pre-dates the introduction of the General Power of Competence. A significant proportion of councils interviewed, which had implemented new and innovative ways of doing things, cited this as the reason for not having used the GPC in their decision making processes. Essex County Council, for example, provided a local authority banking service and supported post offices and provided library services to another authority prior to the Localism Act.

Similarly, Woking Borough Council had used the wellbeing powers under the Local Government Act 2000 and earlier powers to establish the Thameswey Group of holding companies to take forward a range of green energy and sustainable and development projects on behalf of the borough.

Councils that had not used the GPC stressed the importance of the right mindset in being innovative – a willingness to 'think outside of the box'. Taking managed risks and an entrepreneurial approach are more important than the existence or otherwise of a particular power to do something. In other words, organisational culture is key. If you want to do something, the business case is in place and it aligns with the council's priorities and those of the community, you can usually find a legal power to do it.

Notwithstanding this, all councils interviewed welcomed the introduction of the GPC through the Localism Act 2011 and most envisaged they would use the power in future. Many described the GPC as a symbolic 'can do' power which confirms that councils can do just about anything they wish to do – provided it is not illegal and is the right thing to do for their communities. This had been factored into their thinking, without necessarily citing the GPC during decision making processes.

Richmond – how the GPC is encouraging further innovation

The London Borough of Richmond provides an example of a council which has undertaken a number of innovative, community focussed projects, encouraged by the GPC as a 'can do' power which gives implicit permission to fresh thinking.

The GPC has enabled a shift in focus from 'can we do this?' to concentrate on 'should we do this and how best to realise our objectives?' which is a much more creative environment. Richmond wants to further encourage civic pride and citizen engagement. It has introduced a scheme to offer Civic Pride grants to individuals in addition to constituted groups and is making Empty Shop Grants for short term, community use of empty shops to both boost creativity and entrepreneurial activity and enliven high streets.

For more information and contact details please refer to the case study included in the Annex to this report available at: www.local.gov.uk/localism-act

Existing legislation such as the Local Government Act 2003 has provided sufficient powers for several councils to have established local authority trading companies to provide adult social services in accordance with the personalisation agenda. Section 75 of the Health Act 2006 has provided sufficient flexibility to share funding and enable joint working between health and social care, where the will to work in close partnership exists, for example the establishment of Care Trust Plus in North East Lincolnshire.

A number of councils referred to the need to search for any pre-commencement limitations on the GPC when seeking to establish the legal basis for a proposed action. In such circumstances, when a more specific power exists, some councils preferred to cite this as a stronger basis for action. In one instance, where a transfer of land and planning powers from the Homes and Communities Agency (HCA) was sought by Milton Keynes Council, amendments to primary legislation were required and the GPC was clearly insufficient in this case.

Councils and key partner organisations are developing new delivery models with support from the Government, such as using Social Impact Bonds and mutual organisations which are not wholly reliant on the GPC.

It can be seen that some councils have already done things that others are now doing with the support of the GPC. If the power extends the willingness to innovate and the confidence to do so to more councils, and helps embed a culture of change across the sector, that will be no small thing.

Scope for further use of the GPC

Notwithstanding the constraints identified above and the financial challenges which councils will continue to face, almost all councils contacted, whether using the General Power already or not, envisage using the power in future.

Beyond continuing current applications and use in place of the previous wellbeing powers, councils do see potential for new uses of the power. For example, to extend trading beyond an authority's own area and the use of social enterprise models – although this will require the constraints around permitted company models (and possibly state aid) to be thought through. They may well focus on gaps in the existing market or other aspects of market failure.

It may assist in further developing the cooperative council models under consideration in some areas, and in councils' efforts to reinvigorate economic growth. It could support efforts to engage citizens in taking on more civic and community responsibilities, with some limited assistance from councils.

Some councils are considering 'Innovation Plans' and transformation strategies to help meet the challenges of protecting key services and outcomes in times of increasing financial pressures. The GPC is seen as an important 'tool in the box' to help such innovation, although by its very nature the details of such use cannot be predicted at this time. However, it is likely to become more widely used as more councils recognise its potential.

Constraints on the wider use of the GPC

While welcoming the GPC, a number of councils noted some constraints which had or could present barriers to its wider use. The main issues identified were:

- **The need to use company structures as specified in the Localism Act 2011** – when using the GPC as the basis for trading activities a limited number of company structures are permitted, namely companies limited by shares or guarantee or industrial or provident societies. Several councils and a Fire and Rescue Service have wished to extend their services using more modern community interest company structures – for example to achieve more community engagement or to develop governance structures further removed from the political arena for commercial reasons. They believe such structures would not meet the requirements of the Localism Act to exercise the GPC in this way, and hence have used different powers in order to proceed. A number of commentators argue that in the area of trading and commercial activities, the GPC has not moved much beyond what was already possible under the Local Government Act 2003. The National Association of Local Councils – NALC – does not agree that the Localism Act 2011 gives effect to DCLG's intention to extend the power to trade to town and parish councils. NALC recommends that town and parish councils wishing to pursue a trading activity seek independent legal advice.

- **Charging only permitted for a discretionary service and on a cost recovery basis** – the GPC can only be used as basis for charging for a discretionary service – ie not one which it is required to provide by statute or otherwise. The potential service user must be able to decline the service and so avoid the charge. The GPC is subject to a duty that, taking one year with another, charges do not exceed the costs of provision⁶. In other words, any charges should be set at a level which does not generate a profit or surplus, although it is recognised that more than one financial year may need to be taken into account.
- **Limitations on the use of state aid** – in terms of both undertaking trading activities and in supporting local business and employment in difficult economic times. Councils have realistic expectations that, due to wider policy considerations and EU rules, these limitations will remain in place. But it does mean that care is required to keep within these limits, which may have more bearing in regenerating deprived communities where more support is required to ‘de-risk’ development projects.
- **The need to check for pre- and post-commencement limitations** – this takes time and often leads to the identification of a more specific power which is used in place of the GPC anyway. Some councils suggested that there is a case to rationalise the large body of legislation affecting local government. Where common barriers are identified it may be appropriate for the Secretary of State to use his powers under s5 of the Localism Act 2011 to amend, repeal, revoke or disapply such provisions.
- **Does not enable the creation of byelaws or enforcement activity** – a number of people, including some elected members, had anticipated that the General Power would allow this. As enacted, the GPC does not permit this as it simply extends councils powers to do what individuals normally can do. Many councils have provided briefing sessions on the implications of the Localism Act 2011 for leading members and senior officers which have quickly clarified this misunderstanding. It is generally felt that those who need to know are familiar with the extent of the General Power and can advise elected members and other officers on how best to achieve the council’s agreed objectives.
- **The GPC has been introduced at a time of severe financial constraints** – councils’ attention had been focused on the need to manage major budget reductions and so where the GPC has been used it has often been to minimise the impact of spending cuts or support improved efficiency. More creative use of the GPC – to widen councils’ responsibilities – may have been limited at this time because of local priorities, although developing economic resilience and growth emerges as a clear theme in its early use. Some councils found that other provisions of the Localism Act have attracted greater interest among elected members, officers and the wider public, such as the Community Right to Challenge and the Community Right to Bid for assets of community value and the associated asset register.

⁶ Sec 3 (3) of the Localism Act 2011

Making good use of the GPC – top tips

The experience of councils making use of the General Power suggests the following guidelines for its effective use:

- ✓ Be clear about what you want to achieve – and that this is aligned with the priorities of the council and local community. The GPC is not an end in itself, merely a means to an end.
- ✓ Develop and support an environment which promotes an innovative and entrepreneurial approach.
- ✓ Recognise the potential of the GPC as a lever to tackle excessive caution or fixed ways of doing things.
- ✓ Check for any pre-and post-commencement limitations (and consider modifying the approach where necessary).
- ✓ Where used as a basis for charging, ensure that charges are not being made for a statutory service, that the recipient agrees to receive the discretionary service and charges are on a cost recovery basis.
- ✓ Consider implications of different company structures and state aid provisions as appropriate.
- ✓ Parish Councils should ensure they meet the conditions for eligibility as set out in the Statutory Instrument, Parish councils (General Power of Competence) Prescribed Order 2012.





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L13-563

Fife Structure Plan

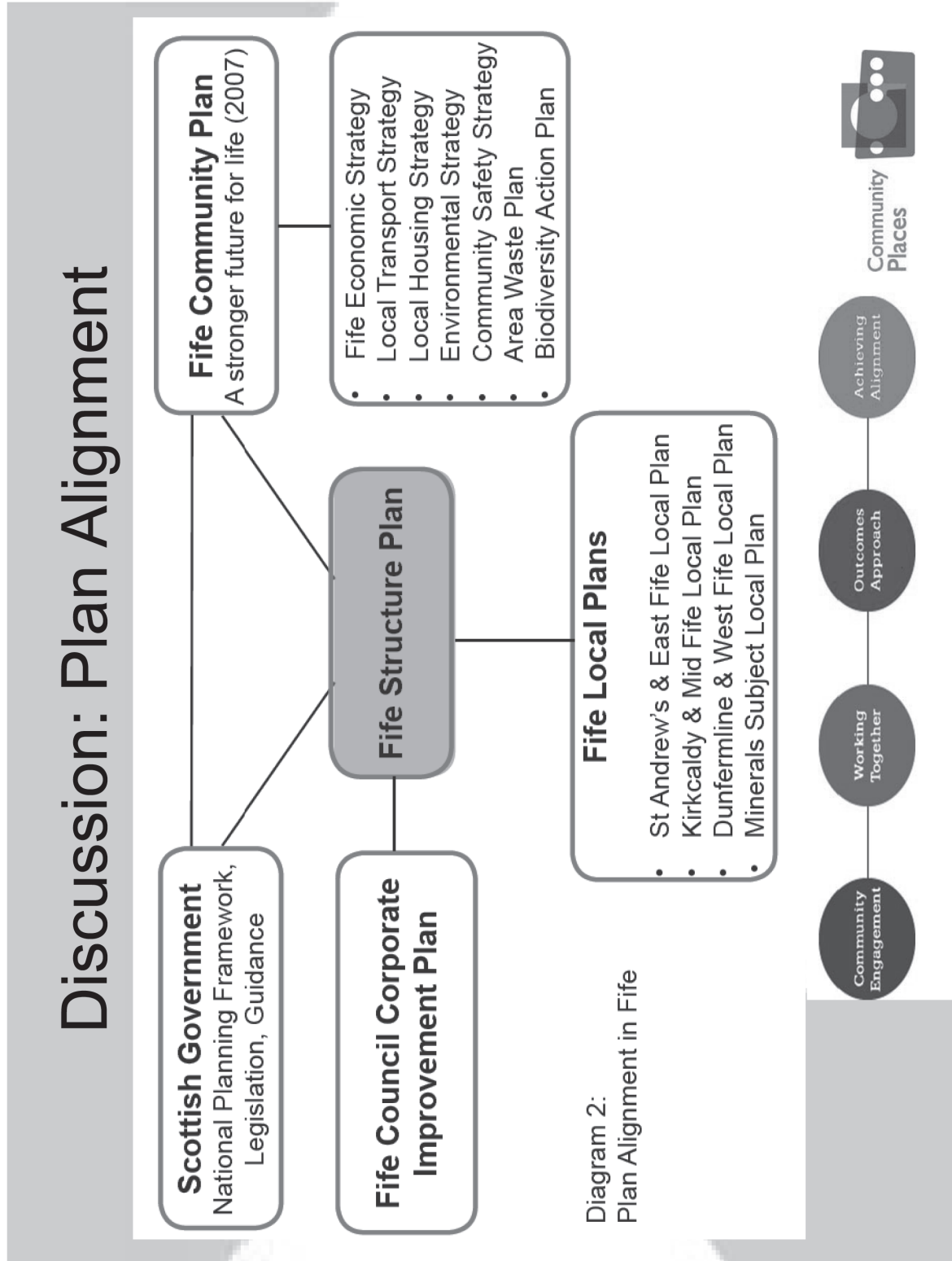


Diagram 2:
Plan Alignment in Fife

Audit Edinburgh

The Audit of Best Value
and Community Planning

**The City of
Edinburgh
Council**



Prepared by Audit Scotland
May 2013

The Accounts Commission

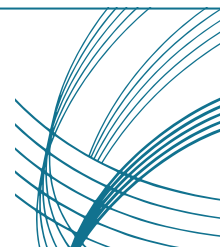
The Accounts Commission is a statutory, independent body which, through the audit process, requests local authorities in Scotland to achieve the highest standards of financial stewardship and the economic, efficient and effective use of their resources. The Commission has four main responsibilities:

- securing the external audit, including the audit of Best Value and Community Planning
- following up issues of concern identified through the audit, to ensure satisfactory resolutions
- carrying out national performance studies to improve economy, efficiency and effectiveness in local government
- issuing an annual direction to local authorities which sets out the range of performance information they are required to publish.

The Commission secures the audit of 32 councils and 33 joint boards and committees.

Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. We help the Auditor General for Scotland and the Accounts Commission check that organisations spending public money use it properly, efficiently and effectively.

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Commission findings

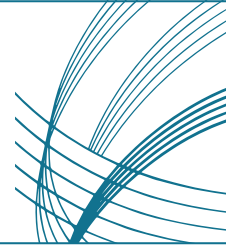


- 1** The Commission accepts the Controller of Audit's report.
- 2** The Commission acknowledges a range of improvements since the last Best Value report in 2007. It welcomes improving performance in partnership working, both at a political level within the council and with community planning partners; economic development; children's services; and aspects of reducing inequalities.
- 3** The council demonstrates a good understanding of the challenges it faces and the need to restore public confidence, which has been damaged in light of high-profile issues such as the trams project and the statutory repairs service. These issues are substantial, and the Commission will continue to monitor progress. Overall, the Commission is concerned about the scale of the challenges that the council faces.
- 4** The council needs to develop a comprehensive workforce strategy; improve its information and communications technology (ICT); ensure it has effective risk management and internal audit arrangements; and improve a range of services including adult social work, waste management, and meeting housing need. It needs to ensure it has the capacity and skills to deliver its ambitious improvement and change programme, and embed the commitment of all staff to the need for change.
- 5** The challenge of reducing budgets is found in other councils, but the Commission considers there is a set of circumstances which makes Edinburgh's situation particularly challenging. The council decided not to proceed with alternative business models to provide services and achieve substantial savings. Currently, its four-year budget for 2014-18 requires recurring annual savings of £107 million by 2017/18 and is heavily dependent on improved procurement delivering recurring annual savings of £41 million by 2017/18. Assuming all elements of the savings plan are achieved including all the savings from procurement, the council will still require to find further substantial savings.
- 6** There are risks in whether the planned savings are achievable and in the reliance on the level of saving to be achieved from procurement. These risks are compounded by the unknown financial impact of fully resolving the statutory repairs problem which is unique to Edinburgh. There is an additional risk that not achieving the required overall savings will hinder the Council's ability to restore public confidence.

- 7** In light of these significant risks and uncertainties, the Commission urges the council to give absolute priority to ensuring that savings identified are both achievable and delivered.
- 8** The Commission has stated previously in its overview reports that a need for focus on finances in councils means that the statutory financial officer is increasingly important and must have the appropriate access and influence to perform this crucial role. Given the scale of the financial challenge facing the Council, the Commission would encourage the council to assure itself that this is the case.
- 9** The council is on a journey of improvement: it needs to complete that journey. The recent strong leadership needs to continue in order to translate plans into reality. To this end, the Commission asks the Controller of Audit to report on progress in around 18-months' time.

Part 1

The audit of Best Value



Best Value and Community Planning

1. The Local Government in Scotland Act 2003 introduced the statutory duty of Best Value in local government. In response, the Accounts Commission began the audit of Best Value and Community Planning. We have published a first round of Best Value (BV) audit reports on all 32 councils in Scotland.

2. We carry out and report this next phase of BV audits under the same legislation but the approach has moved on considerably from the 32 baseline audits. In particular, the audits are:

- based on discussions with colleagues from other local government inspectorates that form a Local Area Network (LAN)
- more focused on the risks identified by the LAN and the particular issues faced by individual councils
- designed to provide a more rounded view of how well the council is working with partner organisations, such as health, police and voluntary organisations to make improvements for local communities.

The City of Edinburgh Council 2007 audit report

3. The first BV audit report on The City of Edinburgh Council was published in February 2007.¹ The audit concluded that The City of Edinburgh Council had a clear and ambitious vision for the city and faced a range of challenges to continued growth, in particular providing an effective transport infrastructure and increasing the supply of affordable homes. Councillors and senior officers were generally providing strong and effective leadership and the council was working well with partners. Our report also highlighted that council services were generally improving, although from a low starting point in some areas. It identified that there was a need for:

- continued action to improve Community Planning
- a council-wide approach to workforce planning
- longer-term financial planning
- wider use of performance information throughout the council to report on the progress of initiatives and projects.

4. Services that most needed improvement were refuse collection, planning and some aspects of adult social care.

5. The 2007 BV report concluded that the council needed to put in place and develop its programme of improvement work to provide a clear focus for investment and action.

The City of Edinburgh Council audit scope

6. BV is an important part of the wider scrutiny arrangements of councils in Scotland. Audit Scotland works closely with other local government inspectorates in the LAN. The LAN process results in each council receiving an Assurance and Improvement Plan (AIP) each year that sets out the scrutiny activity the council can expect.

7. In developing the scope of our audit, we took account of the areas identified in the 2012–15 The City of Edinburgh Council AIP.² We also reviewed the 2007 BV audit report, the external audit report for financial year 2011/12,³ as well as the council's plans, strategies and performance reports. The council provided a submission in advance of the audit that shows a good understanding of the challenges it faces, its strengths and what needs to improve.

8. The audit therefore focused on:

- progress since the previous BV audit in 2007
- the difference working with partners is having on services and outcomes
- changes in political and managerial leadership and how the council is organised, and the effect of those changes on how well the council works
- how well councillors are holding the political administration and council officers to account for service performance and the use of resources.

9. The 2012–15 AIP also identified three specific areas of significant scrutiny risk:

- The tram project: the AIP noted satisfactory progress since a settlement agreement was signed in September 2011. However, given the complexity of the contract and the history of problems, the AIP noted that there are still risks of further delays and overspending.
- Alternative Business Models (ABM): ABM was a plan to deliver services in partnership with the private sector. The council initially identified three services (facilities management, environmental services and corporate and transactional services) for inclusion in ABM. The AIP noted that the implications of the council's decision not to proceed with ABM are important relative to its ability to meet future funding gaps.
- Statutory repairs service: the AIP noted an ongoing investigation into the statutory repairs service. The AIP also stated that the council is taking action, including service redesign, but that risks remained of further reputational damage and financial loss from difficulties in recovering repair costs from owner-occupiers.

8 |

10. In December 2012, the Controller of Audit reported to the Accounts Commission⁴ on matters arising from the 2011/12 audit of The City of Edinburgh Council. The Controller's report referred to the tram project, ABM and statutory repairs. The Commission noted the Controller's report and agreed to consider these matters further at a future meeting, in the context of the BV audit report.

11. There is likely to be a public inquiry into the tram project. The external auditors will continue to monitor the action taken by the council to address the funding gap arising from its decision not to proceed with ABM. The council, assisted by external consultants, carried out a detailed investigation into the statutory repairs service. Consequently, we did not investigate these matters during the BV audit but we did consider their effect in making judgements about leadership and governance. The main references to the tram project are in the context section of this report ([Part 3](#)). The main references to ABM and statutory repairs are in the use of resources section ([Part 6](#)).

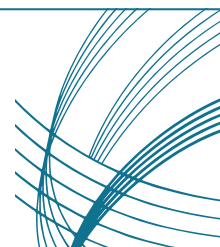
About this audit report

12. We carried out the BV audit of The City of Edinburgh Council between October 2012 and March 2013. The scoping work was completed in November 2012 and the team carried out interviews, observations and focus groups at the council in December 2012 and January 2013.

13. We gratefully acknowledge the cooperation and assistance provided to the audit team by the chief executive, Sue Bruce, the leader and depute leader of the council, Councillor Andrew Burns and Councillor Steve Cardownie respectively, the council's partners whom we met as part of the audit, and all other councillors and staff involved.

Part 2

Overall conclusions



- 14.** We published the first BV audit report on The City of Edinburgh Council in 2007. Since then, the council has had to deal with significant and high-profile problems that have damaged public confidence in the council and its reputation. These include contractual disputes arising from the tram project and serious difficulties in its statutory repairs service.
- 15.** The council's financial position is also very challenging. The position became more pressing when the council decided not to externalise certain services. The council has identified alternative savings and has long-term plans in place to balance its budget.
- 16.** The council's prospects for future improvement depend heavily on it achieving planned savings and addressing the funding gaps that remain. Its prospects also depend on more effective workforce management, improvements in information and communications technology (ICT) and on it ensuring that it has the right level of staff skills and capacity to support improvement.
- 17.** The council shows a strong understanding of what it needs to do to meet the service and financial issues it faces, the scale and complexity of which are substantial. These issues have absorbed a large amount of senior manager time and presented major challenges for the council at a time when it has an ambitious improvement programme under way.
- 18.** The coalition administration has set clear priorities and provides effective political leadership. It has a strong focus on improving outcomes, such as reducing poverty, inequality and deprivation. The coalition is also committed to being more open with the public and with opposition councillors. More widely, councillors demonstrate a strong, cross-party commitment to restoring public confidence in the council following the problems with trams, statutory repairs and more recent concerns about practices at the Mortonhall crematorium.
- 19.** A new chief executive started at the council in January 2011. She has had a significant influence on increasing the pace of change and improvement in the council. This is particularly noticeable from mid-2012 when progress was made in resolving the tram disputes and the tram project started to require less of her time. She and the rest of the Corporate Management Team (CMT) work well together and actively promote stronger corporate working. The chief executive is at the forefront of the change in organisational culture needed to support improvement. There is still some way to go before this shift in culture is achieved throughout the organisation.
- 20.** Partnership working in Edinburgh is strong and the council and its partners are making good progress in improving outcomes for people. They are also starting

to narrow the gap in some outcomes between the most affluent and deprived areas in the city. Council services are generally improving, for example economic development and children's services. The council needs to improve in some other areas, for example adult social work services and waste management. The council knows what it needs to do and it is taking action to improve. A recent survey indicates that residents' level of satisfaction with council services is improving, albeit from a relatively low position.

21. The council manages its finances well, with spending contained within budget and long-term plans in place. However, the scale of savings the council needs to achieve over the next five years is substantial and it is relying heavily on significant savings from improved procurement. The financial impact of fully resolving the statutory repairs problem remains uncertain.

22. The council has been slow in developing a workforce strategy. The 2007 BV report identified the need to improve workforce planning. However, the council has made only limited progress. It needs a strategy that sets out how it will make sure it has the workforce it needs to meet future service demands and to continue improving. The council acknowledges this and is taking steps to address it. The council is also aware of the urgent need to improve ICT. It is currently strengthening its management of ICT to get better value from its contract with an external supplier and to ensure that its ICT is sufficient to support the improvements it is pursuing.

23. Effective use of resources, by which we mean finance, staff and assets, is crucial in achieving good prospects for future improvement. The council is taking action to achieve savings and to improve workforce planning and ICT. However, many of the changes are still at the planning stage or are relatively new and so it is too early to assess fully how effective they are. The council now needs to sustain the momentum generated and identify enough people with the skills necessary to manage change.

Performance assessment

24. The performance assessment provides two judgements on council performance:

- The first judgement assesses how well the council is performing and focuses on service performance and outcomes.
- The second judgement assesses the council's prospects for improvement and focuses on leadership and management, partnership working and resource use.

The [Appendix](#) contains descriptions for each judgement.

25. On the first judgement, we have assessed the council's overall performance as **good**. The council and its partners can demonstrate:

- Good performance in ensuring Edinburgh's economy delivers investment, jobs and opportunities for all. The council and its partners use Edinburgh's characteristics, including its capital city status and festivals, to promote economic development.

- Good performance in improving outcomes for children and young people.
- Generally positive and improving outcomes in health and wellbeing. Health inequalities are complex and it will take time for the council and its partners to demonstrate the results of their work.
- Mixed performance in making Edinburgh's communities safer and improving the physical and social environment people live in. Overall trends in crime and safety are positive, but performance in areas such as cleanliness and recycling are weaker. The council and its partners also face challenges in meeting the demand for housing.
- Improving services include economic development, children's services, and revenues and benefits. There are long-term, positive trends in the performance of waste management but it is too early to assess the effectiveness of changes following the council's decision not to proceed with the proposal in its ABM to externalise this service. There is a mixed picture in some other services, including adult social work services (where there are concerns about meeting the demand for care), homelessness services (where some performance indicators are comparatively poor), and in the statutory repairs service (where serious problems were identified in 2011).
- Well-developed arrangements for consulting with local people and users of services, the results of which are used to inform service improvements.

26. The second judgement concerns the council's prospects for future improvement. In forming this judgement, we have taken account of evidence of good performance in important areas. We also acknowledge that the council might have made more progress in its improvement work had it not had to deal with the significant issues that emerged in recent years. On balance, because many of the changes are relatively recent and because improvements are required in key aspects of BV, we consider the council has **fair** prospects for improvement:

- The council has effective political and managerial leadership that sets a clear vision of what it wants to achieve and focuses on improving outcomes for people. Committee structures support the council's priorities and there is strong scrutiny of budgets and service performance. However, the new governance arrangements are still bedding in and it is too soon to fully assess their effectiveness.
- Partnership working is well established and there is a clear and consistent shared vision and sense of purpose. There is strong commitment across the partner organisations and good local approaches. The council and its partners are good at involving local communities in decisions about local priorities and services. The council needs to ensure that the Edinburgh Partnership Board is clear about its role in the community planning structure.
- The improvement programme is gathering pace and the council is now implementing many of the plans. Senior managers are heavily involved and face challenges in leading council-wide change while at the same time dealing with pressures in services. The new Corporate Programme Office has the potential to support change but it is too soon to assess its effectiveness.

12 |

- Savings plans are in place but it is too early to assess whether the council is likely to achieve all the savings it requires to balance its budget. These plans depend on substantial savings from improved procurement.
- Workforce planning is underdeveloped and the council needs to do more to identify the skills and capacity needed to support improvement. ICT is weak.
- The council demonstrates a strong awareness of where it needs to improve. This is reflected in its improvement programme and in the submission the council approved and provided to us in advance of the BV audit. Councillors and senior managers show good commitment and enthusiasm for change and a focus on improving outcomes for people. The council also acknowledges the need to improve communication with staff to widen understanding of, and commitment to, the council's plans for change.

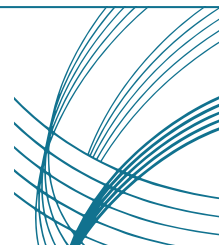
Areas for improvement

27. While we assess the second of the judgements based on the audit as 'fair', the council is taking action that, if successful, is likely to enhance its prospects for improvement. This depends on the council sustaining the more recent momentum and delivering the savings and other improvements it is striving to achieve. In particular, the council should:

- establish clear improvement priorities, and use its new Corporate Programme Office to support delivery
- identify areas where consolidation and stability is required and those where the council should further increase the pace of improvement
- focus on savings plans and satisfy itself that planned savings are achievable, particularly the savings expected from improved procurement
- deal with weaknesses in workforce planning and ICT
- identify and put in place the skills and capacity it needs to deliver improvement
- develop its arrangements for communicating the purpose and progress of change to staff.

Part 3

Local context

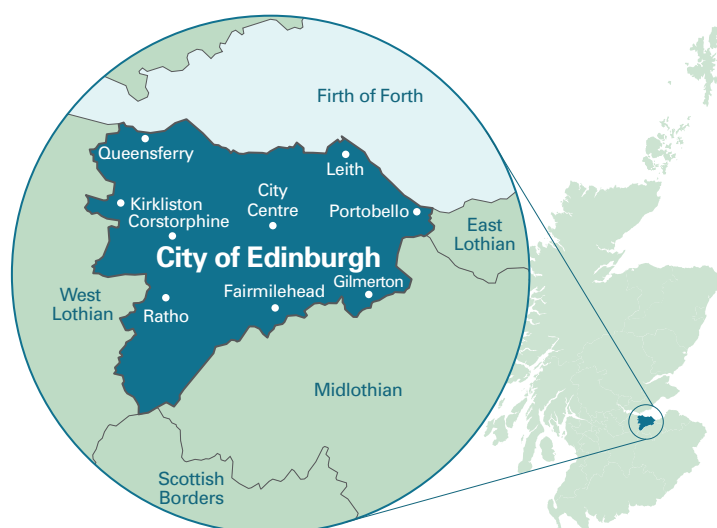


Edinburgh

28. Edinburgh is located on the east coast of Scotland at the mouth of the River Forth. It shares borders with East Lothian, Midlothian, Scottish Borders and West Lothian councils ([Exhibit 1](#)).

Exhibit 1

The City of Edinburgh Council area



Source: Audit Scotland

29. Edinburgh has a population of over 495,000. The population is expected to grow by over 125,000 by 2035.⁵ This rise of 26 per cent is significantly higher than the expected growth nationally of ten per cent. Over the same period, the increase in those aged 75 and over is anticipated to increase by almost

three per cent of the population to ten per cent in 2035. This is a smaller shift in the age profile than that anticipated nationally but translates to an increase of about 25,000 people in this age group.

30. As Scotland's capital city, Edinburgh has a high national and international profile. It is home to the Scottish Parliament, government offices and many consulates. The city is a major visitor attraction with particularly high visitor numbers during summer festivals and over the year end festive period. The capital city status presents opportunities for the council and its partners but it also puts additional demands and pressures on services.

31. Edinburgh's economy relies on the service sector and in particular finance, tourism and education. In the year to September 2012,⁶ 74.8 per cent of people of working age were economically active. Of these, 6.2 per cent were unemployed, lower than the Scotland average of 7.9 per cent.

32. The relative strength of the economy and affluence in Edinburgh masks pockets of deprivation. Over a third of Edinburgh's communities are among the most affluent in Scotland.⁷ There has been a reduction in the number of communities in Edinburgh that are among some of the most deprived in Scotland, but it still has 5.5 per cent of these communities. The council and its partners face significant challenges in continuing to narrow the inequalities gap.

The council

33. The City of Edinburgh Council is the second largest council in Scotland and the eighth largest unitary council in the UK. It employs over 15,000 people and spends about £1 billion each year. Based on the budget estimates for 2012/13,⁸ revenue expenditure represents £2,143 per head of population; the lowest spend per head of population of the 32 Scottish councils.

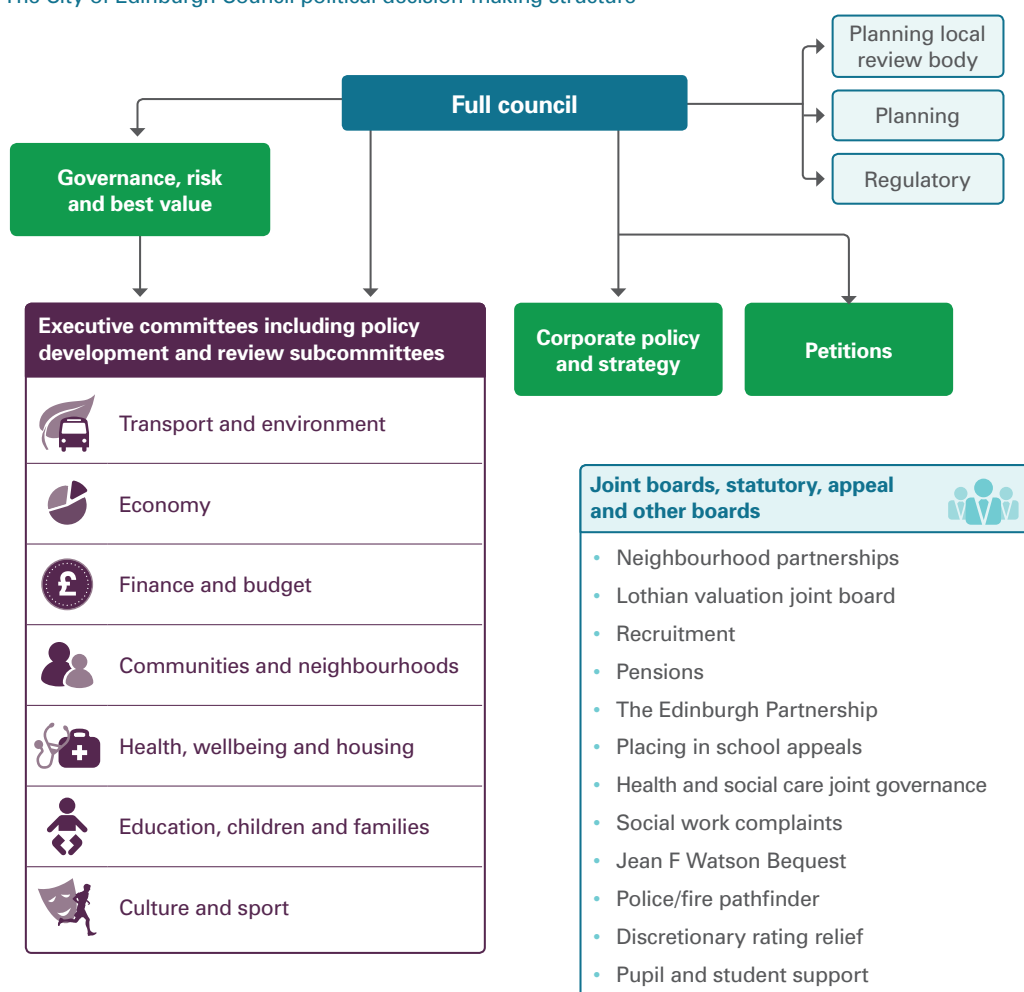
34. The council has 58 councillors and 17 multi-member wards. Following the local government elections in May 2012, the council is led by a Scottish Labour and Scottish National Party (SNP) coalition administration. The political make-up of the council is:

- 20 Scottish Labour Party councillors
- 17 Scottish National Party councillors
- 11 Conservative and Unionist Party councillors
- six Scottish Green Party councillors
- three Scottish Liberal Democratic Party councillors.

A by-election is due to be held on 20 June 2013 in the Liberton/Gilmerton ward.

35. In September 2012, the council approved a new committee structure ([Exhibit 2](#)). The council has seven executive committees, each with a policy development and review subcommittee and three further strategic committees.

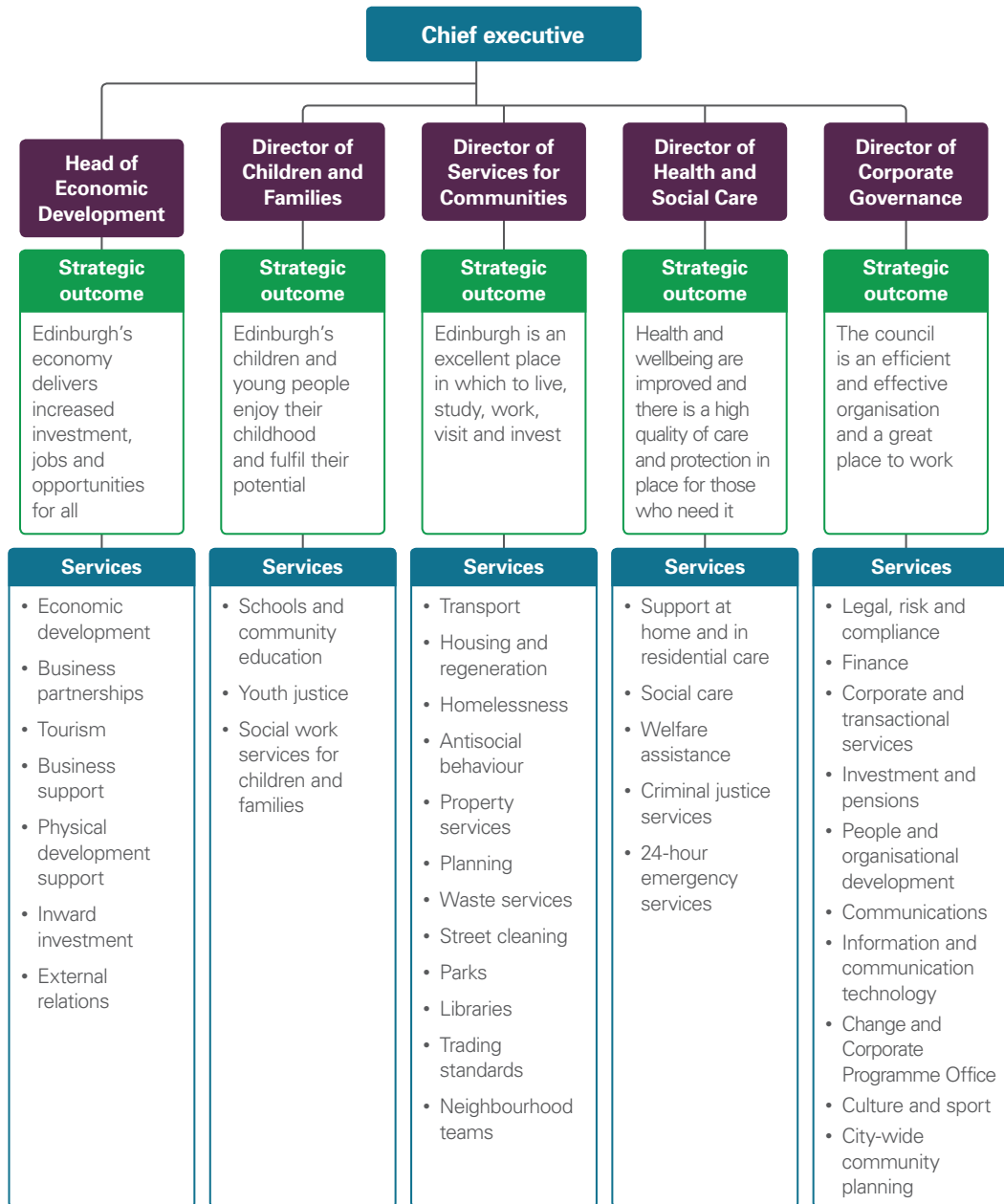
Exhibit 2
The City of Edinburgh Council political decision-making structure



Source: Audit Scotland

36. In January 2011, the council appointed a new chief executive. The council has four directors in its corporate management team, ie directors for corporate governance, health and social care, children and families, and services for communities. Each director has responsibility for a wide range of services as well as responsibility for strategic outcomes (Exhibit 3).

Exhibit 3
Management structure



Source: Audit Scotland

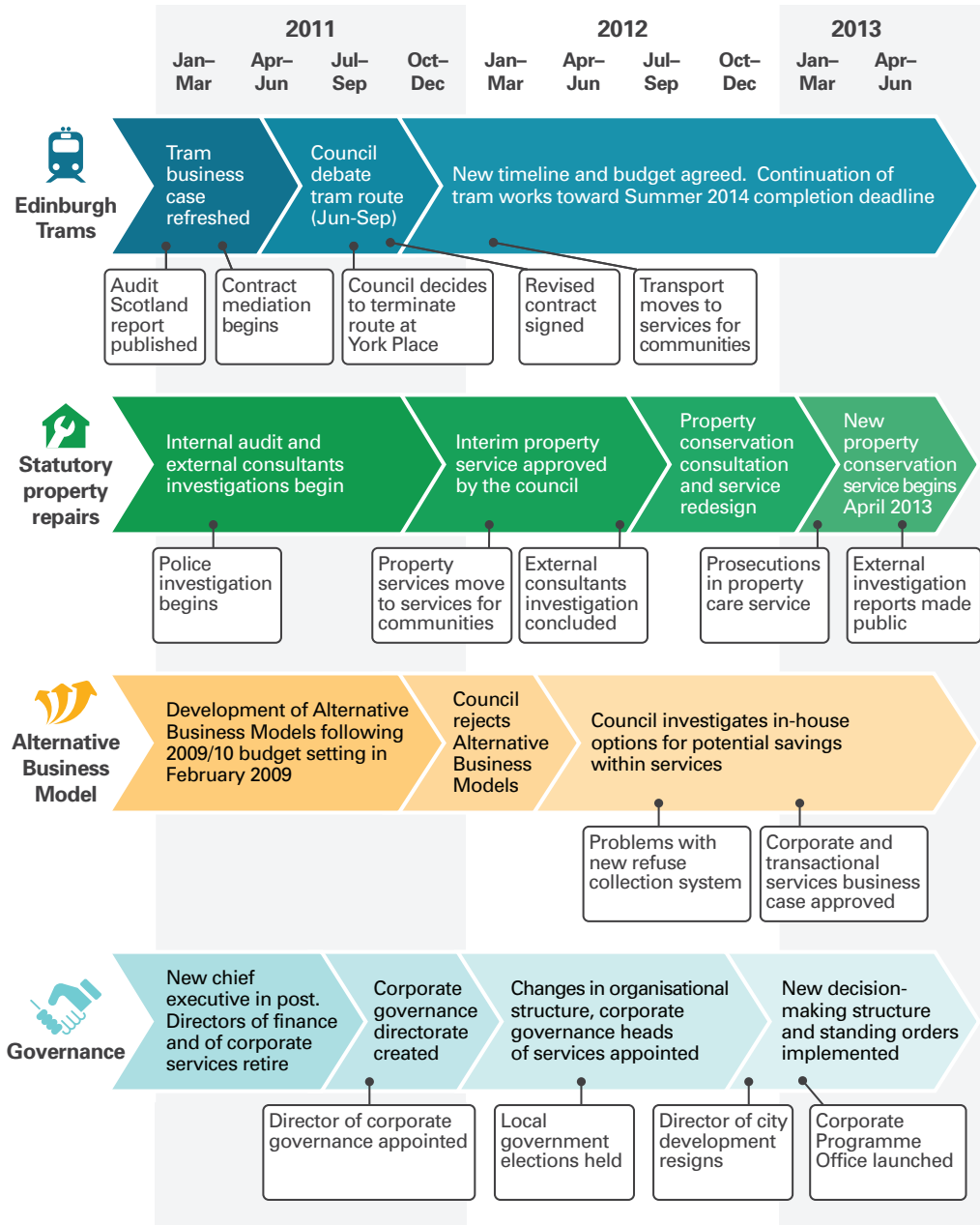
Further context: timeline of events

37. Since the BV audit in 2007, the council has undergone major organisational change and has had to deal with high-profile and significant problems. The scale and complexity of these is an important part of the context: resolving contractual disputes arising from the tram project; identifying savings following the decisions not to externalise certain services; and investigating serious difficulties in its statutory repairs service. These three issues, in particular, have absorbed a large amount of senior manager time and have damaged both public confidence in the council and the council's reputation.

38. [Exhibit 4](#) sets out the most significant events in relation to each of these three matters over the past two years. It also includes a line to reflect major governance events over the same period.

39. Of the issues identified in [Exhibit 4](#), the tram project is the highest profile and involved significant input from the chief executive following her appointment in January 2011 ([Exhibit 5](#)).

Exhibit 4
Timeline



Source: Audit Scotland

Exhibit 5

Edinburgh Trams

In May 2002, the council established Transport Initiatives Edinburgh (TIE), as a fully owned arm's-length company. Its role was to investigate how best to deliver the local transport strategy, which included a proposed new tram network. In 2003, Scottish ministers announced financial support for the project and in 2006 the project received parliamentary approval.

In October 2007, TIE announced Bilfinger Berger Siemens (BBS) as the preferred bidder for construction. The council approved TIE's final business case for the tram project in December 2007. The business case set out two project phases: 1A (Edinburgh airport to Newhaven); and 1B (Roseburn to Leith), with expected costs of £498 million for phase 1A and £87 million for phase 1B. In January 2008, the Scottish Government offered a grant of up to £500 million for phase 1A, on the condition that the project costs would not exceed £545 million, that there was a positive benefit/cost ratio and that no ongoing subsidy would be required.

TIE officially appointed BBS as the contractor in May 2008 but in February 2009, a major dispute arose between TIE and BBS that centred on differing interpretations of contractual agreements. In April 2009, the council decided to postpone phase 1B owing to the financial downturn. The dispute between TIE and BBS continued throughout 2009. During this period, the majority of construction work was effectively suspended but utilities work progressed. In December 2009, TIE agreed to a fundamental review of the contracts. In March 2010, the council announced that phase 1A of the project was unlikely to be completed within budget. At this point, the council had spent almost 60 per cent of the budget and the project was substantially behind schedule.

In October 2010, the council received a report updating it on progress and proposing an incremental approach to the project with a tram line from the airport to St Andrew Square as a first phase.

The council appointed a new chief executive in January 2011. Mediation involving all parties started in March 2011. Following this, work began on a number of priority construction areas while further detailed planning was undertaken.

Between June and September 2011, the council debated proposed revised tram routes and plans for completion resulting ultimately in it confirming that it would proceed to complete the tram line to St Andrew Square/York Place.

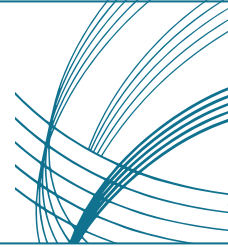
Subsequent negotiations led to a settlement agreement in September 2011 between the council and the contractors. At this point, the council appointed external project managers to assist the process, revised the governance arrangements and began to wind down TIE. The project has required additional funding of £231 million, which has come from additional council borrowing, increasing the overall budget to £776 million.

The project now has a planned completion date of summer 2014. At February 2013, the project is progressing in line with the new budget and timescales.

Source: Audit Scotland

Part 4

Is the council working effectively with its partners to improve Edinburgh?



The council and its partners share a clear vision of what they want to achieve in Edinburgh. They understand the local context and work well together to improve outcomes for local people. The council shows a clear commitment to working with its communities in strategic and local planning. Partnership working is good and the council and its partners are continuing to improve this further. The council needs to ensure that the partnership board is clear about its role in the community planning structure.

40. In this section, we look at how effectively the council and its partners are responding to the needs of Edinburgh. We consider whether the council and the Edinburgh Partnership understand the issues for their communities and have set clear priorities that reflect these. We also look at how well the partnership is organised to deliver its priorities and positive outcomes for the city.

Are they focused on the challenges for Edinburgh?

41. The council and its partners share a clear vision of what they want to achieve in Edinburgh. Their priorities align and are clearly set out in three strategic documents, ie the Edinburgh Partnership's single outcome agreement (SOA) (March 2012), the council administration's pledges (May 2012) and the council's strategic plan (October 2012) (**Exhibit 6**). They also demonstrate a clear understanding of the local context that includes, for example, the city's role as a capital, its economy and workforce, and the challenges in providing affordable housing and sustainable social care.

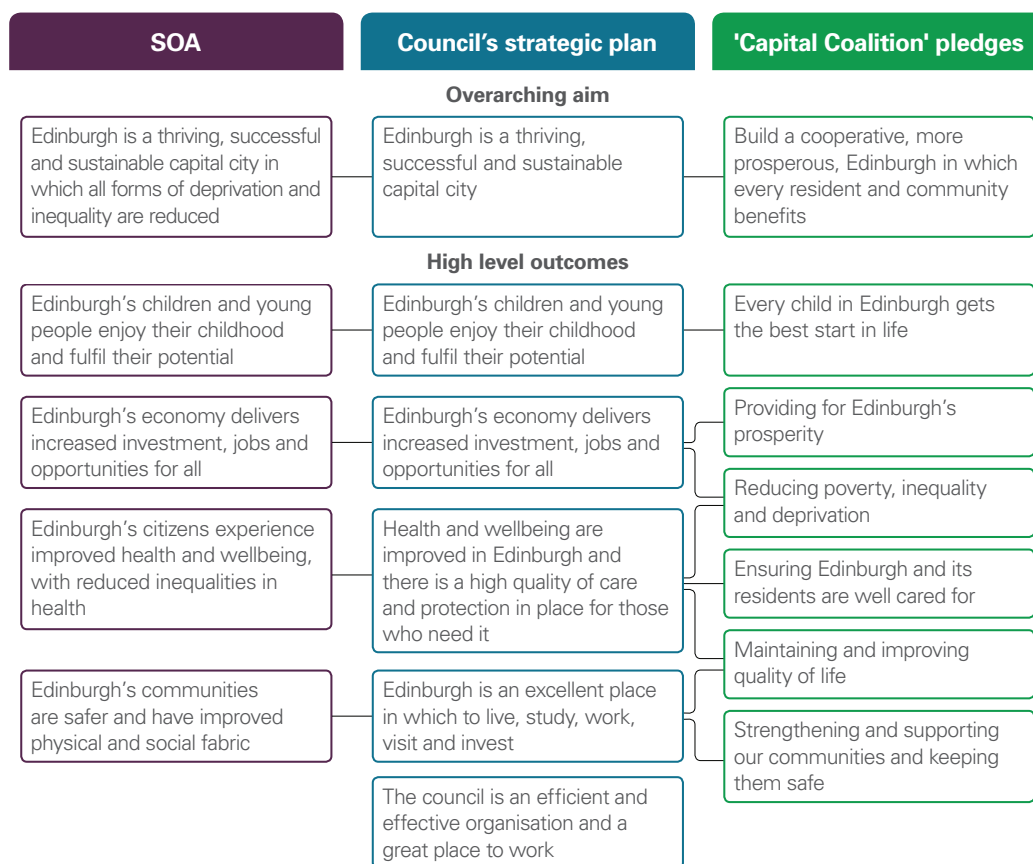
42. All 32 Scottish Community Planning Partnerships produce SOAs. These set out the partnership priorities, how they aim to achieve these and measures for monitoring progress. The 2012–15 Edinburgh SOA introduces a much clearer focus on addressing inequalities and now includes a commitment to 'reduce poverty and deprivation in all its forms'. There is also a clear reference to reducing health inequalities. Social and economic sustainability are implicit in the SOA but environmental sustainability is not evident as a planned outcome. At the time of the audit, the partnership was agreeing the new SOA. The partnership acknowledges that it needs to review how environmental sustainability is better reflected in its priorities and planning.

Engaging with communities

43. The council has a range of good approaches to involving communities in discussions about services and priorities. The council commissions an independent annual survey of residents to collect information on local matters, perceptions and satisfaction. The council uses this information to inform corporate and service planning.

Part 4. Is the council working effectively with its partners to improve Edinburgh? | 21

Exhibit 6
Corporate, Capital Coalition and Edinburgh Partnership priority correlation



Source: Audit Scotland

44. The council and individual services also engage with service users on specific matters. For example, the council has a consultations page on its website and topics that the public can express opinions on include school proposals, the approach to commissioning services for children and local transport. Direct engagement with communities is also evident in services and in local neighbourhoods, for example in the Total Neighbourhood projects ([Exhibit 7](#)).

45. Developments over the past year to further improve its approaches include:

- **Committee changes** – the communities and neighbourhoods committee increases the council's focus on partnership and neighbourhood working, while the petitions committee provides an opportunity for people to influence council business.

- **Customer Access Strategy** – which focuses on improving how people can contact the council, for example through its customer call centre and online.
- **Complaints management** – the council has updated its complaints processes to comply with Scottish Public Services Ombudsman (SPSO) guidance and to bring together different approaches across the council into a single system.
- **Budget consultation** – the council consulted with the public on its 2013/14 budget. This included an online survey, social media and community meetings.

Exhibit 7

Total Craigroyston and Total Neighbourhood projects

Total Craigroyston and Total Neighbourhood are two pilot initiatives started in 2012 that aim to improve outcomes for residents in more deprived areas of Edinburgh.

Total Craigroyston focuses on improving outcomes for children from Craigroyston High School and the catchment primary schools in the north of the city. Between May and June 2012, the project team consulted local people to understand better their concerns and aspirations for the area. The project team is using this to inform an action plan. The team has also started to improve support for primary school pupils moving to secondary school and to identify young people who recently left full-time education who are no longer in positive destinations.

Total Neighbourhood is based in a new multi-agency purpose-built building in the east of the city. The project's aim is to improve outcomes and the quality of life for residents. It aims to achieve this by improving the quality of services, better integrated working, and better community and stakeholder involvement. The project team has run workshops with staff in the area to understand how services could work better. It is also reviewing the effectiveness of money spent in the area.

Both initiatives involve a wide range of public sector and voluntary organisations. They are monitored by the Edinburgh Partnership and by the council's communities and neighbourhood committee. No additional money has been allocated to these initiatives with the core teams made up of council and police staff. Both initiatives are in their early stages but the council hopes, if successful, the 'total model' will be rolled out across the city.

Source: Audit Scotland

How effective is partnership working?

46. The council and its partners have well-established working arrangements that include strong links with the business and voluntary sectors. The council knows where the arrangements need to be strengthened and is taking action with its partners to address these. The council provides strong and effective leadership on Community Planning but needs to make sure that the role of the partnership board, such as in the approval of the SOA, is clearer.

Part 4. Is the council working effectively with its partners to improve Edinburgh? | 23

47. The Edinburgh Partnership has continued to strengthen its structures. The 2007 BV audit identified the need to refocus community planning arrangements and the partnership reviewed its structures in 2008/09. This resulted in increased representation from councillors and more clarity about their role. In 2009, the partnership also set up an executive group of senior managers from partner organisations to lead improvement in Community Planning. It also reviewed its links to the council's neighbourhood structures and the coverage of its strategic partnerships.

48. Exhibit 8 provides an overview of the community planning structures. It also illustrates the links to the neighbourhood partnerships and shows how the council's new communities and neighbourhoods committee fits into these arrangements.

49. While demonstrating a clear awareness of the issues, the partnership board is less clear about its role in leading the partnership, developing the SOA and scrutinising progress. While current arrangements are effective, the council needs to help clarify the partnership board's role in the current arrangements, for example in approving the SOA.

50. The role of the partnership's thematic groups is evolving. The partnership agreed revised strategic partnerships in October 2012. Some of these, such as the community safety partnership, have been in place for some years and have a clear focus. However, others, such as the economic development strategic partnership, are relatively new and are still defining their remits. The Edinburgh Partnership has also faced challenges in setting up its climate change strategic partnership ([paragraph 95](#)).

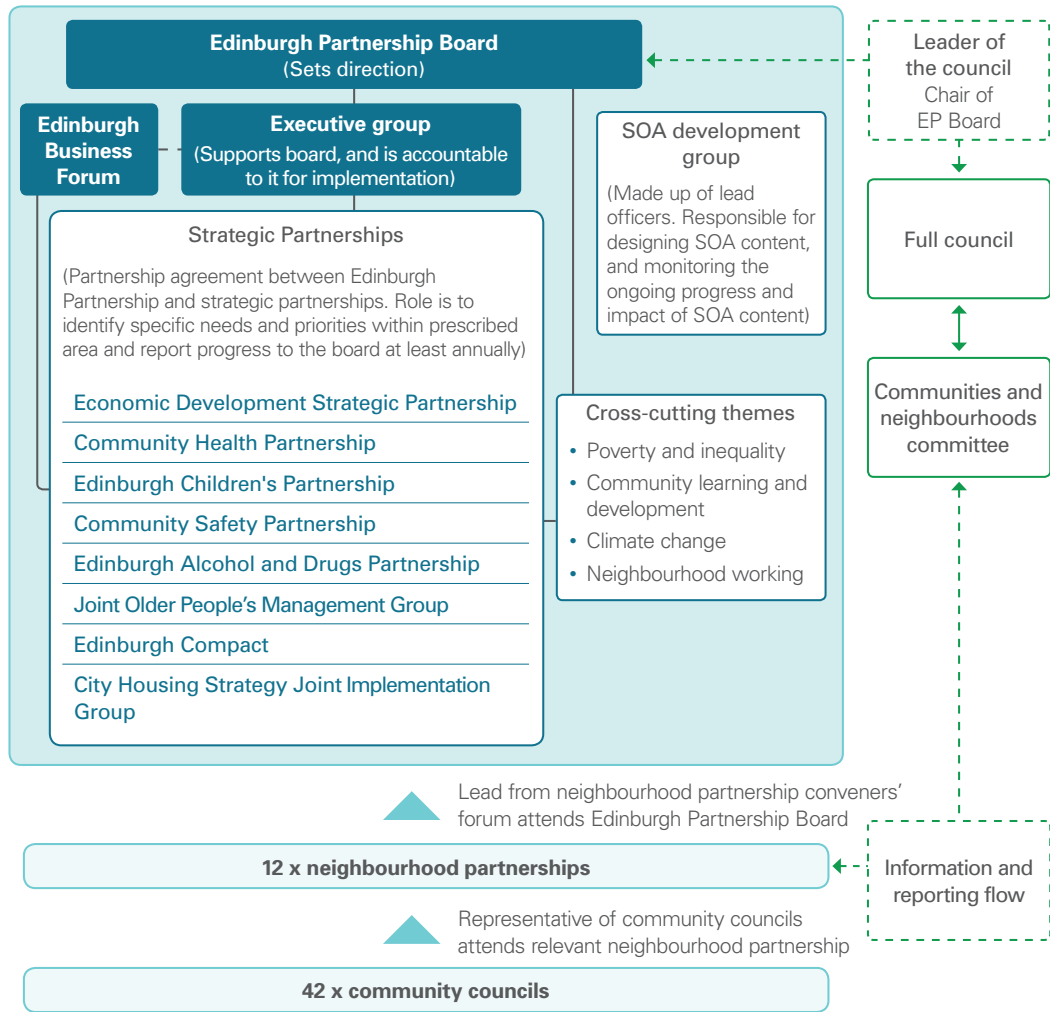
51. The council and NHS Lothian work well together in the Community Health Partnership. The council's director of health and social care has been a joint appointment with the health board since 2005. Organisational changes within both bodies have helped to improve strategic level working relationships and the current focus on service integration is helping to develop these further.

52. In preparation for integration of health and social care, the council and NHS Lothian revised its arrangements in October 2012 to form a shadow health and social care partnership. The partnership has equal representation from the council and the health board. The integrated service came into effect on 1 April 2013, with community-based services coming together in the first year and acute services following thereafter. A finance group, composed of officers from the council and the health board, is working to align health and social care budgets. The group aims to introduce a pooled budget for community care in April 2014 and for acute services the following year. The council and the health board are also working to develop joint performance management arrangements.

53. The council has an effective neighbourhood structure that enables communities to help shape local priorities. There are 12 neighbourhood partnerships. Each includes representation from local communities, services such as police and health, community councils, local businesses and councillors. Each partnership also agrees a local community plan, setting out local priorities.

54. To improve further these well-established arrangements, the council and its partners have two neighbourhood pilots, Total Neighbourhood and Total Craigroyston [Exhibit 7](#). Both projects are still at an early stage but have the potential to demonstrate what can be achieved by a more targeted, local approach.

Exhibit 8
Community planning structures

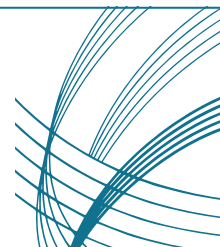


Source: Audit Scotland

55. Performance management within the Edinburgh Partnership is well structured and it is continuing to develop. The partnership uses the council's performance management system to collect performance information and receives progress reports on the SOA. However, there is scope for stronger evaluation of individual projects and workstreams.

Part 5

What have the council and its partners achieved?



The council and its partners are making good progress with improving outcomes for people and communities. Priorities linked to the economy and employment show signs of improvement in a challenging national economic climate. There is also progress in outcomes relating to children and young people, health and community safety. People in Edinburgh show a high level of satisfaction with the area as a good place to live.

The council and its partners are aware of the particular challenges they face in providing sustainable adult social care, meeting demand for affordable housing and preparing for changes to the welfare system. The council needs to do more to improve waste management and cleanliness.

56. The following paragraphs assess the progress the council (through its services) and its partners are making towards each of the Edinburgh Partnership's high-level outcome priorities.

Edinburgh Partnership outcome priority: 'Edinburgh's economy delivers increased investment, jobs and opportunities for all'

57. The council and its partners are making good progress in supporting the Edinburgh economy. Priorities linked to the economy and employment show encouraging signs of improvement in a difficult economic climate and in comparison to other parts of Scotland.

Edinburgh's economy is doing well despite the economic climate

58. The council and its partners use Edinburgh's characteristics, including its capital city status and festivals, to promote economic development. The city's economy is responding well despite the economic climate. For example:

- There were 1.34 million visits by overseas tourists in 2011, up from 1.31 million in 2010. Overseas visitor expenditure increased from £524 million to £609 million.
- There were 32 foreign direct investments into Edinburgh announced in 2011/12, almost twice as many as in 2010/11, with a value of between £300 million and £400 million.
- The council is ahead of its targets for promoting investment in physical development and regeneration in the city. From April to December 2012, the net investment was £75 million, ahead of the council's target by £25 million.

- The number of new businesses starting up has increased in 2012 and compares well against other cities across the UK. Only London had more business start-ups.
- The economic performance of Edinburgh contributes strongly to the wider UK economy. The economic value of all goods and services provided in Edinburgh, at £34,178 per head of population,⁹ is higher than in any other UK local authority outside of central London.

59. The council is committed to helping economic growth. For example, in November 2012, the council brought the 'business gateway service' in-house and set up a new one-stop advice and assistance service for businesses within its headquarters. The council also played an active role in the successful bid to locate the headquarters of the UK's new Green Investment Bank in Edinburgh in 2012. The council and its partners are focused on improving employment and opportunities and are making good progress. For example:

- Following a period of declining employment rates, the employment rate increased slightly to 71.1 per cent in September 2012, above the Scottish average of 70.8 per cent. However, the rate is slightly below the SOA target of 72 per cent for 2012.
- In the year to December 2012, the council helped 1,610 unemployed people into employment or learning, exceeding its target by 110. The council is behind its target for job creation over the same period, with 449 jobs created and safeguarded against a target of 500.
- The council led the development of a new 'strategy for jobs' for 2012–17. This was launched in September 2012 in partnership with the Edinburgh Business Forum.

60. The council and its partners have identified young people's opportunities as a specific area for improvement. Despite good levels of educational attainment, the percentage of school leavers in Edinburgh going into employment, training or continued education was worse than in any other council area across Scotland in 2009/10. In response, partners across the city, including the private sector, have signed up to the Edinburgh Guarantee ([Exhibit 9](#)). This is a good example of what can be achieved when partners focus collectively on a priority for improvement. Although it is too early to assess whether there will be sustained improvement, the council is now the fourth most improved local authority in Scotland for getting school leavers into a positive destination. The percentage of school leavers going into work, training or continuing in education increased from 82.0 per cent in 2009/10 to 88.3 per cent in 2011/12, a little below the Scottish average of 89.9 per cent.

Edinburgh Partnership outcome priority: 'Edinburgh's children and young people enjoy their childhood and fulfil their potential'

61. The council and its partners are achieving mostly positive and improving outcomes for young people. In particular, they are making good progress in improving educational outcomes. They still need to do more to close the gap between children from affluent backgrounds and those from more deprived backgrounds.

Exhibit 9

Edinburgh Guarantee

The Edinburgh Guarantee involves the public, private and voluntary sectors in the city working together to ensure that every school leaver in Edinburgh has a job, training or further education opportunity. It is based on a shared vision among partners that everyone has something to offer and that the city, working together, can deliver a better future for young people, and for the economy. The Edinburgh Guarantee's successes include:

- since August 2011, working with over 150 businesses and organisations across Edinburgh to generate opportunities for school leavers
- matching 513 young people into opportunities by October 2012 including internships, modern apprenticeships, permanent positions, fixed-term positions and training programmes
- setting up sector-based working groups to promote youth employment within different sectors and unlock opportunities for young people
- engaging business and seeking new and innovative ways to introduce the world of work into schools.

Source: Audit Scotland; Edinburgh Guarantee website – www.theedinburghguarantee.co.uk

62. In April 2013, the Care Inspectorate published a report¹⁰ about services for children and young people in Edinburgh. It concludes that the council and its partners are providing a good service, assessing the services as good for seven out of eight quality indicators and very good for the eighth, ie recognising the very wide range of measures to consult and seek the views of children, young people, families and other stakeholders. The report also indicates mostly positive and improving outcomes ([Exhibit 10](#)).

Children are doing better at school

63. There are positive trends in most of the measures that show how well children and young people are performing in Edinburgh's council-run schools. For example:

- Educational attainment at secondary school level on almost all measures shows improving and comparatively good performance. Almost all indicators, covering attainment measures for S4 to S6 pupils, are in line with or above the national average.
- Secondary school exclusion rates improved between 2009/10 and 2010/11. In both primary and secondary schools, fewer children were permanently excluded. There are also positive trends in attendance rates for primary and secondary schools and the council is meeting its targets for both measures.

More still needs to be done to address inequalities

64. The council and its partners show a strong commitment to equal opportunities for children and young people, whatever their background. Some measures show that the inequality experienced by children and young people is decreasing. For example:

- The average attainment for S4 and S5 pupils¹¹ from the least deprived areas has been steady while it has improved for those in the most deprived areas.
- There has been a narrowing of the gap in the average attainment for the 20 per cent lowest attaining pupils compared to the average for all pupils.

Exhibit 10

Care Inspectorate findings 2013

'...Overall, partners are making steady improvements in the wellbeing of children and young people. Positive progress is being made against the performance indicators set out in the Single Outcome Agreement and the Integrated Children and Young People's Plan. Encouraging trends are being achieved in the outcomes for all children and young people...

- Overall the extent to which children and young people in Edinburgh get the best start in life and their life chances are improved is good...
- Children and young people get very effective support to keep safe...
- Parents and carers of very young children benefit from highly effective support and guidance...
- Children and young people are supported to attend school and this helps them to make better progress in their learning and educational attainment...
- The number of high-quality nurturing and stable environments for children who are unable to live at home is increasing rapidly...
- Parents and carers are very positive about the supporting and trusting relationships they enjoy with staff...
- Communities are encouraged to develop local solutions to local problems and become involved in designing the services they need...'

Source: Care Inspectorate

65. However, more work is needed in some areas. For example:

- The average attainment trends for S6 pupils show a widening gap, although at a much lower level than the national trend. The gap in attainment between S6 pupils in the most and least deprived areas in Edinburgh increased by 0.7 per cent between 2004/05 and 2010/11, compared to 15 per cent nationally.
- There has been improvement for school leavers¹² going on to employment, training or continuing in education for young people from both the most and least deprived areas. The rate of improvement has been faster for those from the most affluent areas. This widening gap is in contrast to the national trend.

The council and its partners are working hard to protect the most vulnerable children and young people, but more progress is needed

66. The council and its partners show a clear commitment to improving the outcomes for vulnerable children and young people. The Care Inspectorate concludes in its April 2013 report that encouraging trends are being achieved in the outcomes for all children and young people and in reducing outcome gaps for those whose life chances are at risk. Considerable improvements have been made in the quality of services to protect children.

67. This improvement is reflected in some of the performance measures, for example:

- The number of reviews of looked-after children completed within the target time has increased from 62 per cent in 2011 to 81 per cent in 2012.
- The number of children leaving accommodation through adoption has improved year-on-year, from 40 in 2009/10 to 49 in 2011/12. This is close to the council's target of 50.

68. The Care Inspectorate report indicates that the council and its partners need to continue to reduce outcome gaps for children and young people whose life chances are at risk and place a stronger focus on achieving speedier improvement for the most vulnerable.

69. Performance information indicates that more work is needed to improve the outcomes for some of the most vulnerable children and young people in Edinburgh. For example:

- The target is to reduce the number of children needing to be looked after, but this has remained stable over the last three years, at around 15.4 per 1,000 children.
- The percentage of children in foster care, placed full-time with a council foster carer, has declined, from 65 per cent in 2009/10 to 57 per cent in 2011/12, against a target of 63 per cent.

Edinburgh Partnership outcome priority: 'Edinburgh's citizens experience improved health and wellbeing, with reduced inequalities in health'

70. The council and its partners are achieving generally positive and improving health outcomes. Health inequalities are complex and it will take time for the partnership to demonstrate improvement. Analysis of outcomes between areas of high and low deprivation indicates some positive trends in reducing inequalities, but more progress is still needed. With an increasing older population, there are particular challenges for the council in improving the provision of care home placements and homecare.

The health of the people of Edinburgh is improving

71. There are positive trends in many of the health outcome measures including some of the longer-term indicators. For example:

- Life expectancy¹³ for both men and women has improved and is above the national average (male life expectancy in Edinburgh is 77.2 years compared

to 75.9 nationally and for females is 81.9 years in Edinburgh compared to 80.4 nationally).

- The rates of premature deaths¹⁴ have improved and are lower than the national average (323.7 in Edinburgh in 2011 compared to 349.1 nationally).

72. There are also positive trends in some of the factors that can influence health and wellbeing. For example:

- Smoking rates for adults have decreased year-on-year, falling by a quarter between 2000 and 2010 and at 21.4 per cent is below the national average of 24.2 per cent.
- Alcohol-related hospital admissions fell by 24 per cent between 2007/08 and 2010/11. At 605 admissions per 100,000 population, this is also below the national rate of 695.

More still needs to be done to reduce inequalities in health and wellbeing

73. There are some indications of progress in closing the gap in health between the most and least deprived people in Edinburgh. For example:

- Hospital admissions owing to coronary heart disease have decreased in the most and least deprived areas. The difference between the most and least deprived people has improved at a slightly faster pace than in Scotland as a whole. The gap has decreased by 52.5 per cent in Edinburgh between 2002 and 2010 compared to 50.6 per cent nationally.
- Smoking levels have declined at a slightly faster pace in the more deprived areas of Edinburgh.

74. Some measures indicate that more work is needed to close the gap between the least and most deprived communities. For example:

- The life expectancy rates for people in the more deprived areas of Edinburgh have not increased as quickly as other areas, meaning the gap in life expectancy between the most and least deprived areas has widened. The gap has widened by 2.1 per cent for males and by 16.1 per cent for females between 2003/07 and 2006/10, compared to 3.5 and 4.3 per cent nationally.
- The rates for premature deaths for those in the more deprived areas have been falling but, at 647 per 100,000 people, remain more than twice as high as those for Edinburgh as a whole at 323 per 100,000 people.

The council and its partners are working to improve the provision of homecare and care home placements, but more progress is needed

75. With an ageing population, the demand for care is increasing. The council and its partners face challenges in maintaining sufficient care home placements and carers to meet demand. The health and social care service has shown improved performance but now needs to do more.

76. In January 2012, the Care Inspectorate published a report¹⁵ on the council's social work services. The assessment found no areas for urgent attention or of significant risk. The report states that the council was strongly focused on

Part 5. What have the council and its partners achieved? | 31

outcomes. Although outcomes across the services were mixed, the council closely monitored performance and was identifying where further improvement was needed.

77. On indicators relating to the balance of care for older people, the Care Inspectorate's report notes an upward trend in performance from a low base, with a small but steady increase in the number of people receiving intensive homecare. This had contributed to a reduction in the number of people going into residential care and an increase in residents' dependency levels in the care homes. The report states that the council's own homecare service, which provided 26 per cent of care at home hours, needed to develop more flexibility and capacity.

78. The rate of homecare hours provided has improved. The health and social care service has achieved year-on-year improvement on a number of homecare indicators. Between 2009/10 and 2011/12 the percentage of homecare clients who receive personal care increased from 89.5 per cent to 96.1 per cent; the percentage who received overnight care increased from 31 per cent to 40.5 per cent; and those receiving services at weekends increased from 69.5 per cent to 79.9 per cent. However, this performance remains mid-range when compared to other councils.

79. More people have experienced delays in being discharged from hospital. The council and its partners recognise that this is due to care placements and homecare provision not meeting demand. The council has taken action to increase care provision availability in response to identified shortages but demand is increasing and the council and its partners need to take more action.

Edinburgh Partnership outcome priority: 'Edinburgh's communities are safer and have improved physical and social fabric'

80. Performance on this outcome, which aims to 'ensure people are safe from crime, disorder and danger; are well housed; and live in engaged, inclusive and supportive communities' is mixed. There are positive trends in crime and safety and positive levels of public satisfaction. However, outcomes relating to cleanliness and recycling are comparatively poor. Meeting the demand for housing remains a challenge but there are some signs of progress.

Levels of crime and safety show improvement

81. There is good progress in improving crime and safety outcomes in Edinburgh. For example:

- Overall levels of crime have decreased.
- The percentage of people who feel safe after dark in their neighbourhood has increased from 77 per cent in 2011 to 88 per cent in 2012.
- There have been reductions in the rates of deliberate secondary fires¹⁶ and reductions in vandalism.
- Satisfaction with how well vandalism, graffiti and antisocial behaviour are dealt with at neighbourhood levels has improved and the partnership is achieving its targets for these measures.

82. However, more work is needed in some areas. For example:

- Rates of accidental house fires have been worsening over the last few years despite a previous trend of improvement.

The infrastructure for travelling in Edinburgh is good

83. The tram project has been a major challenge for the council over the last few years. The project is progressing and the council expects trams to run from the summer of 2014.

84. The tram difficulties will have affected public perception of travelling in Edinburgh. More broadly, however, there is good performance in relation to transport and travelling in the city. For example:

- In 2012, 85.4 per cent of people were satisfied with public transport provision. Satisfaction with public transport is generally higher in Edinburgh than nationally.
- Public transport usage and levels of people walking, running and cycling to work in Edinburgh compare well to average levels across Scotland and in other cities. Edinburgh has particularly high levels of travel by bus and by cycling and this has increased steadily over the last ten years.
- The condition of roads in the area is not good but is better than the national average and has improved over the last three years. The proportion of roads requiring maintenance is 32.4 per cent for 2011/12 compared to the national average of 36.4 per cent.

The management of the city's waste and cleanliness needs to improve

85. The amount of waste going to landfill has steadily decreased from 2007/08 to 2011/12 by 19 per cent, meeting the partnership's target. However, there is scope for further improvement. For example:

- There has been a slight improvement in recycling over the last few years but it remains comparatively low, at 33.3 per cent compared to a national average of 41.0 per cent in 2011/12, and is not meeting the partnership's SOA target of 35 per cent.
- There has been a slight improvement in street cleanliness levels. However, these remain worse than the Scottish average.
- Although the cost of waste disposal is less than the national average (£76 per premise compared to £105) the cost of collection per premise is higher (£92 compared to £81 nationally). The cost of street cleaning is the highest in Scotland at £33,957 per 1,000 people, compared to an average of £19,380 nationally.

86. The council introduced a new waste collection policy in September 2012 aimed at increasing recycling rates, reducing the amount of waste going to landfill and to reduce landfill costs.

87. The council has experienced difficulties in implementing the new waste collection arrangements. Complaints about waste collections increased from an average of less than 3,000 a month to 10,384 complaints in the two months

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after the revised arrangements came into effect. Some reduction to service performance is likely during a period of transition and it is too early to assess the longer-term performance of the new arrangements.

Meeting housing needs continues to be a challenge

88. The council and its partners face challenges in making sure the people of Edinburgh have access to suitable housing. The partnership has identified the need for an additional 36,000 homes to meet demand over the next ten years and, of this, 16,600 affordable homes are needed. Housing shortages make it more difficult to manage homelessness effectively.

89. In 2012, the Scottish Housing Regulator (SHR) carried out a targeted inspection of the council's homelessness services.¹⁷ SHR found that the council had improved its service and was on track to meet the national target to abolish the priority need assessment. SHR also commented on the impact of the challenging local context, with the significant imbalance between housing demand and supply in Edinburgh. It noted that waiting times for permanent accommodation are long as a result of the limited supply of accommodation.

90. The council and its partners are responding well to the challenges in a number of ways, for example:

- Private sector house building increased by 35 per cent in 2011/12 compared with the previous year. This follows a period of significant reduction in house building during the economic recession.
- New homes completed through the Affordable Housing Investment Programme surpassed the partnership's target. In 2011/12, 657 homes were completed against a target of 505. Also in 2011/12, the partnership secured funding to approve the construction of 1,558 new affordable homes.
- The number of council houses meeting the Scottish Housing Quality Standards (SHQS) has improved year-on-year and compares well with other councils. In 2011/12, 74.5 per cent met the standard compared to a national average of 66.1 per cent.
- Housing management indicators are generally positive, with all comparable indicators either better than or in line with national averages. Performance is particularly strong in collecting rent arrears from former tenants, the council had the highest rate in 2011/12 across all councils at 60.7 per cent compared to 35.7 per cent nationally. It also performs well in relation to minimising rent losses from unoccupied properties at 0.5 per cent compared to 1.3 per cent nationally.
- Management of temporary homelessness cases is generally good, with good performance on the time taken to complete assessments and improving performance on reassessments. Performance improved from 6.5 per cent requiring reassessment in 2009/10 to five per cent in 2011/12.

91. However, more work is needed in some areas. For example:

- The number of homeless people housed in permanent accommodation has been relatively static and is the third lowest across all councils at 33 per cent, well below the Scottish average of 49.2. There are also

comparatively high rates of reassessment required for permanent homelessness cases at 7.5 per cent, the fourth worst rate in Scotland.

- There is improving, but comparatively poor, performance on benefits and council tax management.

92. The council is preparing well for the UK-wide changes to the welfare system. The reforms will change how the council manages benefits and housing services. Its welfare reform strategic planning group brings together representatives from across council services most affected by the reforms. The council is also working with a range of other relevant organisations, such as the Scottish and UK Governments, COSLA¹⁸ and the DWP,¹⁹ to help to understand and plan for the changes. The council, along with one of its housing association partners, volunteered to be a pilot site for testing aspects of the reforms.

Sustainability

93. The council is making good progress against its environmental sustainability targets. It is developing arrangements to promote environmental sustainability but it is too early to assess their effectiveness. In its *Climate Change Declaration Annual Report 2011*, the council reported a 6.2 per cent reduction in its main carbon footprint categories between 2005/06 and 2010/11, ie in transport, building energy use, municipal waste, and infrastructure energy. The council aims to reduce its carbon emissions by 15 per cent by the end of 2015/16.

94. The council shows commitment to environmental sustainability but needs to do more to monitor and manage progress. In March 2012, the council approved the 'Sustainable Edinburgh 2020' action plan. A progress report was due in September 2012. The corporate policy and strategy committee received this report in April 2013.

95. The council and its partners need to improve how they work together on environmental sustainability. The Edinburgh Partnership agreed to set up a climate change strategic partnership but, at the time of the audit, this was not in place. Environmental sustainability and climate change form part of the context in the SOA but there are no specific sustainability performance targets.

Equalities

96. The council and its partners have a clear ambition to tackle inequalities and identify this as an area of particular focus. The council has sound arrangements in place and has taken action to embed equalities throughout its services.

97. The Edinburgh Partnership's overarching vision, 'Edinburgh is a thriving, successful and sustainable capital city in which all forms of deprivation and inequality are reduced', shows a clear ambition to tackle inequality.

98. In June 2012, the council approved a new *Framework for Equality and Human Rights 2012/17*. This sets out how the council will respond to its statutory duties for equalities and includes wider social and economic issues. The implementation timetable includes milestones and a progress report is due to go to the communities and neighbourhoods committee in May 2013.

Part 5. What have the council and its partners achieved? | 35

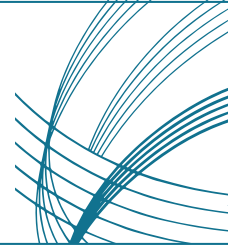
99. As well as agreeing its new equalities framework, the council has also committed to a programme of equality and rights impact assessments (ERiAs). ERiAs widen the focus of the assessment to cover the full range of new duties and framework objectives.

100. In implementing its equalities framework, the council is developing outcome measures to monitor the impact of its activity. These measures will link to the council's strategic plan and the partnership's SOA. The council has been using the equalities measurement framework, developed by the Equalities and Human Rights Commission, to help it gather and use appropriate information.

101. The council reviewed its internal arrangements for equalities when it restructured its corporate governance department. Equalities is now brought together with sustainability, Community Planning and voluntary sector engagement as a single unit within the department. This structure is relatively new and it is too early to assess whether the arrangements are working effectively.

Part 6

Is the council managing its resources effectively?



The council manages its finances well, with spending contained within budgets and long-term financial plans in place. It faces significant financial challenges, particularly from 2014/15 onwards. Its savings plans depend heavily on savings from improved procurement. The council is starting to address weaknesses in workforce planning and ICT, recognising that these are essential to achieve the improvements it is pursuing.

Managing finances

102. The council has achieved good financial results in recent years. It has operated within budget and has reserves available, but has a substantial level of borrowing. The council has identified significant financial challenges and has savings programmes in place that aim to address these.

103. In 2011/12, the council reported an under-spend against budget and a general fund balance of £101 million at 31 March 2012. Its cumulative debt was £1.4 billion at that date, an increase of 30 per cent over four years. This is due to the purchase of its Waverley Court headquarters building and other properties, to achieve revenue savings, and the tram project. The council is operating within the borrowing limits in its treasury policy. However, the associated increase in borrowing costs will reduce flexibility in future budgets.

104. The council set a balanced budget for 2013/14 but the position becomes much more challenging from 2014/15. In the context of a net annual expenditure of about £1 billion, the four-year budget for 2014–18²⁰ shows overall savings requirements of £33 million in 2014/15 and recurring annual savings of £107 million by 2017/18.

105. The council is examining options for achieving these savings. The four-year budget shows that the council's plans depend heavily on savings from improved procurement, ie recurring annual savings of £41 million by 2017/18. Assuming all elements of the savings plans are achieved, the council still needs to identify savings of £7 million in 2015/16, £19 million in 2016/17 and £17 million in 2017/18.

106. The council had planned to save £294 million from ABM, which would have involved partnerships with the private sector ([Exhibit 11](#)) and new ways of working. By January 2012, however, the council had rejected the ABM proposals and decided to pursue in-house alternatives. This approach required the council to change its financial plans and to identify alternatives to the savings anticipated from ABM. These are reflected in the 2014–18 four-year budget highlighted above.

Exhibit 11

Alternative Business Models

In February 2009, the council agreed to start a major project to examine ABM for the provision of some services. ABM aimed to achieve savings of £294 million over a seven- to ten-year period and involved delivering services with private sector partners. The following service areas were part of ABM:

- Corporate and Transactional Services (CaTS) – including revenues and benefits, human resources and payroll
- Integrated Facilities Management – covering building maintenance and design, catering, cleaning, janitorial and security services
- Environmental Services – including refuse collection, street cleansing, road maintenance and design and ground maintenance.

In November 2011, members voted to terminate the procurement process for Environmental Services. In January 2012, the council decided not to proceed with Integrated Facilities Management and CaTS. In the relevant reports when these decisions were made, officers recommended to councillors that CaTS should not proceed as part of the ABM project but did recommend proceeding with the other two service areas. By January 2012, the council had invested £3.3 million in the ABM project.

Since January 2012, officers have been working on a programme of internal improvement for each service:

- ImProve it, the environmental service plan to redesign waste collection
- Integrated Property and Facilities Management (iPFM), aims to reduce the number and improve the quality and energy efficiency of its buildings
- CaTS, designed to improve customer services through online services and new technology.

Plans are at various stages of development: the council approved the business case for CaTS in January 2013 and officers are developing more detailed business cases for ImProve it and iPFM. The council has pressed ahead with changes under the ImProve it programme and has achieved savings.

Source: Audit Scotland

107. During 2011, the council identified serious problems in its statutory repairs service and there is a risk that this will affect its financial plans. The council decided to restrict this service to emergency repairs following investigations of alleged improper practices including poor service, overcharging and mismanagement ([Exhibit 12](#)). The total amount due to the council for work done was £40 million at 31 March 2012. There is uncertainty about how much of this the council will be able to recover. There is also a risk of legal claims from contractors and residents from work completed under the statutory repairs scheme.

Exhibit 12**Statutory property repairs**

The council appointed external consultants to investigate its property conservation service in April 2011 following allegations of poor service, overcharging and mismanagement. The service was responsible for serving statutory notices requiring repairs to commonly owned parts of buildings, such as roofs.¹ The council subsequently broadened the review to include services that maintained council buildings.

The council commissioned external consultants to undertake the investigation. The police launched a separate investigation because of the nature of some of the allegations. While the council investigation is complete, elements of the police investigation are ongoing. The council's investigation identified a range of shortcomings in the service provision. The council has dismissed four members of staff, two have retired and a further two are under investigation. The council published the external consultants' reports in April 2013.

The council has received over 900 complaints about repairs projects. It has a two-stage process involving initial consideration and an appeals process. A report to the council in March 2013 indicated that all complaints would receive initial consideration by the end of that month. Those cases where the council considers there may be a case to answer will be the subject of mediation over summer 2013.

In August 2012, the policy and strategy committee agreed the service should end. The council launched a new 'Shared Repairs Service' in April 2013. This service focuses on providing advice and information to homeowners and an emergency response service.

Note: 1. Under powers in the 1991 City of Edinburgh District Council Confirmation Order.
Source: Audit Scotland

108. The 2007 BV report identified the need for more effective longer-term financial planning. The council has made good progress in developing longer-term financial plans. It now has a long-term financial plan for the period to 2019/20. This shows future budgets based on existing service levels and identifies potential funding gaps. Councillors review the underlying financial, economic, service and demographic assumptions regularly.

109. The council's four-year budget for 2014–18 takes the long-term financial plan as its starting point, identifies pressures and identifies the options to achieve savings. It also takes account of structural and legislative changes, such as the integration of health and social care services and welfare reform.

110. The council's savings plans show recurring annual savings from improved procurement of £41 million by 2017/18 or, on a cumulative basis, £104 million over the period covered by the four-year 2014–18 budget. This represents the largest element of the council's overall savings plan. In March 2012, the council appointed consultants to work with officers to develop procurement savings options. The

Part 6. Is the council managing its resources effectively? | 39

council has also strengthened its in-house arrangements and appointed a manager in July 2012 to lead the council's procurement unit. The council has also introduced new contract standing orders and is providing training for budget holders to develop greater awareness of the options and impact of spending decisions.

111. The council has good arrangements for reviewing procurement proposals. Officers present savings plans to the monthly procurement partnership board and plans are then subject to final approval by the finance and budget committee. For example, the finance and budget committee considered the following proposals in February 2013, from which the council expects savings of £2.6 million:

- adopting the Scottish Procurement framework for the supply of IT consumables
- appointing a single supplier to manage print services
- adopting the Scotland Excel framework for the supply of school and office furniture.

112. Members and officers demonstrate a strong commitment to achieving savings through improved procurement but acknowledge that the targets are very challenging, particularly in the medium to long term. The council engaged a further firm of consultants to verify its ability to deliver the proposed savings. More recently, the council announced that this firm would be taking over the procurement improvement work from the consultants appointed in March 2012.

Managing assets

113. The council has good arrangements for property rationalisation and improvement and aims to make further savings from better management and use of assets.

114. The council has challenging targets for savings from property rationalisation, particularly from 2014/15 when it plans to achieve recurring annual savings of about £5 million. In addition, it is developing Integrated Property and Facilities Management (iPFM), an internal improvement plan for corporate property. iPFM aims to deliver savings of £30 million over seven years. An external consultant, in the role of head of corporate property, is managing the corporate function and delivery of the change programme.

115. The council is reviewing its estate to identify opportunities for consolidation and is working with public sector partners to identify opportunities to share office space. It has developed community hubs as 'one-stop shops' for services such as libraries, social work, community safety and housing.

116. Discussions are also ongoing with the Edinburgh Partnership on a collaborative framework for property asset management that aims to encourage further co-location of services. It is also discussing what services should be provided centrally and what should be provided in communities. However, these proposals are at an early stage.

Managing people

117. The council lacks a strategic approach to workforce planning. While the council has many elements of workforce planning in place it has not brought these together effectively at a council-wide level. The council acknowledges it needs to improve this, but it has made limited progress since the previous BV report.

118. The 2007 BV report found that the council had made good progress in developing its human resources strategy and in making the function more corporate in focus. However, the report also found that the council needed to develop a strategic approach to workforce planning. Despite setting up a workforce planning task group in 2009, the council still does not have a corporate workforce strategy or plan in place. The council is working to develop a new organisational development strategy, but this is at an early stage.

119. The number of people working in the council fell by 1,158 (797 full-time equivalents (FTE)) between April 2010 and March 2012, representing a reduction of 5.8 per cent in the council's workforce (5.03 per cent FTE). Of these, 302 people left through voluntary early release arrangements, while a further 102 left through voluntary and compulsory redundancies. The one-off, aggregate cost to achieve this was £13.2 million, and the council expects recurring savings of £12.9 million per annum.

120. As in other councils, staff reductions have been used to achieve savings. However, without a corporate approach to workforce planning, the council is limiting its ability to:

- understand the skills profile of the workforce and plan future staffing needs
- ensure it is not losing essential skills
- ensure it has the right people in the right posts.

121. Sickness absence rates for all staff have been improving steadily over the last three years, but there is scope for further improvement as the council was comparable with the national average at 9.3 days per employee in 2011/12. The council approved a new managing attendance procedure in August 2012 aimed at supporting managers to make further progress on absence levels.

122. The council published the results of its most recent staff survey in October 2012. It has compared the results to those of the previous survey carried out in 2009 to allow it to track progress. There was an overall response rate of 36 per cent, similar to the 35 per cent achieved in 2009. [Exhibit 13](#) sets out the main results from the 2012 survey.

123. The survey results indicate increased pride in working for the council and that staff understand service aims and objectives. However, the results also highlight some lack of confidence in senior managers. There are also indications of concerns in staff engagement in change activity and in confidence in the way change is managed. Staff have identified improved visibility of managers and listening to staff and the public as priority areas for improvement.

124. Across many of the survey areas, staff in the corporate governance and services for communities departments were more negative in their responses. This may reflect the major changes that have taken place within these two departments. The council intends addressing the findings of the staff survey, at service and corporate levels. These plans are still being developed and, as such, it is too early to assess their impact.

Exhibit 13

Staff survey results 2012

Progress on the 2009 survey:

- Pride in working for the council has increased from 44 per cent to 55 per cent.
- Staff understanding of service aims and objectives has increased from 71 per cent to 80 per cent.
- Satisfaction with working for the council has declined from 62 per cent to 58 per cent.
- 15 per cent of staff believe action was taken on the 2009 survey and 22 per cent of staff believe that action will be taken on the results of the 2012 survey.

Results from the 2012 survey:**Working for the council:**

- 44 per cent of staff would recommend the council as a place to work.
- 15 per cent believe the council is a better place to work than it was a year ago.
- 48 per cent say that their personal morale is good.

Managers:

- 41 per cent believe senior managers in their service have a clear vision for the council.
- 39 per cent have confidence in the decisions made by senior managers in their service area.
- 60 per cent feel they have a say about the way they work and 50 per cent say they are involved in decisions that affect their work.

Change:

- 73 per cent understand the need for change and 67 per cent support the need for change.
- 49 per cent feel informed about changes and 45 per cent feel changes are well communicated.
- 29 per cent believe they have a say on changes that affect them and 28 per cent feel that changes are well managed.

Source: The City of Edinburgh Council; Audit Scotland

125. The council has a staff appraisal process, known as PRD (Performance Review and Development), but it needs to ensure that it uses PRD effectively across the organisation. All staff are required to complete a PRD annually but the staff survey results indicate that only 72 per cent of staff had completed one within that year. The completion rate varied between departments, ranging from 86 per cent in corporate governance to 68 per cent in health and social care. There were also wide variations in completion rates across grade groups, with poor levels of completion in manual/craft grades, at only 32 per cent. The results of the staff survey indicate that only 50 per cent of staff feel that the feedback they receive helps them to improve their performance.

126. The council introduced a 'partnership at work' agreement with the trade unions in 2012. There are early signs that the new arrangements are improving communication and that relationships are more constructive. However, the arrangements will take time to develop fully.

127. The council provides a range of training and development opportunities for its staff and it has achieved Investors in People gold status, the highest award available. The Investors in People award is an independent assessment of people management practice that councils, and other organisations, can choose to complete.

128. The council monitors the percentage of its top earning employees who are female. There has been a steady increase in the percentage of females in both the top two per cent and five per cent of earners and the council compares well to other councils.

ICT

129. The council is aware of the urgent need to improve ICT. It is currently strengthening its management of ICT to get better value from its contract with an external supplier and to ensure that its ICT is sufficient to support the improvements it is pursuing.

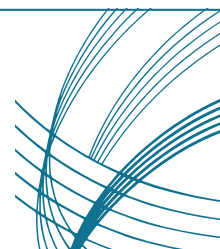
130. In 2001, the council entered a ten-year partnership with an external contractor to manage and modernise ICT. In 2008, the council extended the contract to 2016. It is clear from discussions with senior officers and other staff that the current ICT arrangements do not effectively meet business needs. Staff say they are not receiving the required level of support and assistance, equipment is outdated and unreliable, and systems are incompatible.

131. The council is developing a new ICT strategy, strengthening ICT governance and management and refreshing its ICT infrastructure to overcome these issues and to achieve better value from the ICT contract. An external consultant is managing and supporting these activities. The council plans to involve staff to ensure the strategy focuses on users' needs. Officers report that the strategy is on track for completion by summer 2013 and the council is receiving regular updates on progress.

132. The council recognises that investment in ICT is required and has allocated £7.5 million for ICT improvements in its 2013/14 budget. Although progress has been made in recent months, a greater pace of improvement in ICT is critical if the council is to achieve its programme of change and service improvement.

Part 7

Prospects for future improvement



Strong leadership has increased the pace of improvement in the council, particularly over the past year. The chief executive has had a significant influence on change and improvement. There is a strong level of self-awareness among councillors and senior officers of what the council needs to do to meet the challenges it faces.

It is too early to assess the full effectiveness of the council's ambitious and wide-ranging improvement programme. We assess the council's prospects for future improvement as 'fair'. However, it is likely to enhance these prospects if it sustains the recent momentum for change and is successful in achieving its savings plans, more effective workforce planning and better ICT. The council also needs to ensure it has the right level of skills and capacity in place to support improvement.

Does the council have the leadership capacity and capability to deliver improvements?

133. The council has strengthened its leadership and as a result the pace of change has increased considerably, particularly in the past year. Changes in managerial leadership have been central to this and clear leadership from councillors has facilitated it. There is a common understanding among councillors and officers that the council needs to improve further if it is to meet the financial and service challenges it faces.

Management leadership

134. There have been considerable changes in management in recent years ([Exhibit 14](#)). At the time of the first BV audit in 2007, there were seven departments. The CMT now consists of the chief executive and four directors covering: corporate governance; services for communities; health and social care; and children and families. The chief financial officer and senior officers with responsibilities for communications, organisational development and economic development also attend the CMT meetings. Other officers attend meetings as required.

135. The chief executive has provided strong leadership since she took up post in January 2011. Initially her main focus was to resolve long-running disputes associated with the tram project. Councillors, officers and partners hold the chief executive's leadership in high regard and it is clear she has been central in the positive shift in culture that is becoming more evident in the council.

136. The CMT works well together and, with the chief executive's leadership, continues to develop a more corporate and strategic approach that focuses on achieving improved outcomes for communities, rather than individual departmental objectives.

Exhibit 14**Senior management changes since January 2011**

January 2011	Chief executive takes up post.
March 2011	The property conservation service transfers from city development to services for communities.
April and June 2011	The directors of the corporate services and finance departments retire.
June 2011	The council approves a new corporate management structure, including the merger of finance and corporate services into a new corporate governance department.
September 2011	The council appoints the director of corporate governance.
December 2011	The council approves a review of service alignment across departments. Changes include transport, planning and property services transferring (from city development) and significant trading organisations (from corporate governance) to services for communities.
February 2012	The policy and strategy committee approves the new management structure for the corporate governance department.
November 2012	The director of city development resigns.
April 2013	Further changes to the corporate governance department are agreed. The post of head of policy and public affairs is deleted. Functions are realigned within the department. The external relations function is transferred to economic development.

Source: Audit Scotland

137. CMT members are heavily involved in the change programme. They face challenges in leading change while at the same time dealing with the pressures in their service areas. For example, the director of services for communities has had to take forward a range of projects following the council's decision not to proceed with ABM. He now also oversees the statutory repairs service and, more recently, has had to deal with concerns about practices at the Mortonhall crematorium. Following consideration in January 2013 by the transport and environment committee of the initial findings of the council's Mortonhall crematorium investigation, the committee agreed to commission an independent expert to lead and direct a further investigation.

138. The CMT is aware of these pressures and in response is developing a 'distributed leadership' approach as part of the wider changes within the council. This approach includes the extended CMT, which involves heads of services and

the CMT. The extended CMT provides more capacity at senior officer level and helps reinforce the vision for the future and build confidence among staff in the decisions made by senior managers, both of which were highlighted as areas for action in the 2012 staff survey.

Political leadership

139. Following the May 2012 elections the Labour and SNP groups agreed to work together in a coalition administration. The coalition councillors work well together and there is an effective working relationship between the leader (Labour) and the deputy leader (SNP). The coalition has set out a clear vision and objectives with a strong focus on improving outcomes. The coalition has also adopted an open approach to business demonstrated, for example, by its commitment to publish information about its progress in achieving its policy pledges.

140. There are constructive and effective working relationships across political parties. Councillors from all parties are strongly committed to restoring public confidence in the council, and the council's reputation more generally. There is a common understanding that the council needs to build public trust and confidence if it is to achieve its plans for the city.

141. Working relations between councillors and officers are good, with evidence of a clear understanding of respective roles and responsibilities. It is clear that councillors determine policy and priorities and scrutinise delivery and performance. Councillors engage well with officers. They take a keen interest in services and outcomes and demonstrate a good understanding of the most significant council-wide issues as well as their specific areas of committee responsibility.

Governance, scrutiny and challenge

142. The council set up new political governance arrangements in October 2012. It is too early to assess their effectiveness but the early indications are positive. The new arrangements have good potential to support engagement, transparency and scrutiny.

143. The committee structure ([Exhibit 2](#)) includes a corporate policy and strategy committee and seven executive decision-making committees each with a subcommittee to allow time for policy development and scrutiny. Councillors challenge officers and other councillors and the quality and depth of questioning is good.

144. The governance, risk and best value committee replaced the audit committee in the new structure. It has a broader remit that includes specific responsibilities for organisation-wide risk and performance management. A senior councillor from the opposition chairs the new committee.

145. The new petitions committee has potential to improve community engagement in council business but it is too early to assess its impact. The committee first met in December 2012 and considered a petition on public transport in Kirkliston. It decided to refer the matter to the transport and environment committee.

146. The new arrangements also include meetings designed to promote inclusivity and transparency in the political process. Leaders' meetings and committee agenda-setting meetings are open to opposition parties and

councillors from all parties welcome this approach. Although there are no indications of this to date, the council needs to ensure that these positive steps to improve cross-party working do not become informal decision-making forums. If this were to be the case, it would detract from the coalition's aims of improving public accountability and transparency.

147. There are weaknesses in risk management. Officers acknowledge the need for improvement and are implementing changes to strengthen the position. Early in 2012, the council commissioned an external assessment of risk management. This concluded that risk management practices were operating at a basic level and that improvement was required across the council. In November 2012, the governance, risk and best value committee approved a new risk management policy and strategy and the council is committed to reviewing progress.

148. Internal audit is an important element of the council's risk management arrangements. Following the retirement of the chief internal auditor in July 2012, a firm of accountants works in partnership with council staff to deliver the internal audit and risk management function. This arrangement aims to transfer skills from the external partner to the council so that the council can revert to an in-house service at the end of the contract in 2016. Internal audit reports to the director of corporate governance and the governance, risk and best value committee oversees internal audit activity.

Performance management

149. The council has effective performance management arrangements. It has become more outcome focused and has worked to address inconsistencies in its arrangements, both of which were identified as areas for improvement in the 2007 BV report. The council's performance framework will take time to bed in and the council needs to make sure that service planning arrangements support the new framework.

150. The council approved a new performance framework in October 2012. It brings together the council's priorities from its capital coalition pledges, its strategic plan and the SOA with a clear focus on outcomes. Staff awareness of the new framework is developing, particularly for those in corporate roles. The council now needs to widen this awareness so that staff not based in main offices or who do not have regular Internet and email access become familiar with the new framework.

151. All services also have a performance manager to support the process. As part of the restructuring of the corporate governance department, the council created a new business intelligence unit. The unit brings together staff engaged in a range of research, information and performance work across the council and aims to promote a corporate focus and consistency. The CMT now receives monthly performance reports on all directorates, whereas previously it considered reports every two months.

152. Councillors show a strong interest in performance information and ask challenging questions. Under the new committee structure, service performance is reported to the relevant executive committee, with more detailed information provided to the policy development and review subcommittees. The corporate policy and strategy committee considers council-wide performance reports and the work programme for the governance, risk and best value committee includes a performance-focused session at every third meeting.

153. The standard of reports for council and committees is generally good although there is scope to improve consistency. Councillors have requested clearer terminology and better presentation of information to help give a clearer picture on performance and trends. Officers are making good progress in improving reports.

154. The council produces a good annual public performance report. The report brings together information on financial performance, progress against outcomes and information from customer satisfaction and scrutiny activity. It also has a performance page on its website that provides links to performance reports, financial reports and survey findings.

155. The council uses benchmarking in its public performance report and in other reports such as its statutory performance indicator report. It uses family groupings²¹ to compare its position with other councils. It also uses customer satisfaction information as part of its performance measures, both at service and council-wide level.

Is the council aware of where it needs to make improvements and is it committed to change?

156. There is a strong level of self-awareness among councillors and senior officers of what the council needs to do to meet the financial and service challenges it faces. The council is taking steps to improve in these areas but it is too early to assess the impact of actions taken over the past six to twelve months.

157. The council has an ambitious and wide-ranging improvement programme that is set out in its transformation change plan ([Exhibit 15](#)). Within this, each member of the CMT has responsibility for one of the corporate priority areas and for related strategies, plans and projects.

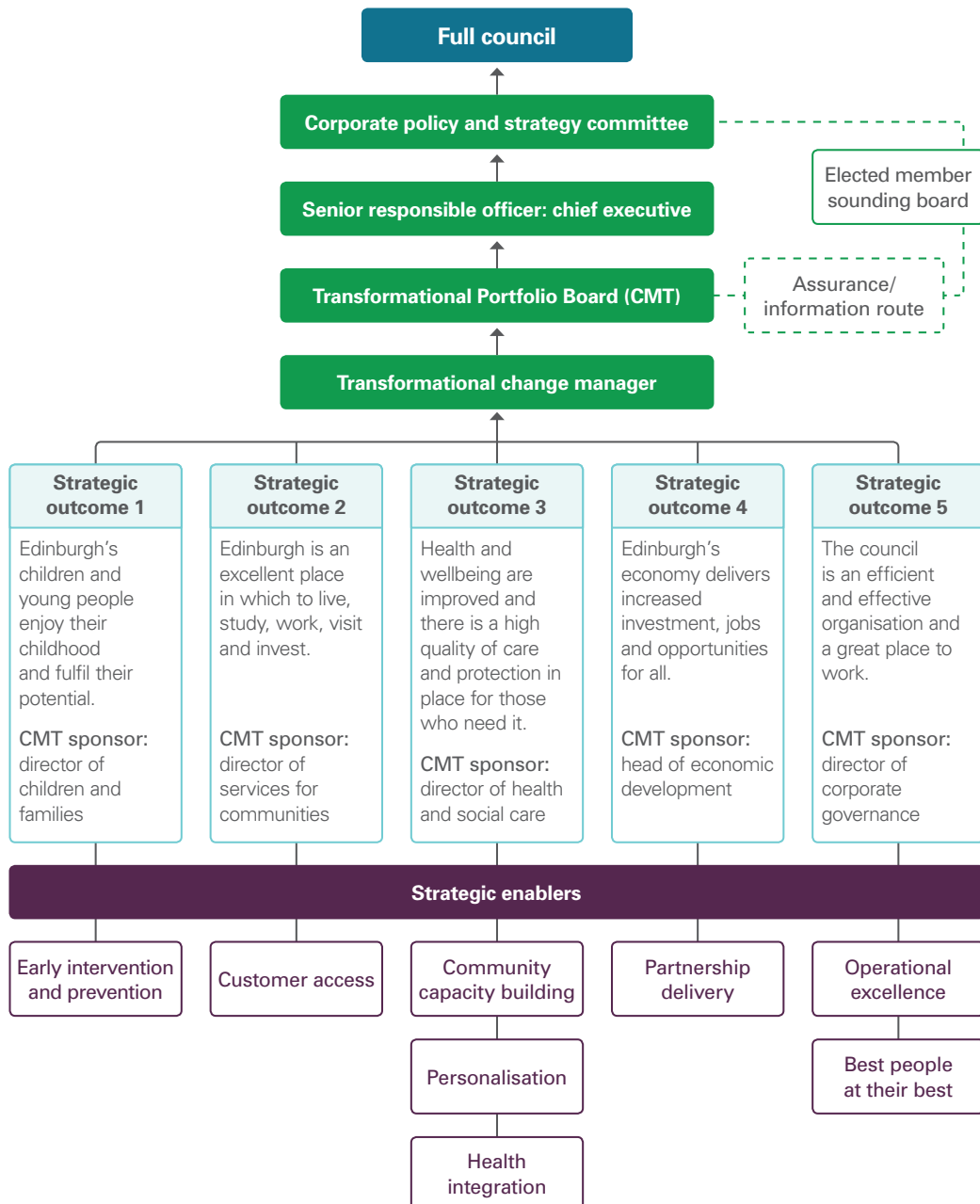
158. There is also a wide range of interrelated improvement work that is not directly part of the transformation change plan. For example, the council has set up development programmes in services following its decision not to proceed with the ABM ([Exhibit 11](#)).

159. The council recognises the need for effective overview of all of this work and, as part of its response, it launched a Corporate Programme Office (CPO) in January 2013. Its purpose is to provide oversight and coordinate the resources for reviews, change programmes and strategic projects.

160. The principle of the CPO is sound but it is important that it is fully functional quickly and develops good relationships with services. The council needs to ensure there is effective communication about the CPO to staff across services. Some staff who we spoke to during the audit did not have a clear understanding of the purpose of the CPO and how it will operate in practice.

161. The CPO needs to establish its position and ensure it can secure the skills and capacity to fulfil its role successfully. However, at the time of the audit, the council was also unable to demonstrate how and when it will fully staff the CPO. The council is investing in training to increase change management skills. However, there is a risk that the skills and experience needed are not in place to match the council's ambitions for improvement and pace of change.

Exhibit 15
Transformation change plan



Source: The City of Edinburgh Council

162. The council identified the need for specialist skills to support key areas that are central to achieving savings and sustaining improvement. For example, it has brought in external contractors and consultants to provide immediate capacity in ICT and procurement. This has allowed the council quickly to direct specific knowledge and experience to support critical work. It also gives the council more flexibility in reducing or replacing these specialists as the work and priorities change. However, the council needs to do more to demonstrate value for money and sustainability from these arrangements over a longer period of change.

163. Councillors and senior management are very aware of the importance of achieving the change in organisational culture necessary to deliver the change programme. The council needs to do more to ensure that it communicates this across the organisation. This was confirmed by the 2012 staff survey which highlights that, although support for change is higher than it was in 2009, only 28 per cent of staff feel change is well managed and only 29 per cent feel they have a say on changes that affect them.

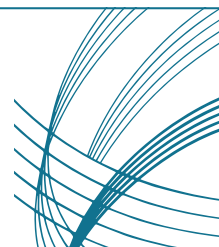
164. The cross-section of officers and managers that we spoke to during the audit generally welcomed the changes taking place. They recognised a positive shift in culture since the chief executive came into post but indicated that empowerment and engagement varied across services. They showed commitment to and pride in the services they deliver but recognised the strain on morale from the high-profile problems the council has had to deal with in recent years.

165. There are some good examples of communication with staff. This included face-to-face sessions with managers and staff of the corporate governance department to explain the corporate vision, changes to the management structure and priorities for the department. This was a good approach given it is a new department and the significant changes for staff working in it.

166. However, overall, staff provided mixed views on communication of change with those working outwith headquarters saying that methods for disseminating information are not effective. A better understanding is required of the most appropriate approach to communications, particularly in services where change is ongoing and staff feel vulnerable.

167. The corporate plan includes the need to develop a communications plan. However, there have been further changes in the team responsible for communications that may delay the development and implementation of this work. The council needs to prioritise communication to ensure that staff have a more consistent understanding of the improvement work. This will also help address staff uncertainties associated with wide-ranging change.

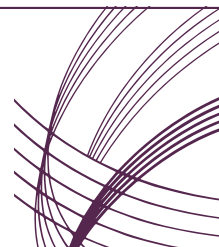
Endnotes



- ◀ 1 [*The City of Edinburgh Council: The Audit of Best Value and Community Planning*](#), Audit Scotland, February 2007
- ◀ 2 [*City of Edinburgh Council Assurance and Improvement Plan: Update 2012–15*](#), Audit Scotland, May 2012
- ◀ 3 [*City of Edinburgh Council: Annual report on the 2011/12 audit*](#), Audit Scotland, November 2012
- ◀ 4 Report by the Controller of Audit to the Accounts Commission under Section 102(1) of the Local Government (Scotland) Act 1973 – [*City of Edinburgh Council: Annual report on the 2011/12 audit*](#), Audit Scotland, November 2012
- ◀ 5 General Register Office of Scotland.
- ◀ 6 Office for National Statistics.
- ◀ 7 Scottish Indices of Multiple Deprivation (SIMD), 2012.
- ◀ 8 Scottish Government Provision Outturn and Budget Estimates 2012.
- ◀ 9 This measure is often referred to as gross value added (GVA) and is a measure of the economic contribution of the production of goods and services in a specific area.
- ◀ 10 www.scswis.com
- ◀ 11 Data is available for the period 2002/03 to 2010/11 for S4 and for 2004/05 to 2010/11 for S5 and S6. Based on average SQA tariff scores.
- ◀ 12 Data is available for the period 2007/08 to 2010/11. Based on average SQA tariff scores.
- ◀ 13 The most recent data for life expectancy at birth is for 2008–10.
- ◀ 14 Deaths in people under the age of 75, shown as a rate per 100,000 population.
- ◀ 15 www.scswis.com
- ◀ 16 Typically outdoor fires in heathland, rubbish bins or derelict buildings.
- ◀ 17 The findings of this activity were reported directly to the council and not published by SHR. The council considered the findings at its health, wellbeing and housing committee on 29/01/13.
- ◀ 18 Convention of Scottish Local Authorities.
- ◀ 19 Department for Work and Pensions.
- ◀ 20 Reported on 24 April 2013 to the finance and budget committee, policy development and review subcommittee.
- ◀ 21 Family groupings are groups of councils that share similar characteristics, such as geographic size, levels of deprivation, or population density. Using family groupings can provide helpful comparisons by taking into account the wider context of the council's performance.

Appendix

Judgement descriptions



The BV audit provides two overall judgements on council performance. One assesses how well the council is performing and the other covers the council's prospects for improvement. The judgements are based on standard descriptors as shown in the following table. **The highlighted text** indicates the audit assessment for The City of Edinburgh Council.

How good is my council's overall performance?			
Unsatisfactory	Satisfactory	Good	Outstanding
Improving outcomes and addressing complex cross-cutting issues with partners			
The council has a poor track record in delivering improved outcomes for the area with its partners, and addressing key cross-cutting issues such as community safety, health improvement, equalities, and sustainability.	Progress towards key strategic outcomes is mixed, with improved progress required in a number of important outcome areas. Systematic evidence of the impact of partnership working is not available.	Consistent progress is being made towards the majority of key strategic outcomes. However, some improvements are still required in a number of outcome areas and there is scope to further align partnership working with key strategic priorities.	The council is able to consistently demonstrate considerable success in delivering complex cross-cutting strategic local issues and improving outcomes with partners. Consistent progress is being made towards almost all key strategic outcomes. Limited improvements are required.
The quality of local service			
The overall quality of council services is consistently below the national average. Many services, including one or more key services (education, social work, or housing) require significant or urgent improvement.	Overall service performance is mixed. Whilst some services are performing well several services, or significant aspects of services, require important improvements to be achieved.	Many council services are performing consistently well and demonstrating continuous improvement. Whilst some further improvements are required, all key services are performing well.	Most of the council services are recognised as performing at the highest level. All key services can demonstrate strong and consistent improvement.
The views of citizens and service users			
Overall satisfaction with the council and its services is consistently below the national average. Overall satisfaction trends are static or falling. Arrangements for consulting with local people and users of services are patchy and underdeveloped and the council cannot demonstrate that consultation is influencing decision-making and service improvement.	Overall satisfaction with the council and its services is mixed, with a significant number of services, or important aspects of services, below the national average. Overall satisfaction trends are improving slowly. The council has introduced arrangements for consulting with local people and users of services but these are not applied consistently throughout the organisation. Whilst there are some examples of this 'making a difference' within departments systematic evidence of impact is not yet available.	Overall satisfaction with the council and its services is generally above the national average, with overall satisfaction trends that are improving well. Arrangements for consulting with local people and users of services are well developed. There is good evidence that consultation and engagement is taken seriously across the organisation with good systematic evidence available on its impact.	Overall satisfaction with the council and its services is consistently above the national average for most aspects of performance, with overall satisfaction trends that are improving quickly. The council has comprehensive and well-coordinated arrangements for consulting with local people and users of services and is able to demonstrate that their views are influencing strategic priorities and shaping service improvements.
The council's progress in delivering on its improvement agenda (including VFM)			
There is limited evidence that the council knows where improvements are required and is able to secure improvement in service performance. It cannot demonstrate improvement in VFM.	Whilst some services are improving the pace of change has been slow and the council has been unable to systematically transfer service improvements from one service to another and secure systematic improvements in VFM.	The council knows where improvements are required and can demonstrate a systematic and effective approach to securing improvements across all services (including VFM). Improvements are implemented quickly, and with little slippage.	The council is able to demonstrate that it is effectively managing performance improvements in line with its strategic priorities, across services, and in partnership with others, and it can demonstrate systematic and significant improvements in VFM.

What are my council's prospects for future improvement?			
Poor prospects	Fair prospects	Good prospects	Excellent prospects
Leadership capacity and organisational commitment to change			
The council does not have the leadership and management arrangements needed to deliver on its ambitions. Governance is weak and developing its political and managerial ability to tackle the council's problems is a key priority for the council.	The council needs to improve its leadership and managerial impact to deliver on its ambitions. There are some weaknesses in the governance arrangements and it is unable to demonstrate that it currently has the organisational commitment and capacity to secure change and improved outcomes.	The council has effective political and managerial leadership supported by good governance arrangements. It is committed to continuous improvement, focused on what matters to local people, and is securing improved outcomes.	The council has highly effective political and managerial leadership supported by strong and effective governance arrangements. It has ambitious plans for the areas and a strong focus on continuous improvement. It has the organisational commitment and capacity to secure change and improved outcomes.
Partnership working			
The council has not yet established a shared vision for the area with its partners, supported by sound governance arrangements and the resources needed to deliver key priorities.	Whilst the council has established a shared vision for the area with its partners, there is not a consistent sense of ownership from the partnership's leaders and improvements are needed in governance and resource alignment.	Leaders of the partnership articulate a clear and consistent shared vision and sense of purpose for the partnership and the improvements it is trying to achieve for the area and effective governance and resource alignment arrangements are in place.	Leaders of the partnership actively promote and communicate the shared vision and sense of purpose of the partnership and the improvements it is trying to achieve for the area. They can demonstrate – and are committed to – ensuring that the shared vision for the area impacts on their own organisation and partnership activity.
Staff understanding of and commitment to improvement			
There is very limited staff understanding of and commitment to continuous improvement and the council's improvement agenda.	Staff understanding of and commitment to continuous improvement and the council's improvement agenda is developing.	There is widespread staff understanding of and commitment to continuous improvement and the council's improvement agenda.	There is very strong staff understanding of and commitment to continuous improvement and the council's improvement agenda.
Effectiveness of resource planning and performance management (including member scrutiny)			
The council lacks awareness of where it needs to make improvements and is not able to secure improvement in service performance as a consequence of ineffective performance management arrangements and weak scrutiny and challenge. Resources are not used to best effect.	Whilst the council is aware of where it needs to make improvements, it lacks a systematic approach to securing improvement. Scrutiny and challenge is patchy. The council lacks a systematic process for directing resources to key priority areas and securing improved VFM.	The council is aware of where it needs to make improvements, and has a systematic approach to securing improvement. Scrutiny and challenge is well developed. It has a systematic process for directing resources to key priority areas and securing improved VFM, but cannot yet demonstrate consistently improved outcomes.	The council is aware of where it needs to make improvements, and has a systematic approach to securing improvement. Scrutiny and challenge is highly effective. the council has a systematic process for directing resources to key priority areas and can demonstrate consistently improved outcomes.

The City of Edinburgh Council

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One Newport Engagement and Participation Strategy



One Newport Engagement and Participation Strategy

The purpose of the One Newport Engagement and Participation Strategy is to make sure that The One Newport Local Service Board and its partners involve citizens, service users, agencies and practitioners in the design and delivery of services in Newport. This strategy also sets out how the statutory requirements of the guidance Shared Purpose, Shared Delivery will be addressed.

Aims of the Strategy

- To support and encourage the One Newport Local Service Board and its partners to take a joined up approach to the engagement and Participation processes.
- To support, encourage and enable local communities to engage with the One Newport Partnership and its members to participate in decision making that has a direct impact on their lives.

Our Objectives

- To provide effective, appropriate and ethical opportunities for citizens, service users, agencies and practitioners to express their views.
- To actively seek the views from those groups identified as 'seldom heard'
- To provide mechanisms and structures that will support a joined up approach to the engagement and participation process.
- To identify and reduce barriers that prevent engagement
- To raise awareness throughout the One Newport Partnership of the importance and benefits of involving citizens, service users, agencies and practitioners in decision making processes.
- To improve the skill set of staff in engaging with communities, citizens and service users thus providing a positive experience of being involved in decision making processes.
- To co-ordinate engagement and participation activities to improve the process of engaging in decision making within the One Newport Partnership, from the planning of activities, to the sharing of data and ensuring feedback is provided to those involved.

Definitions

Engagement: An active and participative process by which people can influence and shape policy and services that includes a wide range of different methods and techniques.

Consultation: A formal process by which policy makers and service providers ask for the views of interested groups and individuals.

Participation: People being actively involved with policy makers and service planners from an early stage of policy and service planning and review.

Participation means that it is my right to be involved in making decisions, planning and reviewing an action that might affect me. Having a voice, having a choice"
(WG Sound Bite 2004)

Joint planning and sharing of data

The One Newport Local Service Board and its partners recognise the importance of working jointly to develop a strategic and co-ordinated approach to public engagement and enable more effective and efficient engagement through the sharing of resources, reducing duplication and the lessening the risk of engagement fatigue.

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Part of this process will be to develop a robust method for the collection and storage of public engagement data and work collaboratively in responding to the expressed needs of citizens.

National Principles of Public Engagement

The Welsh Government endorsed the National Principles for Public Engagement in Wales in March 2011. They are a set of non-statutory principles and are designed to provide guidance when undertaking the engagement and participation process. They are an overarching set of principles aimed at public service organisations across all sectors in Wales.

The Principles for Public Engagement for Wales are:

1. Engagement is effectively designed to make a difference
2. Encourage and enable everyone affected to be involved, if they so choose
3. Engagement is planned and delivered in a timely and appropriate way
4. Work with relevant partner organisations
5. The information provided will be jargon free, appropriate and understandable
6. Make it easier for people to take part
7. Enable people to take part effectively
8. Engagement is given the right resources and support to be effective
9. People are told of the impact of their contribution
10. Learn and share lessons to share the process of engagement

The One Newport Partnership endorse the use of the National Principles of Public Engagement when engaging with citizens, service users, agencies and practitioners

The National Participation Standards

The One Newport Local Service Board have statutory obligation under Section 12 of the Children and Families (Wales) measure and the Shared Purpose Shared Delivery Statutory Guidance- Children and Young Peoples Participation (annex 1) to ensure that all children and young people have an opportunity to have a voice and to be listened to.

In order to measure and monitor effective participative opportunities the Welsh Government have endorsed the National Participation Standards (January 2005) alongside a nationally recognised kite mark as part of a self-assessment process.

The National Participation Standards are

- Information
- It's your choice
- No Discrimination
- Respect
- You get something out of it
- Feedback
- Improving how we work

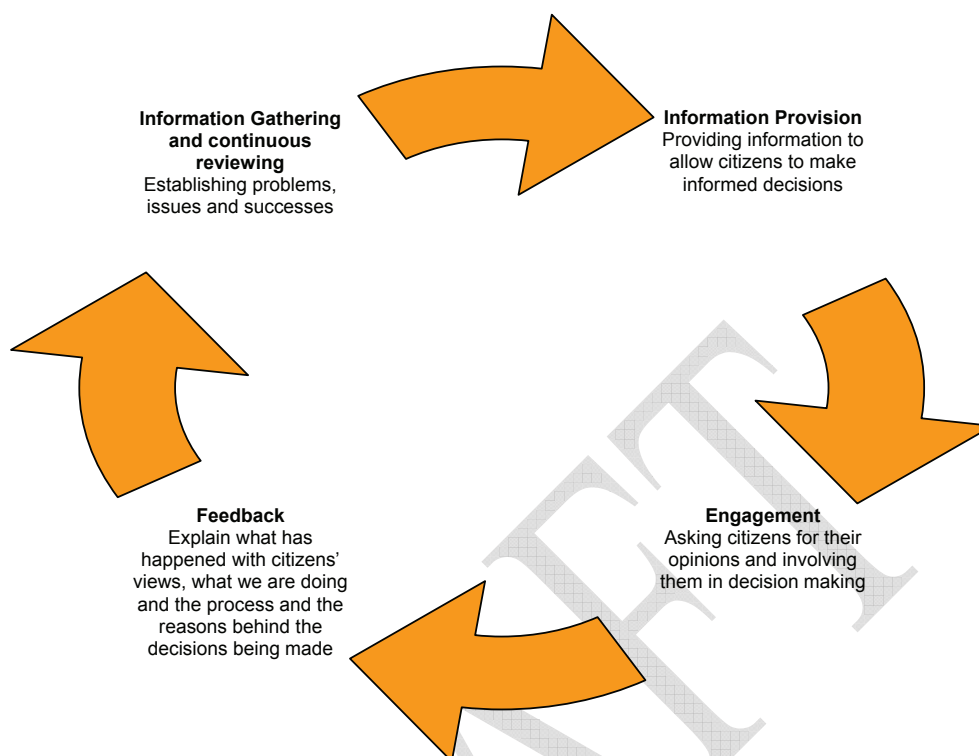
The One Newport Partnership will apply the National Participation Standards and the self-assessment process across all age ranges to ensure a consistent approach as part of the improvement of engagement and participation processes in Newport.

The One Newport Participation Promise

A Participation Promise has been developed (Annex 2) that outlines the expectations on members of the One Newport Partnership in relation to engagement and participation. The Participation Promise will be a demonstration of commitment on a local level to involving citizens, service users, agencies and practitioners in the design and delivery of services in Newport. This will be monitored as part of the quality assurance processes of the One Newport Partnership

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The Engagement cycle embedded in to planning



How will we engage and promote participation?

The One Newport partnership will undertake an annual cycle ensuring a co-ordinated approach through a wide range of appropriate mechanisms including;

- Newport Youth Council, youth fora, school councils
- Citizen Panels
- Special interest groups
- Residents survey
- On line surveys
- Social Media
- One Newport Website and Young Newport website
- Customer Insight
- Planned workshops
- Bespoke consultation responding to changes in services and policies
- Targeted engagement and participation activities designed to encourage and support seldom heard* groups such as:
 - Young People identified as NEET
 - BME children, young people and families
 - Gypsy Roma groups
 - Children, young people and adults with disabilities
 - Children, young people and families affected by alcohol and substance misuse
 - LAC children and young people
 - LGBT Groups
 - Children, young people and adults with caring responsibilities
 - Asylum seekers

*the above list is not exhaustive and seldom heard groups will be actively engaged in participation activities based on need and ongoing identification through the UNA process.

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Information gathered will be centralised and the process will be facilitated and supported through the Partnership Support Team. We will ensure that feedback provided is timely and uses media that is accessible to all ages including children and young people.

How will we achieve our objectives?

The One Newport Local Service Board will agree a detailed annual work plan which will identify areas of work to ensure that partners involve citizens, service users, agencies and practitioners in the design and delivery of services in Newport

What does success look like?

Citizens and service users will:

- Feel that information given is transparent, accessible and understandable.
- Feel that they are able to access a wide range of appropriate, effective opportunities to be involved in decision making processes.
- Feel listened to and able to influence decisions within a wide range of services on relevant issues that affect them.
- Feel that feedback given is timely and in a media that is accessible.

Practitioners and staff will:

- Have access to training opportunities to improve their skills and knowledge to enable them to effectively engage with citizens and service users.
- Have support, advice and guidance on best practice when involving citizens and service users in engagement and participation activities.
- Be supported and encouraged to work with other practitioners/colleagues from different services and agencies to ensure a joined up approach to providing engagement and participation activities.

Partner Agencies and organisations will:

- Jointly co-ordinate their engagement and participation activities.
- Benefit from a wider range of citizens and service users taking part in engagement, participation activities and expressing their views.
- Work together to capture the views, collate information and effectively utilise information gathered.
- Provide timely feedback in a media that is accessible and provide tangible evidence of how citizens and service users have influenced decision making and service delivery.

How will we monitor how well we are doing?

- Number of engagement events, opportunities and processes taking place on an annual basis
- Number of joint, collaborative engagement activities on an annual basis.
- Number of citizens, service users, agencies and practitioners actively involved in engagement activities.
- Number of agencies and organisations undertaking the National Participation Standards Self assessment process.
- Number of training opportunities for citizens, service users, agencies and practitioners on engagement and participation.
- Number of citizens and service users actively involved from seldom heard* groups.

A summary will be included in the Local Service Boards annual report detailing how the statutory duties have been met and how they can be improved upon.

More Information

If you would like more information on One Newport Local Service Board or engagement and participation activities please contact:

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Website: <http://onewportlsb.newport.gov.uk>

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Annex 1

STATUTORY GUIDANCE - CHILDREN AND YOUNG PEOPLE'S PARTICIPATION

This statutory guidance is issued in accordance with Section 17(3) of the Children and Families (Wales) Measure 2010 and applies to local authorities both in respect of the single integrated plan, and whenever they take decisions which might affect children and young people.

Local authorities have a duty to promote and facilitate participation by children and young people in decisions that might affect them. The legal basis for this duty is Section 12 of the Children and Families (Wales) Measure 2010. It requires local authorities to make such arrangements as they consider suitable to promote and facilitate participation by children in decisions of the authority which might affect them, and to publish and keep up to date information about its arrangements. These duties can be discharged via the single integrated plan engagement strategy.

The United Nations Convention on the Rights of the Child (UNCRC) is an international agreement that sets out the rights that all children and young people can expect to enjoy, wherever or whoever they are. The Welsh Government has implemented this through the Rights of Children and Young Persons (Wales) Measure 2011 which came into force on 1 May 2012.

It places a duty on the Welsh Ministers to have due regard to the UNCRC when reviewing their policies and when making decisions about proposed policies or legislation. This will be strengthened from 1st May 2014 when Welsh Ministers will have a duty to have due regard to the rights in the UNCRC whenever they use any of their legal powers or duties.

The UNCRC consists of 54 articles, 42 of which directly relate to children and young people. Article 12 is an enabling right which enables children and young people to access all the other rights in the UNCRC. It says that every individual child and young person has a right to have their views heard and to participate in decision making. This is the basis for work to promote and support children and young people's participation, both locally and nationally. The UNCRC applies to children and young people under 18yrs, but in Wales, young people include those up to the age of 25 yrs and Local Authorities are expected to consider applying their arrangements for participation to these young people where appropriate.

The Seven Core Aims is the national framework for developing policy for children and young people. They summarise the UNCRC and form the basis for decisions on priorities and objectives in Wales and they should form the basis for decisions on strategy and service provision nationally and locally. Core Aim 5 in particular relates to children and young people's participation and states that all children and young people are listened to, treated with respect, and have their race and cultural identity recognised.

Requirements

In order to meet the requirements of the legislation Local Authorities are expected to work with relevant partners to:

- promote and facilitate participation within the broad context of children and young people's rights as part of their policies, services and wider citizen engagement.
- embed children and young people's participation into all aspects of planning, delivering and reviewing services. The Single Integrated Plan engagement strategy should set out how this will be addressed and evidenced through review of its implementation;
- publish information about arrangements for promoting and facilitating participation in the authority in the Local Service Board's annual public report on progress, as well as using media which are accessible to children and young people such as relevant web-sites.
- ensure that a range of opportunities and the appropriate required support are provided for effective participation. The opportunities for children and young people as individuals to participate should be integrated into day to day services as well as specific participation structures such as forums for children, forums for young people, or groups/forums which represent children and young people who are marginalised, vulnerable or have a special interest in a particular issue. These forums and groups have a key role to play in supporting young people to have a voice and to access their rights as set out in the UNCRC.
- establish a County Youth Forum as a representative body of young people to act as a channel for young people's views across their local authority and represent those views to local and national decision-making bodies. They should aim to be as inclusive as possible in terms of geographical spread, age, gender and to represent specialist needs and more marginalised young people. For County Youth Forums to operate effectively, they will need to be adequately supported by Local Authorities who should consider what support is required to do this. They will also need to be effectively linked into national participation structures and more information about these can be found at <http://participationhub.org.uk>;
- consider how best to support training and the promotion of participation - which should be integrated into wider work around developing knowledge and understanding of the UNCRC;

Promotion - Local Authorities should make sure that as many children and young people as possible are aware of their right for their opinion to be heard, and to be involved in decision-making about policies and services that affect their lives. This should include publishing information about the benefits of participation, and also disseminating examples of good practice, for instance through web-sites and newsletters as well as social media. **Relevance** - Information and materials aimed at children and young people should be clear and easy to understand, answer their questions and identified needs, as well as being accurate, up-to-date, and accessible in terms of language and format.

Engagement - Local Authorities should consider how children and young people themselves can be actively involved in raising awareness of the importance of participation. The right to have their views heard and to participate in decision making applies to individuals, and although many children and young people prefer to participate in a group, consideration should be given to how individuals can be part of planning and decision-making processes.

Working with partners

Whilst this statutory guidance, issued under the Children and Families (Wales) Measure 2010, relates only to Local Authorities we would encourage them to work closely with each of their relevant partners. Working in a multi-agency way is good practice and the Children Act 2004, Section 25, places a legal duty on local authorities to promote cooperation with a view to improving the wellbeing of children in the area.

There are many examples of partners contributing to children and young people's participation and mainstreaming it into their areas of work and their arrangements for citizen engagement. Some of these can be found on www.pupilvoicewales.org.uk.

What happens now?

- The Single Integrated Plan's engagement strategy should set out how children and young people's participation is embedded into all aspects of planning, delivering and reviewing services;
- Local authorities should publish their "arrangements for promoting and facilitating participation" in the single integrated plan's engagement strategy, as well as using media which are accessible to children and young people such as relevant web-sites
- The Local Service Board's annual report should include a summary as to how these statutory duties have been met, and how they can be improved upon. The Welsh Government will monitor local arrangements for children and young people's participation.
- Single integrated plans provide evidence to Inspectorates and the Welsh Audit Office (WAO) when undertaking reviews of efficiency and effectiveness of local services. Inspectorates and the WAO may also review the outcomes achieved and procedures involved to demonstrate how effectively children and young people are being listened to, involved and engaged.

The scope of the duty to promote and facilitate children and young people's participation is wider than involvement in the single integrated plan. It is important that participation becomes part of policy and practice of all local partners.

Local Authorities should work with local partners, including children and young people, to ensure that participation is promoted and facilitated. Children and young people have a right to be listened to, have a voice, and be able to access opportunities to play an active role in decision-making wherever they are – in school, out and about in the community, or as users of services.

There are many examples of good practice and a significant number of these have adopted the 'National Children and Young People's Participation Standards' for Wales as a means of ensuring that participation happens meaningfully and effectively.

Further information on good practice in relation to children and young people's participation can be found on <http://www.uncrcletsgetitright.co.uk>

Information, resources, materials and good practice that support participation in Wales are also available at <http://participationhub.org.uk>

Wales has been leading the way in children and young people's participation and momentum must be maintained.

Annex 2



Participation Promise

YOUR Promise!

We, Members of the **One Newport Partnership** will take action to achieve the following eight promises.

1. We fully recognise and accept that participation is a priority in the One Newport Partnership and is an important process in providing services to the population of Newport.
2. We will adhere to the principles of the Principles of Public Engagement and the National Participation Standards to meet the priorities of the One Newport Single Integrated Plan.
3. We will ensure that all citizens, service users involved receive the support, knowledge and skills that they need to participate effectively.
4. We will use the National Participation Standards to work with citizens and service users to see how well we are meeting the Standards.
5. We will actively promote, support and encourage staff to take up participation training opportunities offered within the One Newport Partnership.
6. We will offer a broad spectrum of opportunities for citizens and service users to have a say in the services that we provide.
7. We guarantee that timely feedback is always provided using media that is accessible
8. We will work with partner agencies to provide and promote participation and engagement opportunities.

The One Newport Partnership

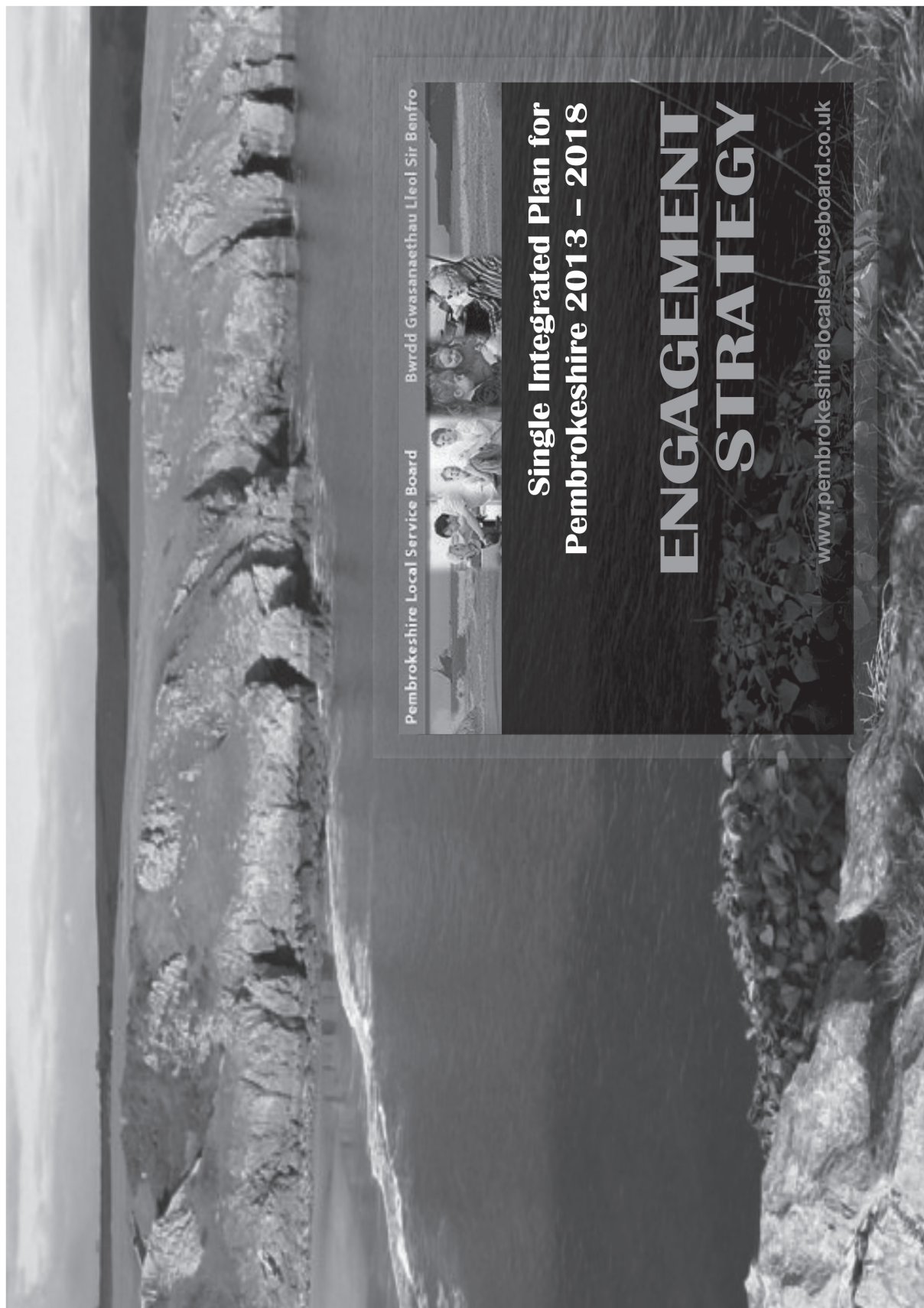
OUR Promise!

We, **the One Newport Partnership Support Team**, will take action to achieve the following four promises.

1. We will promote participation and the rights of citizens and service users throughout the One Newport Partnership and the One Newport Engagement Strategy.
2. We will support you by facilitating training Opportunities for both service users and staff.
3. We will listen to service users give feedback and create changes where possible. Where changes are not possible we will provide an explanation.
4. We will help services, organisations, service users to create, maintain and sustain the structures needed for citizens and service users to participate in decision-making at all levels.

The One Newport Partnership Support Team

Single Plan Engagement 2013



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For a copy of this document in large print, Braille, audio tape or an alternative language please contact Jackie Meskimmon on (01437) 776613.

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Background

LSBs are not statutory bodies. They are an expression of engaged public service leadership locally, whose role it is to lead change through:

- Agreeing strategic priorities for multi-agency working to support the agenda set out in Programme for Government and respond to clearly evidence local needs
- Achieve improvements by ensuring appropriate systems are in place and that managers and front line staff across agencies are working together effectively, and that agreed priorities are reflected in individual organisations' corporate plans
- Ensure partnership and delivery structures are fit for purpose and accountable
- Challenge where there is underperformance or coasting and implement changes that reflect evidence based best practice to improve outcomes for the local population
- Review and report periodically on progress – to the public, Welsh Government, democratically elected members, PLSB and other organisations

The Single Integrated Plan

In June 2012, Welsh Government issued guidance that details the requirement for Local Service Boards to produce Single Integrated Plans for their areas by April 2013.

The Single Integrated Plan will replace the following existing plans and strategies:

- The Community Strategy
- The Children and Young People's Plan
- The Health, Social Care and Well-being Strategy
- The Community Safety Strategy

Single Integrated Plans are underpinned by two 'enabling strategies': an information strategy and an engagement strategy.



Introduction

This document is aimed at members of the public, as well as representatives of organisations with an interest in Pembrokeshire.

It sets out the consultation and engagement work that Pembrokeshire Local Service Board (PLSB) partners have undertaken in the development of the Single Integrated Plan for Pembrokeshire 2013 – 2018. It also outlines the objectives the PLSB partners will aim to meet through the delivery of engagement activities over the life of the plan. A detailed Annual Action Plan is attached as Appendix B. The Action Plan will be reviewed and refreshed annually by the Engagement Strategy Development Group, which is made up of representatives from the main partner organisations.

The PLSB's engagement with children and young people is also covered by this document.

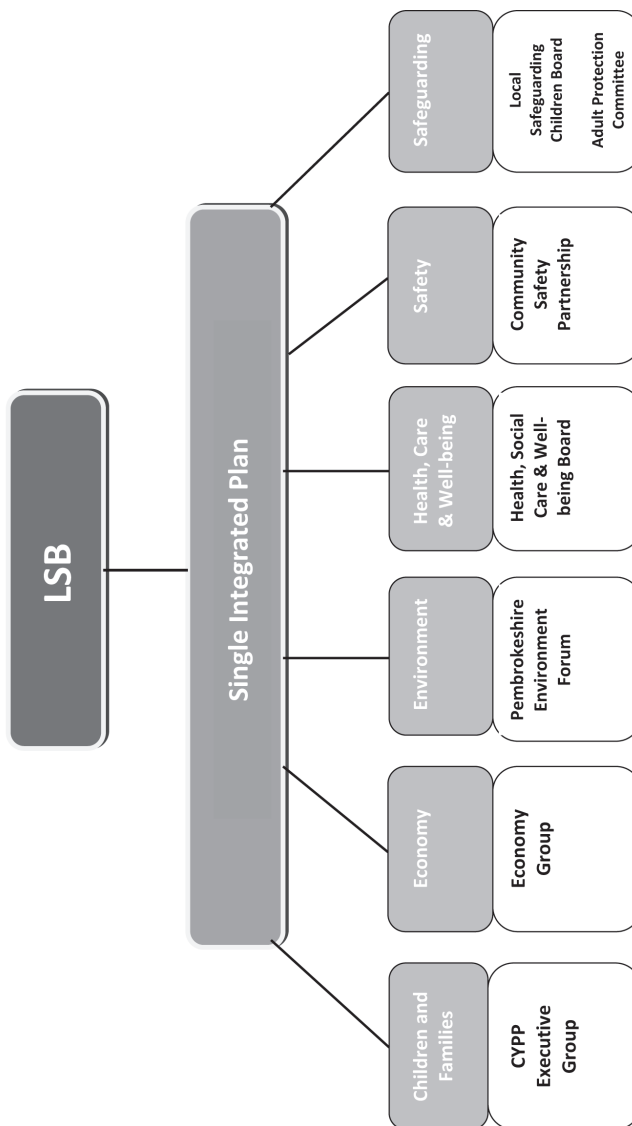
The Strategy will be taken forward by the PLSB and its associated partnerships (see Partnership Arrangements in Pembrokeshire) with support from the Partnership & Scrutiny Support Team (which is based at Pembrokeshire County Council) and Communications Teams within the main partner organisations.



Partnership Arrangements in Pembrokeshire

The Pembrokeshire Local Service Board (PLSB) is made up of Pembrokeshire County Council, Dyfed Powys Police, Hywel Dda Health Board, Pembrokeshire Association of Voluntary Services (PAVS) and Welsh Government.

However, it is underpinned by a wider partnership comprising public, community and voluntary sector organisations:



Our Commitment to Engagement

Pembrokeshire Local Service Board partners are committed to putting engagement at the core of the design and delivery of the Single Integrated Plan in order to:

- Provide evidence on which to base decisions
- Ensure resources are targeted more effectively
- Help give a voice to a wide section of society
- Increase the opportunity for local people to develop their own responses to the issues they face, encouraging co-production of services where feasible.

Our Objectives

Pembrokeshire Local Service Board partners will work together to:

- 1). Raise awareness of the Local Service Board and the Single Integrated Plan 2013 - 2018
- 2). Make best use of existing joint engagement mechanisms
- 3). Develop new joint engagement mechanisms where appropriate, to help overcome barriers to participation
- 4). Maintain records of engagement activities undertaken, in relation to the development and delivery of the Single Integrated Plan, and ensure that information from engagement activities is fed back into the planning cycle
- 5). Feed back the outcomes of engagement activities to those who have taken part and, where appropriate, to a wider audience
- 6). Recognise and share best practice

The Focus of our Engagement Activities

The focus of engagement activities will be in relation to the following priorities, which have been identified through a comprehensive needs assessment and consultation process.

Children, young people and families in Pembrokeshire have the opportunity to fulfil their learning potential and to live healthy and happy lives

- Pembrokeshire's children, young people and families have the opportunity to achieve their full potential
- Pembrokeshire's children, young people families' safety and well-being is protected and promoted
- Pembrokeshire's children, young peoples and families' rights are protected and supported
- Pembrokeshire's children, young people and families' are not disadvantaged by poverty

Pembrokeshire has a competitive, productive and sustainable economy

- People with the learning, skills and confidence to improve their employment prospects
- Successful businesses which grow, prosper and employ
- Infrastructure and investment to support a dynamic and prosperous economy

People in Pembrokeshire enjoy an attractive, sustainable and diverse environment

- Pembrokeshire will address the challenge of climate change
- The quality of Pembrokeshire's environment will be protected and improved
- Pembrokeshire will have good communication links to and within the County

People in Pembrokeshire are healthier

- Help and support people to take responsibility to improve their health and well-being throughout their lives
- Reduce inequities through cross-sectoral working
- Provide the people of Pembrokeshire with appropriate and sustainable health and social care services

Children and adults are safeguarded

- Pembrokeshire will ensure the safeguarding of children, young people and vulnerable adults

Communities in Pembrokeshire feel safe

- Provide an effective and co-ordinated response to anti-social behaviour, focusing on prevention and early intervention
- Reduce the harm caused by substance misuse
- Protect every individual's 'right to be safe'
- Reduce the impact of reoffending within our communities
- Prevent violent extremism

Who We Will Engage With

Below are examples of groups at which engagement activities will be targeted.

The public

Members of the general public, in their role as residents and business people.

Other individuals and groups

Customers – people in their role as recipients of our services

This group may include current users of a service, previous users of a service and potential users of a service

Beneficiaries – people who benefit from the receipt of a service (e.g. pupils as beneficiaries of education)

Non-users – people who do not use a particular service

This group may include those who have actively chosen not to use a service or those who are denied access to it

Stakeholders – people who will be affected by a particular issue and can influence it, although they are not directly involved in working on it

While, in some engagement activities, members of the public will be ‘stakeholders’, it usually means someone who is affected by an issue in a more formal sense, through their professional role or through their involvement in a group or organisation.

Examples of stakeholders include:

- Professionals outside the organisation
- Community and voluntary organisations and the people who work and volunteer for them
- Campaign groups and campaigners
- Regulatory or enforcement agencies
- Members of industry or the business community
- Elected officials
- Community representatives

Employees – employees in PLSB member organisations will have an important role to play in the design and delivery of the plan

Partners – people in their role as representatives of partner organisations, including other public sector bodies, private sector businesses and community/voluntary organisations

Providers – people in their role as representatives of organisations that provide services to customers on behalf of LSB members

Children & Young People – children and young people aged 0 – 25 years

Hard to reach/seldom heard - These are people whose voices are sometimes marginalised in more routine consultation activities

Every effort should be made to ensure they are given the opportunity to participate fully in any public engagement activity likely to affect them. They include individuals who share one or more of the following protected characteristics:

- Age (including children and young people and the elderly)
- Sex
- Gender reassignment
- Sexual orientation
- Marriage and civil partnership
- Pregnancy and maternity
- Disability
- Race
- Religion or belief

In addition to the main partner organisations the PLSB is underpinned by a wider partnership of public, community and voluntary sector organisations. These wider partner stakeholder organisations will be a strong focus of engagement activities.



Accessibility, Welsh Language, Guidance and Best Practice

Those undertaking engagement in relation to Single Integrated Plan priorities should ensure that engagement activities are undertaken in line with guidance issued by their organisations in order to that the following requirements are met:

- Accessibility
- Welsh Language
- Ethics
- Data Protection

Participation Cymru's National Principles for Public Engagement in Wales

<http://www.participationcymru.org.uk/national-principles-for-public-engagement-in-wales>

National Co-ordinating Centre for Public Engagement (Higher Education)

<http://www.participationcymru.org.uk/national-principles-for-public-engagement-in-wales>

Involve (National Consumer Council)

<http://www.involve.org.uk/deliberative-public-engagement-nine-principles/>



Evidence of Activities Undertaken in Preparation of Single Integrated Plan 2013 - 2018

Partners can already demonstrate that they are working well together to deliver against these objectives, through activities undertaken in the preparation of the Single Integrated Plan 2013 – 2018.

Objective 1 – Raise Awareness		
Action	By Who	By When
Develop LSB Branding	Partnership and Scrutiny Support, with support from PCC Marketing	Complete
Launch of Consultation – 28/11/12	Partnership and Scrutiny Support, with support from PCC Marketing	Complete
Develop exhibition material	Partnership and Scrutiny Support, with support from PCC Marketing	Complete
Press release Public Services Day 21/01/13	Partnership and Scrutiny Support, with support from PCC Press Team	Complete

Objective 2 – Make best use of existing joint engagement mechanisms		
Action	By Who	By When
Development of Consultation Plan for the Single Integrated Plan	Partnership & Scrutiny Support Team, Engagement Strategy Development Group (PCC, Hywel Dda, CSP and PAVS)	Complete
Consultation and engagement activity undertaken in relation to existing partnership plans: Community Plan 2010 - 2015; Children & Young People's Plan 2011 - 2014; Health, Social Care & Well-being Strategy 2011 – 2014 and Community Safety Strategy 2011 – 2014	Relevant partnerships	Complete
Residents Opinion Survey May 2012 to inform development of the Plan	Citizens Panel	Complete

Objective 2 – Make best use of existing joint engagement mechanisms (continued)		
Action	By Who	By When
Annual Community Safety Consultation Event (Oct 2012)	Community Safety Partnership	Complete
Early stage session for all Overview & Scrutiny Committee Members (02/11/12).	Partnership & Scrutiny Support Team	Complete
Draft plan included as agenda item for individual Scrutiny Committees in Nov.	Partnership & Scrutiny Support Team	Complete
Feedback session with Pembrokeshire Youth Assembly	Pembrokeshire Youth (Gennex)	Complete
Consultation documents on www.pembrokeshire.gov.uk/haveyoursay	Partner Communications Teams	Complete
www.pembrokeshirelocalservice.board.co.uk (28/11/12 - 15/02/13) and other partner websites		
Easy read consultation documents for children and young people on www.pembrokeshireyouthzone.co.uk (28/11/12 – 15/02/13)	PCC Marketing	Complete
Promotion of consultation on PCC social media sites	PCC Marketing	Complete

Objective 3 – Develop new joint engagement mechanisms where appropriate to help overcome barriers to participation		
Action	By Who	By When
Establish www.pembrokeshirelocalserviceboard.co.uk to replace existing partnership websites	PCC Marketing	Complete
Consultation with partner organisation on Economy and Environment priorities, with a view to establishing new sub-partnerships	Partnership & Scrutiny Support Team	Complete
Public Services Day - 18/01/13 for representatives of community and voluntary sector organisations and Council members	Partnership and Scrutiny Support Team, Engagement Strategy Development Group	Complete
Pembrokeshire Association of Voluntary Services (PAVS) feedback day (Feb 2013)	PAVS and Partnership and Scrutiny Support Manager	Complete

Objective 4 – Maintain records of engagement activities undertaken and ensure that information is fed back into the planning cycle		
Action	By Who	By When
Consultation comments passed to appropriate associated partnerships for consideration, record of partnership responses made and compiled into Consultation Report	Associated partnership members with support from Partnership & Scrutiny Support Team and Engagement Strategy Development Group	Complete

Objective 5 – Feedback the outcomes of engagement activities to those who have taken part		
Action	By Who	By When
Publication of Consultation Report on www.pembrokeshire.gov.uk/haveyoursay and other partner websites	Partner Communications Teams	May 2013
Distribution of Consultation Report to all those who took part in the consultation, and other interested parties	PCC Marketing + All	May 2013

Footnote

Pembrokeshire Citizens Panel

The Pembrokeshire Citizens Panel was established in 2005 and is a joint initiative between Dyfed Powys Police, Pembrokeshire County Council, Hywel Dda Health Board and Pembrokeshire Coast National Park Authority. The Panel is a representative group of approx 1,000 people living in the county who have agreed to offer their views and opinions on services delivered by the partners.

The Panel is created to give a broad representative balance of the County in areas such as age, gender, language and geographical area. Membership is refreshed each year to avoid the panel becoming unrepresentative over time.

In Spring 2012, Local Service Board partners worked together to develop a Residents Opinion Survey for the Pembrokeshire Citizens Panel, the results of which were used to inform the development of the Single Integrated Plan.

Appendix A

Pembrokeshire Local Service Board branding



A branding strip has been developed for the Pembrokeshire Local Service Board. The purpose of this is to allow member, and other, organisations to promote the role projects and actions they are involved in have in helping to deliver the Single Integrated Plan.

Helping to identify projects and actions which are being undertaken under the Pembrokeshire Local Service Board umbrella will be one of the main ways in which we will communicate that local public sector organisations are committed to working together to improve outcomes for local people.

LSB member organisations, and other organisations, involved in delivering projects and actions as part of the Single Integrated Plan are encouraged to use the PLSB branding wherever appropriate.

PLSB branding includes the branding strip above and/or one of the following acknowledgements:

- A Pembrokeshire Local Service Board Project
- Supported by the Pembrokeshire Local Service Board
- In partnership with Pembrokeshire Local Service Board

Using the PLSB branding will communicate the partnership message more quickly and effectively than could be achieved by member organisations working in isolation under their own, individual identities. Organisations should, however, continue to use their own corporate identities alongside should they wish to do so.

Further information on use of PLSB branding can be obtained from Sarah Worby, Marketing Officer, Pembrokeshire County Council on 01437 775263 sarah.worby@pembrokeshire.gov.uk



Appendix B

Action Plan 2013 – 2014

The Action Plan will be taken forward by the PLSB and its associated partnerships (see Partnership Arrangements in Pembrokeshire) with support from the Partnership & Scrutiny Support Team (which is based at Pembrokeshire County Council) and Communications Teams from main partner organisations.

The Action Plan will be reviewed and refreshed annually by the Engagement Strategy Development Group, which is made up of representatives from the main partner organisations.

Objective 1 - Raise Awareness		
Action	By Who	By When
Prepare final Single Integrated Plan	Partnership and Scrutiny Support Team with graphic design support by PCC Marketing	April 2013
Official Launch Single Integrated Plan - 14/05/13	LSB Partners, support from PCC Press	May 2013
Establish baseline, Citizens Panel June 2013	Citizens Panel	Results for July 2013
Promote use of LSB branding and acknowledgement of LSB support for actions and projects - Raise awareness with key officers in partner organisations	Partnership and Scrutiny Support Team, Partner Communications Teams	March 2014
Use of local media	Partner Communications Teams	Ongoing

Objective 2 - Make best use of existing joint engagement mechanisms		
Action	By Who	By When
Publication of the Single Integrated Plan on www.pembrokeshirelocalserviceboard.co.uk and partner websites	Partner Communications Teams, with support from PCC Marketing	May 2013
Further develop www.pembrokeshireyouthzone.co.uk as the main website for public service and third sector organisations to engage with children & young people in Pems	All, with support from PCC Marketing	Ongoing
Promote activities and encourage feedback on PLSB member social media www.twitter.com/pembrokeshire www.twitter.com/hywelddahb www.twitter.com/DyfedPowys www.facebook.com/pembrokeshirecountycouncil www.facebook.com/pembsyouthzone and other Council social media sites for children and young people www.facebook.com/hyweldahealthboard http://www.facebook.com/dafyddp www.youtube.com/pembscouncil www.youtube.com/hyweldahealthboard http://www.youtube.com/user/VicindiaCharlie	Partner Communications Teams	Ongoing
Promote use of the Pembrokeshire Citizens Panel as a mechanism for consultation and engagement	Partnership & Scrutiny Support Team	Ongoing
Promote use of 'Bringing views to the attention of an Overview and Scrutiny Committee', as a mechanism for engagement http://www.pembrokeshire.gov.uk/content.asp?nav=101,2159&parent_directory_id=64&id=27380&template=20186	Partnership & Scrutiny Support Team	Ongoing
Promote use of existing forums as a mechanism for consultation and engagement. These include: Youth Forums and Assembly Talking Health/Siarad Iechyd Housing Forum Third sector forums co-ordinated by PAVS	All	Ongoing
Promote the use of existing partner publications. These include: Siarad Iechyd Newsletter Community Safety Partnership Annual Consultation Day – autumn 2013	PAVS Newsletter Tenants News etc	

Objective 3 - Develop new joint engagement mechanisms where appropriate to help overcome barriers to participation		
Action	By Who	By When
Add 'comments' link to PLSB web pages to enable people to contribute directly	PCC Marketing	June 2013
Encourage partners to link to www.pembrokeshirelocalserviceboard.co.uk	Partner Communications Team	June 2013
Continue to develop www.pembrokeshirelocalserviceboard.co.uk to reflect full range of PLSB activities	All partners encouraged to contribute. Partnership and Scrutiny Support Team to co-ordinate content, PCC Marketing to support	Ongoing
Develop PLSB newsletter	All partners encouraged to contribute. Partnership and Scrutiny Support Team to co-ordinate content, PCC Marketing to support	Ongoing
Public Services Day 2014 for representatives of community and voluntary sector organisations and Council members	Partnership and Scrutiny Support Team, Engagement Strategy Development Group	March 2014
Stronger Communities: Better Services Portfolio Project	Co-ordinated by PAVS	April 2018

Objective 4 – Maintain records of engagement activities undertaken and ensure that information is fed back into the planning cycle

Action	By Who	By When
Maintain records of consultation and engagement activities undertaken and ensure that information is fed back into the planning cycle	Lead Officers in partner organisations with responsibility for delivering actions as part of the Single Integrated Plan, Partnership and Scrutiny Support Team	Ongoing

Objective 5 – Feedback the outcomes of engagement activities to those who have taken part

Action	By Who	By When
Feedback the outcomes of consultation and engagement activities to those who have taken part	Lead Officers in partner organisations with responsibility for delivering actions as part of the Single Integrated Plan, Partnership and Scrutiny Support Team	

Objective 6 - Recognise and share best practice		
Action	By Who	By When
Inform Partnership & Scrutiny Support Officers of best practice for showcasing at Public Services in Pembrokeshire Day	Lead Officers in partner organisations with responsibility for delivering actions as part of the Single Integrated Plan, Partnership and Scrutiny Support Team	Ongoing

Footnote

Stronger Communities: Better Services Portfolio Project

PAVS has secured funding from the Big Lottery to support the Strong Communities: Better Services Portfolio Project.

Officers in lead organisations may find it useful to link with opportunities provided as part of this project in order to help deliver some of the engagement aspects of their action plans. In Pembrokeshire the portfolio is made up of projects that:

- Work with specific service users through communities of interest, identified through consultation processes as being a priority for service commissioners and where citizen voice needs to be strengthened
- Work in communities of place to develop sustainable and co-productive approaches to community-based service development and provision
- Offer innovative and creative methods of engagement that can be used with different groups of service users as a resource for groups leading on portfolio projects

Further information is available from Michelle Copeman, Pembrokeshire Association of Voluntary Services, on 01437 769422
 michelle.copeman@pavs.org.uk



**SINGLE
INTEGRATED
PLAN
'Feeling Good
About Newport'**

ONE NEWPORT'S SINGLE INTEGRATED PLAN

Vision

"Working together to create a proud and prosperous city with opportunities for all"

Outcomes

People in Newport achieve their full potential Newport has a prosperous and thriving economy People in Newport are healthy and thriving People in Newport live in a safe and cohesive community Newport is a distinctive and vibrant city

1. Introduction

The Welsh Government has challenged all local authority areas in Wales to develop a Single Integrated Plan (SIP) and rationalise partnerships by 1 April 2013. The statutory guidance '[Shared Purpose – Shared Delivery](#)' sets out the role of local government and their partners, through Local Service Boards (LSBs), in helping to improve service delivery by working together to plan, work, deliver and improve outcomes.

2. Background

One Newport Local Service Board (LSB)

One Newport is the city's Local Service Board (LSB) where the leaders of local public, private and third sector organisations work together to ensure services are effective, focused on local people and improve the quality of life in the city. One Newport includes senior members from Newport City Council (NCC), Aneurin Bevan Health Board (ABHB), Gwent Police, University of Wales Newport, Newport City Homes, Communities First, Job Centre Plus, Newport Unlimited, key private and voluntary sector bodies and Welsh Government.

Partnership Working

The One Newport partnership helps public service organisations to work together more effectively and to support, encourage and pursue joint working where it benefits local people. New partnership arrangements were implemented in June 2012 and are based on six priority themes and this SIP.

3. About the Single Integrated Plan

What is a Single Integrated Plan?

A SIP is the defining statement of strategic planning intent for the local authority area. It contains the LSB's vision for improving the city over the next three years. No single organisation can meet the total needs of a community, so there is a requirement to plan and deliver services in collaboration with other public and private sector organisations. This SIP identifies key priorities that, as an LSB, we will work towards achieving over the next few years. These priorities have been identified as those where the LSB and other key stakeholders must work together to achieve success.

The SIP replaces the following plans and strategies:

- Community Strategy
- Health, Social Care and Wellbeing Strategy
- Children and Young People's Plan
- Community Safety Plan
- Prosperous Newport Plan

How has this Single Plan been developed?

The SIP and priority themes have been determined by a robust evidence base in the form of a [Unified Needs Assessment](#) (UNA). The six priority themes are:

1. Skills and Work
2. Economic Opportunity
3. Health and Wellbeing
4. Safe and Cohesive Communities
5. City Centre
6. Alcohol and Substance Misuse

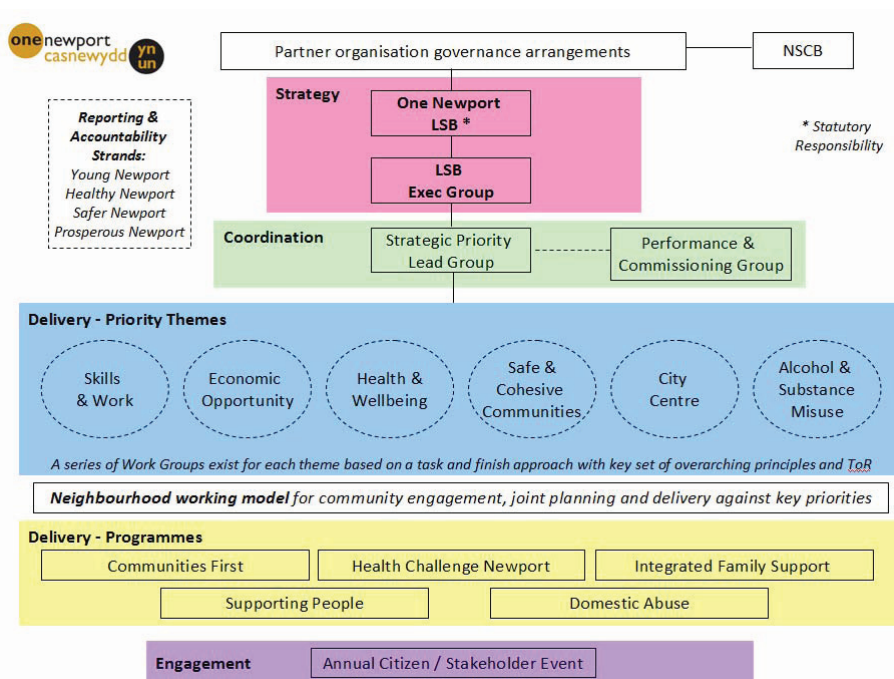
Each theme will have a series of work groups based on a task and finish approach with a key set of overarching principles and terms of reference. Each work group will agree a set of actions for delivery.

A Neighbourhood Working model will also be implemented to assist with community engagement, joint planning and delivery against key priorities.

Key Programmes will remain in place and work towards achieving the key priorities. These include:

- Communities First
- Supporting People
- Domestic Abuse
- Health Challenge Newport
- Integrated Family Support (including Families First, Flying Start)

Partnership Structure



How will the new structure work?

Under previous arrangements, progress against priorities would be reported to the relevant Partnership Board (Children and Young People's, Health, Social Care and Wellbeing, Community Safety or Prosperous Newport). This was done in different ways and within different timescales.

New arrangements mean that priorities have been identified within a single structure and resources can be aligned far more easily against those priorities. Most work will be undertaken by groups set up to run projects with set, time-bound goals to achieve against the LSBs priorities. Occasionally a more permanent group will need to be established and these will ensure the LSB meets certain requirements or has a more long term approach to the co-ordination of some pieces of work.

There are also a number of Programmes being run across Newport and each of these has its own requirements for governance.

All groups, whether project, standing or programme specific will report through the relevant Priority Theme to the Strategic Priority Leads Group (SPLG) via the One Newport Performance Management Framework. The SPLG will ensure that:

- Project plans are in place and resources are allocated to manage the project
- Projects are monitored in line with the agreed priorities and that work undertaken is in line with those priorities
- Partners contribute resource, expertise and time to undertake agreed work
- Progress is monitored and partners and projects are held to account
- Reports to the Local Service Board are timely, accurate and that any issues are identified early on
- New priorities and emerging issues are identified and actions taken to address these as required
- Arrangements are in place to ensure we meet, monitor and progress our statutory responsibilities across the partnership

4. Role of LSB member organisations

The priorities and actions in the SIP will have implications for the corporate planning of LSB member organisations, and should be considered at all levels of service planning and delivery.

All LSB member organisations must ensure the outcomes set out within the SIP are reflected in the aims and objectives of each partner organisation's corporate planning processes and are the core of the performance management of the partnership.

5. National, Regional and Local Roles

The LSB is committed to collaborative working where shared priorities have been identified across the region. The LSB aims to work with all partners in neighbouring areas in South East Wales to improve delivery for local citizens.

Work is already underway in relation to regional collaboration on a range of issues including Education, Alcohol and Substance Misuse, Welfare Reform and Community Safety. During the life of this SIP the LSB will need to be mindful of these and other emerging collaborative agendas and be able to respond accordingly.

The Welsh Government has identified the outcomes Wales should work towards and the priority areas for action in the [Programme for Government](#). The following outcomes are of particular significance for local multi-agency delivery:

- improving early years' experiences

- improving health and educational outcomes of children, young people and families living in poverty
- preventing poor health and reducing health inequalities
- more inclusive and cohesive communities
- improving the skills of young people and families
- ensuring people receive the help they need to live fulfilled lives
- creating sustainable places for people

The [Public Service Leadership Group](#) (PSLG) has been established to provide national leadership for public service reform and collaboration, and to drive the pace of improvement in public services of Wales. There are 3 national programmes of work led by the Public Service Leadership Group:

- Asset Management and Procurement
- Organisational Development and Simpson Implementation
- Effective Services for Vulnerable Groups

6. The Child Poverty Strategy and relationship to this Plan

Organisations working within Newport are committed to working together to tackle the inequalities that some children, young people and families face because they are living in poverty. There is strong evidence that shows poverty can have adverse effects on outcomes for children and young people later in life. Therefore, the single overriding priority within this plan is to reduce the inequalities that exist between those children, young people and families living in poverty and those that do not and to ensure that all children and young people living in Newport reach their full potential regardless of their family's aspirations or economic and social situation.

This SIP will be supported through the development of a [Child Poverty Strategy](#) for Newport which will detail our commitments, the support we will provide and differences we will make to the lives of children, young people and families in Newport.

7. Neighbourhood Working

'Neighbourhood Working' is the process of improving and joining up local services, whilst focusing on specific neighbourhoods and being more responsive to local needs. It commonly involves area partnerships of local residents, together with key agencies and service providers. These partnerships use community information and data to improve services and reduce gaps in outcomes such as education, community safety and quality of life measures.

The LSB is developing a neighbourhood working approach reflecting our ambition to improve services in local areas, by involving communities and providing more effective, efficient and accessible services based on the needs of the local area.

Key objectives include:

- To improve services by making them responsive to local needs
- To improve links between partners, citizens and other agencies
- To involve local people in decisions specific to the area in which they live
- To help elected members to work with local people to assist their representative role
- To make local people aware of the varying demands on partner agencies
- To provide outreach opportunities for partner services

This work cannot be undertaken in isolation and is just one of a range of partner and partnership responses to improving services at a local level with ever decreasing budgets. Any progression of this agenda will need to take in to account work already underway in relation to Neighbourhood Care Networks and Communities First, learning from effective practice and combining efforts at a local level.

8. Vulnerable Groups

The key focus of this SIP is the improvement of the lives and life chances of the people of Newport. In order to achieve this, work that will be undertaken against the identified priorities will undoubtedly focus in on those groups and individuals who are most vulnerable, most at risk and most disadvantaged. Partners committed to achieving the goals set out in this Plan do so in the knowledge that there is unjustifiable inequity in access to services and opportunities and that the life, education, health and employment chances of these groups are significantly worse than others in our society.

When developing project and action plans, partners will be required to show how they will meet the needs of those individuals and groups who are most in need and we, as an LSB, will hold ourselves to account on our ability to affectively change their lives for the better.

Through these arrangements we will maintain a focus on:

- Children, young people and families
- Frail older people
- Carers
- Disabled people
- Minority ethnic communities
- Homeless and those at risk of becoming homeless
- Armed Forces community
- Deprived communities

9. Welfare Reform

The LSB recognises that changes to the current benefits system will impact upon some of our most needy individuals and families. Currently, work is on-going across Gwent to put in place the resources to offer support, information and advice to those who will be affected by these changes. The SIP will support this agenda by enabling individuals to gain the skills needed to access employment, by creating an environment where businesses can thrive and by removing inequities in access to services.

10. Progress so Far

The following is a summary of some of the main achievements over the last few years through partnership working in Newport:

Healthy Newport

- Implementation of the **Frailty programme** which provides a community based integrated model of care to help individuals maintain independence and avoid unnecessary hospital admissions
- Implementation of the **Exercise Referral Scheme** in Newport which offers a structured exercise programme to improve the physical and mental health of those clients who have a chronic disease or are at risk of developing chronic disease
- Opening of an additional two **ExtraCare** Schemes for Frail Older People (Capel Court & Glyn Anwen) where care and support is provided on site, there are now a total of 161 self-contained flat across four sites
- Development of the **NewLink Community Transport Scheme** which provides transport for residents who are unable to use local bus services
- **WALK Newport** has successfully been established as an independent and self-sustainable walking group
- Development of the **Lighthouse Project** which provides low-level housing related support to people in their own homes
- Integration of the Learning Disability Team
- Integration of the Community Mental Health Teams
- Integration of Occupational Therapy Services
- Development and expansion of the **Memory Cafe** which offers an informal setting for those affected by dementia and their carers to access support and information
- Development of **Newport's Carers Forum** which provides carers with opportunities to meet and share knowledge, expertise and coping strategies and develop informal networks

Young Newport

- The **Flying Start** programme currently supports over 1,600 children from deprived areas of Newport, with a planned expansion to enable more eligible families to benefit from support
- Appropriate and sustainable **childcare** provision, advice and support is available to all families through a variety of local programmes including parenting courses and Health Access programme
- Consistent increases in **Key Stage 2** Core Subject Indicator (CSI) attainment year on year, increasing from 80.3% attainment in 2006/07 to 84% attainment in 2010/11
- Some significant progress has been made to reduce the number of **young people not in education, employment and training** over the last 3 years through a variety of collaborative initiatives
- **Early years vaccination** uptake rates continue to be good in Newport
- Children and young people have the opportunity to take part in a wide range of **sport and physical activities** across communities in Newport through various schemes including a Club Accreditation Scheme for Voluntary Sports Clubs
- Increase in participation in **community sports activities**, reaching almost 50,000 participants
- Promoting the **participation** of young people to ensure they can express their views, be listened to and influence decision making and service delivery through various initiatives including training, Youth Council, Community Youth Forums, School Councils and consultation activity
- Increased focus on **preventive services** for children/young people and their families, as a result of work by the Integrated Family Support Team and the new Families First model
- A wide range of organisations and services across the city support people and communities disadvantaged by **poverty** in relation to both financial and employment support including Genesis, disabled families financial advice and job/employability skills clubs

Prosperous Newport

- Planning approval has been granted for the retail redevelopment of 390,000 sq ft comprising the **Friar's Walk** development. Debenhams, the key anchor store, have signed for their 93,000 sq ft unit, which has taken this exciting project to the next key stage of its development
- A planning application for 70,000 sq ft office development for **Admiral Insurance** in **Cambrian Centre** has been granted and when fully occupied this building will host 1,200 jobs
- Physical regeneration works around the **Market Quarter**, where the indoor market itself is having a new frontage and new entrance, together with key buildings in and around **High Street**, and all new public realm works through High Street will be undertaken throughout the 2012/13 financial year
- Newport City Council has redrawn the boundary for its **grant incentive schemes** for new businesses thinking of relocating or enhancing their business in the city centre, to be co-terminus with the boundary of the priority zones within the city centre
- Newport and Gwent Enterprise has been successful in securing the contracts for the delivery of Welsh Government **business services** across South East Wales in partnership with Business In Focus

Safer Newport

- Designing out crime reports (**environmental**) have seen improvements in such places as the city centre, alley gating in Ringland, fencing of castle and lighting scheme
- Substantial reductions in **crime** including criminal damage/graffiti through introduction of graffiti removal scheme, criminal damage action plan; improved **hate crime** incident reporting and management; **violent crime** reductions across the city but particularly around the city centre; **prostitution** policy recognised as best practice
- **Operations** including Halloween, Bonfire Night, Christmas Crime Campaigns, Alcohol Misuse Enforcement Campaigns, Trading standards, Police and Warden operations to address misuse of fireworks, selling of cigarettes, Rear of Bus Advertising campaign
- Addressing **licensing** issues including amending taxi licensing policies to improve personal safety and information sharing on offenders, multi agency operations, targeting individual problem premises
- Improvements in the **city centre** through First Best Bar None scheme in Gwent, poly carbonate glasses, support of street pastors scheme, City Centre Tactical Group meetings
- **Business Crime Partnership** has introduced new digital radios, information and photo sharing in the city centre
- Excellent three stage approach and process for managing **Anti-Social Behaviour** (ASB), I-zone mobile youth provision, support for young offenders and parents, MUGA Corporation Rd, work of ASB recognised by Prime Minister and visit to Downing Street
- Many **campaigns** such as Pink Handbag scheme (personal safety), Motor Crime Education Project, joint clean up campaigns e.g. Somerton, Neighbourhood Management Pilot, Neighbourhood Crime and Justice Campaign
- Improved **substance misuse** services and capacity for addicts and users; first Crack House closure in Wales
- Opening of new **Domestic Abuse** Unit and new programmes of work

11. Our Needs

[Newport's Unified Needs Assessment](#) (UNA) was published in May 2012 and sets out a summary of the issues facing the local population and presents public opinion, background information and baseline data which has been used to determine the priorities for this SIP.

Profile of Newport

As one of Wales' newest cities, Newport forms the gateway between Wales and England and the economic motor for the South East Wales region. In spite of the tough economic climate facing the city and the UK as a whole, it continues to undergo some of the most far-reaching changes seen in the locality during the last 100 years and heralds the newest and perhaps most exciting chapter in the city's history. Those who know the city well will recognise it as a multi-cultural community with its own unique atmosphere where traditional industries exist alongside new electronics and financial service sectors.

For all its historic interest, Newport has more than its past to commend it. After losing some of its core industries, the city is successfully proving that it can re-establish and adapt itself as a centre of modern industry and commerce. We provide jobs and opportunities for local people, the communities along the M4 corridor and the eastern valleys.

Newport covers a geographical area of just over 73.5 square miles. It is a vibrant, forward-thinking city steeped in a rich heritage, natural areas, biodiversity and landscape. Protection of this environment as well as our urban centres will make Newport a more attractive place.

Newport City

Newport is undergoing major changes with many parts of the city being redeveloped to create a better environment for people to live, work and visit. It has a distinctive role as a city and the aim is to revive the city centre and the surrounding districts to make it a more sustainable city where people can live closer to places where they work and shop and are encouraged to use public transport. Newport has a key regional role within south east Wales and partner agencies are working together to regenerate the city and turn it into a thriving centre for business, leisure and living. The image of the city has suffered in recent years and work is underway to increase community confidence and to encourage people to feel good about the city and to be proud of where they live. The Ryder Cup in 2010 was a once in a lifetime opportunity to get residents, businesses and visitors feeling good about Newport and to create a lasting legacy for the city.

People

The city has long been an ethnically diverse area but its demographic make up has remained essentially stable for a significant period of time. We are proud that we have always experienced good inter-community relations in the city and it is vital that all of the people and agencies in the city continue to maintain this commendable social cohesion.

In 2011, the population of Newport was estimated at 145,736 with 51% female and 49% male¹. The population has risen by 6% since 2001. The age structure of the population broadly reflects wider trends evident in Wales and the UK. Newport has an ageing population, and increased life expectancy and overseas immigration has resulted in moderate population growth which is likely to continue in the foreseeable future.

Population by Ethnicity

The most recent Census data in 2011² shows the population of Newport is made up of 89.9% of people from a white background and 10.1% of people from a non-white background. The city

¹ Office for National Statistics (ONS), 2011 Census

² 2011 Census (Table KS201EW), Office for National Statistics (ONS)

has the second largest number of people from a non-white background of the Welsh Councils after Cardiff. The number of people from a non-white background has continued to increase with an estimated 6.6% of the population from a minority ethnic background in the city in 2009³, an increase from 4.8% in 2001⁴. This is a higher proportion of people from a non-white background than for Wales as a whole.

Population by Target Group

Most recent figures indicate that 21.6% of the Newport population are living with a long term limiting illness and 7.9% of people are permanently sick or disabled⁵. As life expectancy grows, the incidence of limiting long term illness is likely to increase with age.

Carers

Most recent figures show that 11.4% of the population are unpaid carers⁶. This information is taken from the 2011 Census where respondents were asked if they provide unpaid care and how many hours a week on average they care for. The percentage of unpaid carers is slightly below the Wales average of 12.1% but above the England average of 10.3%.

Armed Forces

Data from the 2011 Census shows there were a total of 196 people employed in the armed forces either living in households or communal establishments. This compares to a total of 6,875 people in Wales. The dispersed nature of many members of this community has meant that they are often 'lost' in the system, and in spite of the great contribution, and sacrifices in many cases, they have made, this remains a group within society that continues to be inadvertently denied access to core services such as housing, employment and benefits advice, health care, and school places.

Asylum seekers, refugees and migrants

The rate of turnover for asylum seekers in Newport has changed from 30% in 2010 to approximately 90% in 2011. A higher rate of turnover is likely to affect service provision and community cohesion.

According to the data available, the numbers for non-UK born residents for the UK and Wales show a steady increase over time, while the number of migrants in Newport has remained stable over the last few years, with an apparent 'dip' in 2009/2010. It is not clear whether this dip is reflecting the actual situation and if so, what the reasons are, or whether it is related to the way data is collected. In Wales, the top five of countries of origin from non-UK born migrants for the period of April 2010 to March 2011 is Poland, India, Germany, the Republic of Ireland and the Philippines.

Gypsy and Traveller population

In 2009, the Council was required to carry out a [Gypsy and Traveller Needs Assessment](#) to supplement the Newport, Torfaen and Monmouthshire Local Housing Market Assessment report which were completed in 2007. This Fordham study concluded that the Council had a 10 year need for 29 permanent pitches for families living in, or with an affiliation to Newport.

The Welsh Government Gypsy and Traveller Caravan Count on 19th July 2012 states that 58 caravans exist in Newport on private, tolerated and un tolerated sites. The current Newport City Council accommodation waiting list demonstrates an immediate need for 17 pitches (usually 2-3 caravans per pitch) and then a further 10 pitches up to the end of the Local Development Plan period to 2026.

Many of the occupants on the un tolerated sites have been found to have accommodation elsewhere and the Council does not have a duty to accommodate them. Two hundred of these

³ Annual Population Survey, 2009

⁴ 2001 Census

⁵ 2001 Census

⁶ 2012 Census

caravans are on lawful private sites. In addition to the permanent residential accommodation need there is an identified need for 7 transit pitches for families travelling through Newport. The Local Development Plan will provide sites to accommodate the required need during its plan period 2011 – 2026.

Wealth and Deprivation

In Newport, neighbourhoods with some of the country's highest levels of social deprivation sit next to some of those with the greatest affluence. The Wales Index of Multiple Deprivation (WIMD) is the official measure of deprivation for small areas in Wales. The WIMD 2011⁷ is made up of eight types of deprivation or domains: employment, income, education, health, community safety, geographical access to services, housing and physical environment. Newport is ranked as the fourth most deprived local authority in Wales, with 16% of LSOAs in the most deprived 10% in Wales. Newport has 56% of its LSOAs in the most deprived 50% in Wales. In general, the Valleys and urban local authorities tend to be more deprived than those which are largely rural.

Priorities for Newport

The main challenges and those which contribute to disadvantage are across educational achievement and employment, crime and anti social behaviour, health inequalities, and child poverty. Economic regeneration alongside community regeneration are key factors that can transform local neighbourhoods and the lives of local people. Focus must be on narrowing the gap between the least and most affluent areas of the city by addressing areas of activity including employment, health, housing, education, community safety and the environment.

The following is a list of the most popular recurring themes that appear in all of the partnership consultation and engagement activity that has taken place since 2010:

1. City centre cleanliness
 - Community safety and anti social behaviour
 - Sport and leisure facilities
2. Attractive city centre
 - Derelict properties across city / empty shops
 - Shopping facilities – lack of choice and quality
 - Food and drink facilities
 - Heritage and culture
 - Parking in city centre
 - Pride in Newport / negative attitudes
 - Regeneration progress
 - Nuisance in city centre
 - Activities and events across city
 - Encourage local businesses
 - Good public transport
 - Built environment / urban planning e.g. city centre layout
3. Niche role for Newport
 - Location and geography of city
 - Countryside and wildlife
 - Job, skills and employment

⁷ [StatsWales](#)

12. Our Priorities

The following information contains our priority outcomes for the next 3 years, with clear actions for driving improvement which describes partners' contributions and accountability. There is a focus on the highest priorities which form the core agenda for improvement of the LSB. More detailed delivery plans for each priority will be developed on an annual basis.

<p>Outcome Theme</p>	<p>People in Newport achieve their full potential</p> <p>Skills and Work Ensuring people of all ages have access and opportunity to gain the appropriate skills, knowledge, and qualities to secure life long employment by:</p> <ul style="list-style-type: none"> • Developing life long work focused skills • Ensuring that progression pathways exist • Ensuring that support is in place
<p>Our needs</p>	<p>Local Economy The key issues have been identified as:</p> <ul style="list-style-type: none"> • Diversifying the economic base, by developing a highly skilled workforce in the locality and providing an attractive investment or business start-up environment, is important in ensuring employment increases in the future • Reducing the number of young people not in education, employment or training through joint working, good practice, data sharing and developing appropriate programmes or interventions • Addressing the issue of workless households and associated poverty, and understanding the inherent link between economic and social aspects of poverty and designing interventions to effectively tackle these issues • Addressing ward variances across the city by focusing on those areas that have higher levels of unemployment and workless households <p>Adults are Successful The key issues have been identified as:</p> <ul style="list-style-type: none"> • Raising the level of educational achievement and promoting a culture of lifelong learning to improve opportunities for all people • Raising levels of literacy and numeracy, and breaking the link between poverty and poor educational outcomes <p>Children Succeed in School or Work The key issues have been identified as:</p> <ul style="list-style-type: none"> • Improving the attainment levels for Key Stage 4 level 2 threshold, inclusive of English/Welsh and Mathematics • Narrowing the gap in attainment levels between pupils eligible for Free School Meals (FSM) and non-FSM pupils. • Improving primary school attendance rates, which still remain slightly below the Wales average • Reducing permanent secondary school exclusions, which have increased recently despite considerable progress in recent

	years						
Statutory duties addressed	<p>More detailed information on needs analysis and current initiatives is available in the UNA.</p> <p>Children's Act 2004 Children and Young People's Plan (Wales) Regulations 2007 Children and Families (Wales) Measure 2010 Learning and Skills Act 2000</p>						
Our priorities	Youth Opportunity	Basic Skills	Learning Pathways (whole life)	Access to Employment	High Level Skills		
To achieve this we will	<p>Map resources, both physical and financial, available for the delivery of services to support young people in making successful transitions from education</p> <p>Commission a programme for 16 and 17 year olds 'unknown' or not in education, employment or training (NEET) not registered to support them back in to learning</p> <p>Develop a strategy that enables joint planning, resourcing and delivery of services on a community or neighbourhood basis to remove barriers to progression</p>	<p>Ensure young people and adults have the appropriate level of basic skills to access opportunities and contribute to society and the economy</p> <p>Map out current informal and non-formal learning opportunities to identify gaps and issues with progression</p> <p>Commission Narrowing the Gap – Family Skills Project through the Families First programme</p> <p>Work with partners delivering services so that all opportunities are accessed to support people in developing their basic skills and gain accreditation through informal and non-formal</p>	<p>Provide skills and employment focused learning to individuals affected by Welfare Reform</p> <p>Work collaboratively with a range of training providers to influence their learning offer</p> <p>Develop a range of support options and guidance interventions to ensure people get the right help at the right time</p> <p>Ensure that Learning Pathways match with labour market information and the needs of employers through robust analysis of data and engagement of employers</p>	<p>Identify opportunities for closer joint working through community based activity and implement community traineeship programmes for unemployed people and intermediate labour markets</p> <p>Ensure that partners are able to offer advice, information and support to individuals and families impacted upon by Welfare Reform</p> <p>Develop the New Work Programme to provide opportunities for unemployed people to gain employment</p> <p>Provide support to carers to help them overcome the barriers to education, learning and employment</p>	<p>Work collaboratively to review and develop leadership and management products to improve client participation</p> <p>Encourage all eligible businesses to participate in the 'Workforce Development' initiative</p> <p>Capitalise on the city University campus, both in terms of people and business engagement to promote high level skills</p>		

	<p>Commission Narrowing the Gap – Children and Young People’s Skills Project through the Families First programme</p>	<p>learning settings</p>	<p>Promote and strengthen progression pathways to higher education</p>	<p>through the Carers Pathway</p> <p>Work with partners to improve employment and learning opportunities for all people, including the removal of barriers to employment, such as affordable childcare and transport and digital inclusion</p>	
<p>What will success look like?</p>	<p>More young people remain within education</p> <p>More young people leave formal education having achieved Level 2 threshold, including English/Welsh and Maths</p> <p>More young people have increased resilience and wellbeing</p>	<p>More people are able to access opportunities</p> <p>Less children are living within households in relative poverty</p> <p>More people are engaged in meaningful community based learning and norm within communities</p>	<p>More people are engaged in meaningful community based learning and norm within communities</p> <p>Opportunities available meet the needs of both learners and employers</p> <p>Adults are supported effectively and enabled to make informed career and learning decisions</p> <p>Qualifications NQF level 2 above, level 3 above, level 4 above</p>	<p>Lower numbers of economically inactive people</p> <p>Less children are living within households in relative poverty</p>	<p>More employers support their workforce to develop higher level, industry specific skills</p> <p>More people gain higher level, technical skills needed in emerging industries</p> <p>More technical industries are attracted to the city</p>
<p>We can measure success by</p>	<p>% year 11 NEETs</p> <p>% year 13 NEETs</p> <p>% pupils at KS4 achieving level 2 threshold</p> <p>% of pupils at KS4 achieving level 2</p>	<p>% working age adults with no qualifications</p> <p>% adults with literacy needs</p> <p>% adults with numeracy needs</p>		<p>Economic inactivity rate</p> <p>Employment rate</p> <p>Children living in workless households</p> <p>% adults in receipt of out of work benefits</p>	<p>Number of higher level skills gained at Level 4 and 5</p> <p>Number of new business start ups</p>

<p>Who needs to be involved</p>	<p>threshold inclusive of English/Welsh and Maths</p>	<p>Newport City Council Education Service, Coleg Gwent, Careers Wales, National Training Federation, Registered Social Landlords (RSLs),</p>	<p>Job Centre Plus, Newport City Council Community Learning and Leisure, Newport City Council Community Development, Newport City Council Regeneration and Regulation, Business sector, Registered Social Landlords (RSLs),</p>	<p>Job Centre Plus, Newport City Council Community Learning and Leisure, Newport City Council Community Development, Newport City Council Regeneration and Regulation, Business sector, Registered Social Landlords (RSLs),</p>	<p>University Wales Newport, Newport City Council, National Training Federation, business sector</p>
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<p>Outcome Theme</p>	<p>Newport has a prosperous and thriving economy</p> <p>Economic Opportunity Ensuring future sustainable economic prosperity for the city through:</p> <ul style="list-style-type: none"> • Status as a smart and connected city • Providing a regenerated, diversified and resilient economy • Raising the profile of the city
<p>Our needs</p>	<p><u>Prosperous and Thriving</u> The key issues have been identified as:</p> <ul style="list-style-type: none"> • Driving forward the regeneration programme in order to establish Newport as an attractive place to live, work, invest and do business • Diversification of the economic base so that the city is less reliant on one or two vulnerable sectors to support economic growth • Identification of emerging, resilient economic opportunities such as digital media, low-carbon goods and services, and freight logistics • Ensuring local people are equipped to access jobs and opportunities whilst continuing to support Newport's role in the wider regional labour market • Ensuring we take a key strategic role in any City Region based around the Welsh capital • Ensuring the city is energy efficient and makes an appropriate contribution to reducing Wales' carbon footprint and households in fuel poverty • Driving forward the city as a 'digital city' and ensuring this interest applies to residents, businesses and local communities <p><u>Distinctive and Vibrant</u> The key issues for have been identified as:</p> <ul style="list-style-type: none"> • Improving the image of the city and the city centre, and to take forward Newport's status as a 'Smart and Connected' city • Driving forward the regeneration programme to establish Newport as an attractive shopping, leisure and tourist destination • Maintaining high quality leisure facilities and raising the profile of city events and attractions • Improvements to transport infrastructure and connectivity to encourage visitors and investment • Maintaining Newport's identity as part of a greater City Region • Expansion of prevention-based interventions or initiatives to tackle homelessness, with more targeted support <p><u>Carbon Emissions and Resource Consumption</u> The key issues have been identified as:</p> <ul style="list-style-type: none"> • Striving to ensure the needs of the environment, economy, and society are kept in balance • Domestic CO₂ emissions in Newport are amongst the lowest per head in Wales, but the city has one of the highest volumes of emissions due to industrial and commercial activity

	<ul style="list-style-type: none"> Volume of waste produced remains a critical issue as the landfill site is approaching capacity and it is therefore important to reduce waste as much as possible <p>Clean and Pleasant Environment The key issues have been identified as:</p> <ul style="list-style-type: none"> The environment around us is critical to our health and wellbeing, and threats to the environment such as climate change and pollution are therefore threats to our own continued wellbeing The local environment is subject to several key risks, including air pollution from transport emissions, and the vulnerability of the coastline to flooding The city must concentrate on issues specific to our urban location such as empty homes Human beings have a huge impact on the outcome of these risks. Littering is just one such example of how people can thoughtlessly reduce the quality of local environments to the detriment of those who live there <p>More detailed information on needs analysis and current initiatives is available in the UNA.</p>										
Statutory duties addressed	Not applicable										
Our priorities											
To achieve this we will	<table border="1"> <thead> <tr> <th data-bbox="817 1391 762 1691">Connections</th> <th data-bbox="817 1113 762 1391">Marketing and Image</th> <th data-bbox="817 835 762 1113">Enterprise Culture & Inward Investment</th> <th data-bbox="817 580 762 835">Emerging Economies</th> <th data-bbox="817 344 762 580">Climate Change and Energy</th> </tr> </thead> <tbody> <tr> <td data-bbox="817 1391 762 1691">Continue to campaign for the opening of the Ebbw Vale Rail link into Newport Central Station, particularly in relation to the city centre regeneration proposals and the 'Motorsport' investment that has been announced in the heads of the valleys region</td> <td data-bbox="817 1113 762 1391">Implement the City Council and Newport Unlimited Marketing Plan 'Standing Up For Newport' through: <ol style="list-style-type: none"> Smart and Connected city campaign brand Promotion of SME Business Support Business visitor development City brand and sense of place development Develop and implement a Visitor Destination action plan </td> <td data-bbox="817 835 762 1113">Encourage good business occupiers by offering a range of accommodation Develop a One Newport joint partner offer to encapsulate the range of support available to inward investors as a single package offer Establish links with key partners to launch the One Gateway concept in one central location in Newport offering holistic</td> <td data-bbox="817 580 762 835">Focus on attracting key sector functions to the city e.g. digital sector, green energy sector Develop a Digital City vision through <ol style="list-style-type: none"> bids to central government collaboration with private sector through Alacrity Foundation identifying locations and commissioning office development for growth business </td> <td data-bbox="817 344 762 580">Develop a green 'Eco' city vision through: <ol style="list-style-type: none"> green tourism initiatives recycling and waste focus energy saving investment in public and private sector housing identifying supply chains serving the low carbon and environmental sectors and </td> </tr> </tbody> </table>	Connections	Marketing and Image	Enterprise Culture & Inward Investment	Emerging Economies	Climate Change and Energy	Continue to campaign for the opening of the Ebbw Vale Rail link into Newport Central Station, particularly in relation to the city centre regeneration proposals and the 'Motorsport' investment that has been announced in the heads of the valleys region	Implement the City Council and Newport Unlimited Marketing Plan 'Standing Up For Newport' through: <ol style="list-style-type: none"> Smart and Connected city campaign brand Promotion of SME Business Support Business visitor development City brand and sense of place development Develop and implement a Visitor Destination action plan	Encourage good business occupiers by offering a range of accommodation Develop a One Newport joint partner offer to encapsulate the range of support available to inward investors as a single package offer Establish links with key partners to launch the One Gateway concept in one central location in Newport offering holistic	Focus on attracting key sector functions to the city e.g. digital sector, green energy sector Develop a Digital City vision through <ol style="list-style-type: none"> bids to central government collaboration with private sector through Alacrity Foundation identifying locations and commissioning office development for growth business 	Develop a green 'Eco' city vision through: <ol style="list-style-type: none"> green tourism initiatives recycling and waste focus energy saving investment in public and private sector housing identifying supply chains serving the low carbon and environmental sectors and
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	<p>the Newport and Regional Transport Study proposals.</p> <p>Improve transport integration and modal shift with development of new transport interchanges</p> <p>Identify and develop Park and Ride facilities</p> <p>Active Travel Planning when considering new development sites</p> <p>Promote and develop the City Regions agenda</p> <p>Promote inter city and region active travel routes, including walking and cycling</p>	<p>advisory and support services to local businesses</p> <p>Introduce an account management support network for SMEs and inward investors</p> <p>Develop, implement and promote the International Gateway in Newport to help and encourage businesses to export</p> <p>Develop and launch a Taste of Enterprise scheme</p> <p>Establish a Centre of Excellence for advice and guidance for any public or private sector organisation that is considering establishing social enterprises</p> <p>Develop designated enterprise space, with relevant monitoring support, provide academic programmes that can encourage new enterprise development</p> <p>Capitalise on the city</p>	<p>that is 'fit for purpose'</p>	<p>encouraging them to choose Newport as a location base</p> <p>e) full Green Deal programme</p>
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<p>What will success look like?</p>	<p>Improved transport links between Newport and the South Wales region and beyond</p> <p>Stronger freight networks to improve the distribution of goods</p> <p>Reduction of travel times to major UK destinations</p> <p>Improved travel alternatives for the public and commerce</p> <p>Improved accessibility to active travel options</p> <p>Improved interchanges for multi modal options</p> <p>Healthier population through involvement in active travel</p> <p>Stronger relationships with neighbours through shared routes and strategies</p>	<p>University campus, both in terms of people and business engagement</p> <p>More businesses locating or relocating to the city</p> <p>Maintaining the status as a University city</p> <p>Improved per capita business start ups and survival rates</p>	<p>Greater uptake of local services and events</p> <p>More business and investment attracted to the local area</p> <p>Increase in visitors to the city</p>	<p>Strong complementary role in the South East Wales City Region</p> <p>Diversification of the economic base so that the city is less reliance on the public and service sectors</p> <p>Increase in alternative business sectors</p> <p>Increase in the number of people and businesses with access to the internet</p>	<p>Decrease in waste to landfill</p> <p>Increased energy from renewable sources</p> <p>Greater investment in green spaces</p> <p>More energy efficient homes and premises</p>	<p>We can measure success by</p>	<p>Employment by sector</p> <p>Business start up rates by sector</p> <p>Job density</p> <p>Total employee jobs</p> <p>UK competitiveness index score</p> <p>VenueScore (Javelin)</p> <p>Co2 emissions per capita</p> <p>Total energy use</p>
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	<p>Traffic volumes</p> <p>Rail, bus, cycling and walking use</p> <p>Number of people participating in active travel options</p>	<p>Group) and various other milestone data (e.g. share of total retail spend, number of shoppers, etc)</p> <p>Estimated value of tourism</p>	<p>Number of active enterprises</p> <p>Regeneration investment</p>	<p>% of adults 18+ digitally included</p>	<p>Waste to landfill</p> <p>Green Deal investment</p>
<p>Who needs to be involved</p>	<p>SEWTA, Newport City Council, Sustrans, Welsh Government, County Surveyors Society Wales, Public Transport companies</p>	<p>Newport City Council, Newport Unlimited, Welsh Government</p>	<p>Newport City Council, Newport Unlimited, Newport and Gwent Chamber of Commerce</p>	<p>Newport City Council, Newport Unlimited, Newport and Gwent Chamber of Commerce</p>	<p>Newport City Council, Carbon Trust, Wastesavers, Natural Resources Wales, Registered Social Landlords (RSLs),</p>

<p>Outcome Theme</p>	<p>People in Newport are healthy and thriving</p> <p>Health and Wellbeing Improving health, wellbeing, and independence by:</p> <ul style="list-style-type: none"> • Promoting and supporting health living throughout life • Prevention, early intervention, and self management of illness • Reducing inequities in health • Enabling people to take a personal and shared responsibility for their own health and that of their families
<p>Our needs</p>	<p><u>Healthy and Thriving</u> The key issues have been identified as:</p> <ul style="list-style-type: none"> • Reducing inequities in health, e.g. the gap in life expectancy, healthy life expectancy and disability free life expectancy between the least and most deprived • Decreasing the number of people that are overweight or obese • Reducing unhealthy eating • Increasing physical activity • Reducing the number of children with decayed, missing or filled teeth (dmft) • Reducing the level of smoking and passive smoking • Improving people's mental wellbeing • Reducing the number of people with cardiovascular disease <p><u>Children have the Best Start</u> The key issues have been identified as:</p> <ul style="list-style-type: none"> • Decreasing the rate of low birth weight babies through targeted work with pregnant women regarding lifestyle choices and behaviours • Increasing breastfeeding rates amongst mothers <p><u>Diverse Wildlife, Countryside and Open Spaces</u> The key issues have been identified as:</p> <ul style="list-style-type: none"> • Although the city is viewed as industrial and urban, it includes a wealth of unique natural areas, and has more green space per head of population than any other urban areas as well as many of the valley authorities • Newport should celebrate these assets for the mutual benefit of the city and its local environments and wildlife; the green spaces also play a critical role in the image the city presents to the outside world • Conserving these green spaces and their inhabitants will contribute economic and social benefits in turn, including improvements to education, health, house prices, and many other quality of life indicators

Statutory duties addressed	<p>More detailed information on needs analysis and current initiatives is available in the UNA.</p> <p>NHS (Wales) Act 2006 Health, Social Care and Wellbeing Strategies (Wales) Regulations 2003 Children and Young People's Plan (Wales) Regulations 2007 Children and Families (Wales) Measure 2010</p>			
Our priorities	Food and Physical Activity	Smoking	Mental Wellbeing	
To achieve this we will	<p>Develop and implement Food and Fitness policies to a range of settings, including early years, schools and workplaces.</p> <p>Develop a "Creating an Active Newport" action plan</p> <p>Deliver targeted health education / awareness raising campaign to provide effective information to support parents to be more active with their children</p> <p>Map, develop and implement a portfolio of community targeted weight management programmes for different age groups in areas of greatest need</p> <p>Focus on empowering all partner agencies to meet strategic and operational food and nutritional objectives</p>	<p>Support the implementation of smoking interventions to prevent the uptake of smoking amongst children and young people, through schools and youth support services</p> <p>Promote brief intervention for smoking cessation training to professionals working with children and young people, including youth workers and schools.</p> <p>Promote brief intervention for smoking cessation training to wider organisations, including healthcare workers, community workers, midwives and health visitors</p> <p>Support the introduction of smoke free environments ("Smoke Free Newport") including:</p> <ul style="list-style-type: none"> • Smoke free playground • Smoke free homes • Smoke free cars • Smoke free colleges 	<p>Support the implementation of the Integrated Mental Health Strategy for Gwent</p> <p>Implement the Community Recovery Wellbeing Plan including:</p> <ul style="list-style-type: none"> • Population health • Mental health promotion of those at risk • Mental health service users <p>Promote mental wellbeing and building resilience for everyone through programmes such as "SEAL" and integrating the "Five Ways to Wellbeing" into current policies, plans and programmes</p>	<p>Our Environment</p> <p>To become a member of the UK Healthy City Network</p> <p>Assess the need and access to play opportunities for children in Newport</p> <ul style="list-style-type: none"> • Develop and embed initiatives that increase activities in the outside environment <p>Develop active travel plans which encourage people to walk, cycle and use other modes of transport involving physical activity</p> <p>Review existing policies and environmental infrastructure to identify and incorporate appropriate physical environmental changes to improve population physical activity</p> <p>Plan effective physical activity opportunities in the new developments (including</p>

				road transport infrastructure, regeneration and new builds) through integrating open space assessments in planning, transport, leisure and regeneration policy
What will success look like?	<p>Reduction in the number of people that are overweight and obese</p> <p>Increase in physical activity levels</p> <p>Increase in healthy eating behaviours</p> <p>Reduction in the number of people with cardiovascular disease</p>	<p>Implementation of the "Smoke Free" Newport campaign</p> <p>Reduction of smoking levels</p> <p>Reduction of passive smoking levels</p> <p>Increase in the number of people engaging in smoking cessation services</p> <p>Reduction in the number of people with cardiovascular disease</p> <p>Reduction in cancer levels</p>	<p>Improved access to psychological therapies</p> <p>Improved levels of mental wellbeing</p> <p>Reduction of people being treated for a mental health illness</p>	<p>More children using appropriate play opportunities in the local community</p> <p>More people accessing and utilising outdoor green spaces</p> <p>More people using modes of transport that involve physical activity e.g. walking, cycling</p> <p>Changes made to physical environment which increase population physical activity</p> <p>New development in the city will be planned to incorporate effective physical activity opportunities</p>
We can measure success by	<p>% of adults (16+) reporting as obese</p> <p>% of adults (16+) reporting as overweight & obese</p> <p>% of children in reception class (age 4/5) who are overweight</p>	<p>% of adult smokers</p> <p>% who gave up smoking during pregnancy</p> <p>% of low birth weight babies</p>	<p>SF36 Mental Health Component Summary Score</p> <p>% of adults who are currently being treated for any mental illness</p>	<p>Accessible green space per 1000 population (ha)</p> <p>% of footpaths and other rights of way which are easy to access</p>

Who needs to be involved				
	<p>or obese (new for 2013)</p> <p>% of adults who report meeting the fruit & veg consumption guidelines</p> <p>% of adults who report meeting the physical activity guidelines</p>	<p>Aneurin Bevan Health Board, Newport City Council, Public Health Wales</p>	<p>Aneurin Bevan Health Board, Newport City Council, Public Health Wales, Newport Mind, Alzheimer's Society</p>	<p>Aneurin Bevan Health Board, Newport City Council, Public Health Wales, Natural Resources Wales, Registered Social Landlords (RSLs),</p>

Outcome Theme	People in Newport live in a safe and cohesive community		
Our needs	<p>Safe and Cohesive Communities Ensuring that residents, visitors and businesses feel safe in their local area and feel confident that any safety concerns are addressed. Promoting an inclusive community that focuses on matters relating to housing, learning, communication, equality and social inclusion, preventing violent extremism and crime and disorder.</p> <p>Safe and Inclusive Community The key issues have been identified as:</p> <ul style="list-style-type: none"> • Increasing public confidence in the police and local authority in how they manage crime and anti-social behaviour, particularly in the city centre • Minimising the number of young people entering the criminal justice system • Developing and supporting social and community cohesion and improving neighbourhood engagement, planning and integration of services to meet local needs • Continued focus on a multi-agency preventative approach for vulnerable children, young people and their families <p>Adults are Successful The key issues have been identified as:</p> <ul style="list-style-type: none"> • Continued provision of good quality, affordable housing and community regeneration, as well as support to people that are homeless or living in temporary accommodation • Housing and community regeneration are central to improving the lives of the people in Newport, particularly those from the most disadvantaged communities. <p>More detailed information on needs analysis and current initiatives is available in the UNA.</p>		
Statutory duties addressed	Crime and Disorder Act 1998 Crime and Disorder (Wales) Regulations 2007		
Our priorities	Cohesive Communities	Anti-Social Behaviour (ASB)	Youth Justice Property Crime (Acquisitive)

<p>To achieve this we will</p>	<p>Develop multi-agency processes to support vulnerable people and communities accessing public services by focusing on:</p> <ul style="list-style-type: none"> a) Hate crime b) Prevent c) Migration d) Gypsy and Travellers <p>Improve public confidence through:</p> <ul style="list-style-type: none"> a) Communication b) Neighbourhood working c) Community involvement d) Volunteering <p>Work with partners and stakeholders to improve opportunities for marginalised communities within the city</p>	<p>Ensure that there are a wide range of diversionary activities and inter-generational work in place, delivered in partnership with communities, to reduce the likelihood of anti-social behaviour</p> <p>Develop an integrated offender management approach to minimise impact of priority anti social offenders</p> <p>Continue to reduce incidents of deliberate fire setting across the city by:</p> <ul style="list-style-type: none"> a) reducing ASB around key seasonal dates such as Halloween and school holiday periods b) reducing incidents of ASB at identified hot spot wards 	<p>Implement the Youth Offending Strategy</p> <p>Implement MOSSS (Model of Secondary School Support) in partnership with schools and the wider community</p> <p>Implement Restorative Justice Practices training programme within the Youth Offending Service and its partner agencies that will see Newport become a fully restorative Youth Offending Service</p> <p>Promote positive images of young people and their involvement in their communities and the wider economy through the commissioning and deployment of youth support services</p> <p>Commission Narrowing the Gap – Children and Young People’s Skills Project and Confident and Nurturing Families through Families First to reduce risk in vulnerable families and communities</p> <p>Reduction in young people entering and remaining within the Criminal Justice System.</p> <p>Reduction in youth re-offending</p>	<p>Develop and implement a multi-agency crime reduction plan</p> <p>Include and empower communities to reduce crime and disorder through the development of neighbourhood and community watch schemes</p> <p>Prevent adult and youth reoffending through the provision of early intervention and reduction of re-offending through the integrated management of priority and prolific offenders</p> <p>Provide support to witnesses, victims and potential victims of acquisitive crime</p> <p>Provide support to offenders and their families to reduce re-offending</p>
<p>What will success look like?</p>	<p>Increase in public confidence on how the local authority and partner agencies respond to community cohesion issues and tensions</p>	<p>Less reports of ASB and disputes in communities</p> <p>Increase in public confidence in how the police and local</p>		<p>Less incidents of recorded crime</p> <p>Reduction in the overall reported incidents of</p>

	<p>Increase in community involvement through volunteering, neighbourhood working</p> <p>Increase in Hate Crime reporting and improved support to victims of Hate Crime</p> <p>Improved life chances of those from marginalised communities</p>	<p>authority deal with ASB</p>	<p>Reduction in the use of youth custody</p> <p>Effective public protection</p> <p>Effective safeguarding</p> <p>Access to devolved services for young people in the youth justice system</p> <p>Increase in public confidence in how the police, local authority and other relevant agencies deal with young people</p>	<p>acquisitive crime, with emphasis on domestic burglary, metal theft and shoplifting</p> <p>Increase in public confidence in how the police and local authority deal with crime and disorder</p> <p>Reduction in serious acquisitive crime</p> <p>Reduction in reported domestic burglary offences</p> <p>Reduction in reported offences of metal theft</p> <p>Reduction in reported offences of shoplifting</p> <p>Reduction in Theft from Vehicle</p>
<p>We can measure success by</p>	<p>Public confidence</p> <p>Number of people who feel safe in their local area</p> <p>Annual police reported hate crime per 1,000 population</p>	<p>Public confidence data</p> <p>ASB rate per 1,000 residents</p>	<p>Number of first time entrants to the youth justice system</p> <p>Rates of young people receiving first reprimand, warning or conviction</p>	<p>Annual serious acquisitive crime rate per 1,000 population</p> <p>Annual domestic burglary rate per 1,000 population</p>
<p>Who needs to be involved</p>	<p>Gwent Police, Newport City Council, Gwent Association of Voluntary Organisations (GAVO), Communities First, Registered Social Landlords</p>	<p>Newport City Council Regeneration and Regulation Service, Newport City Council Lifelong Learning and Leisure Service, Gwent Police, Fire</p>	<p>Newport City Council Children and Family Services, Youth Offending Service, Registered Social Landlords (RSLs),</p>	<p>Gwent Police, Newport Business Against Crime, Drug Interventions Programme (DIP), Newport City Council, Registered Social Landlords</p>

(RSLs), South East Wales Racial Equality Council (SEWREC), Coleg Gwent, Aneurin Bevan Health Board (ABHB), Gwent Education Multi-Ethnic Service (GEMS), University of Wales Newport (UWN)	Service, Probation, Registered Social Landlords (RSLs), ABHB		(RSLs), Kaleidoscope, Probation, Youth Offending Service, Victim Support
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Outcome Theme	Newport is a distinctive and vibrant city		
Our needs	<p>City Centre Ensuring that people have access to an attractive, safe, and diverse city centre that they can have a sense of pride in by:</p> <ul style="list-style-type: none"> • Improving the image and function of city centre • Offering a distinctive and vibrant city centre • Becoming an attractive place to live, work, and visit <p>Distinctive and Vibrant The key issues have been identified as:</p> <ul style="list-style-type: none"> • Improving the image of the city and the city centre, and to take forward Newport's status as a 'Smart and Connected' city • Driving forward the regeneration programme to establish Newport as an attractive shopping, leisure and tourist destination • Maintaining high quality leisure facilities and raising the profile of city events and attractions • Improvements to transport infrastructure and connectivity to encourage visitors and investment <p>More detailed information on needs analysis and current initiatives is available in the UNA.</p> <p>Not applicable</p>		
Statutory duties addressed	Not applicable		
Our priorities	Marketing and Communication	City Centre at Night	Business Investment
To achieve this we will	<p>Implement the joint City Council and Newport Unlimited Marketing Plan 'Standing Up For Newport', through:</p> <ol style="list-style-type: none"> City centre zones Smart and Connected city campaign brand Partnership and collaborative marketing Newport Market City centre events 	<p>Reduce the impact of alcohol aggravated harm by developing a strategic approach to the night time economy.</p> <p>Develop a city centre management plan to include location mapping, licensing, planning regulations and designations, transport, street maintenance and food hygiene.</p> <p>Look at bringing forward the co-location of key services alongside the Information Station in the city centre</p> <p>Develop multi agency working and co-</p>	<p>Offer a range of incentives to encourage more retailers and shoppers to the city centre</p> <p>Develop the city centre retail scheme</p> <p>Identify key buildings & opportunities for improving the fabric of existing city centre buildings</p> <p>Encourage good business occupiers by ensuring a range of accommodation is available</p> <p>Work together to deliver a workable redevelopment of the Cambrian Centre and</p>

		location of services within the city centre to oversee delivery of the City Centre Management Plan		its environment
What will success look like?	<p>Increase in city centre footfall</p> <p>A more competitive city</p> <p>More people consider Newport a good place to live, work and visit</p> <p>Increase in attendance at city centre events</p>	<p>Increase in the number and range of people visiting and using facilities in the city centre particularly in the early evening</p> <p>Increase in city centre footfall during the evening</p> <p>Increase in the range of services and activities on offer in the city centre</p>	<p>More businesses locating or relocating to the city centre</p> <p>Improved shopping experience, with a diverse mix of retail outlets, restaurants and businesses</p> <p>Cleaner and more pleasant city centre environment</p>	<p>Continue to develop and promote the 'Cultural Quarter' of the city centre</p> <p>Increase in the number of people visiting the city centre</p> <p>Improved shopping experience, with a diverse mix of retail outlets, restaurants and businesses</p> <p>Cleaner and more pleasant city centre environment</p>
We can measure success by	<p>City centre competitiveness</p> <p>City centre footfall</p> <p>VenueScore (Javelin Group) and various other milestone data (e.g. share of total retail spend, number of shoppers, etc)</p>	<p>Quarterly crime rate in Newport city centre</p> <p>Quarterly anti-social behaviour (ASB) rate in the city centre</p> <p>% of alcohol related crime and disorder in the city centre</p> <p>% people who feel safe in city centre during night time</p>	<p>Number of active businesses</p> <p>Number of business start ups</p>	<p>Number of properties refurbished</p> <p>Street Cleanliness</p>
Who needs to be involved	Newport City Council, Newport Unlimited	<p>Newport City Council Streetscene Service, Newport City Council Regeneration and Regulatory Services, Newport City Council Public Protection Service, Trading Standards, Licensing, Newport Business Against Crime, Newport Pub</p>	Newport City Council, Newport Unlimited	Newport City Council, Newport Unlimited

Watch

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<p>Outcome Theme</p>	<p>People in Newport live in a safe and inclusive community</p> <p>Alcohol and Substance Misuse Working together to tackle and reduce the harms associated with substance misuse by:</p> <ul style="list-style-type: none"> • Reducing the harm to individuals, their families and wider communities • Improving the availability and quality of education, prevention and treatment services and related support • Making better use of resources 			
<p>Our needs</p>	<p>Safe and Inclusive Community The key issues have been identified as:</p> <ul style="list-style-type: none"> • Reducing the impact of alcohol and substance misuse on individuals, families and communities <p>Healthy and Thriving The key issues have been identified as:</p> <ul style="list-style-type: none"> • Decreasing adults drinking over the recommended guidelines and binge drinking. • Decreasing alcohol attributable and alcohol specific hospital admissions • Decreasing alcohol related deaths 	<p>More detailed information on needs analysis and current initiatives is available in the UNA.</p>		
<p>Statutory duties addressed</p>	<p>Substance Misuse (Wales) Regulations 2007 Crime and Disorder Act 1998 Health, Social Care and Wellbeing Strategies (Wales) Regulations 2003</p>			
<p>Our priorities</p>	<p>Harm Prevention</p>	<p>Recovery (treatment and support services)</p>	<p>Supporting Families</p>	<p>Tackling Availability of Alcohol</p>
<p>To achieve this we will</p>	<p>Primary Prevention Deliver harm reduction training for all front line staff</p> <p>Develop and distribute a suite of harm reduction information and promotional material</p> <p>Continue the programme of awareness training about drugs and alcohol</p>	<p>Explore potential for developing a fully integrated drug and alcohol service for adults, children and young people</p> <p>Expand the provision of Alcohol treatment services</p> <p>Extend a user centred, outcome focused approach that gives the service user a more</p>	<p>Ensure there are inter-agency protocols in place</p> <p>Ensure there is good communication between adult and children's services assessment, care planning and service provision</p> <p>Ensure that families at risk are identified at an early stage</p>	<p>Improve enforcement activity in relation to underage alcohol and solvent sales</p> <p>Ensure individuals are encouraged to drink responsibly and licensees do not serve irresponsible drinkers</p> <p>Make links with city centre</p>

	<p>Establish links with national and local health promotion programmes</p> <p>Harm Prevention</p> <p>Continue the Needle Exchange provision and look to expand provision across more pharmacies</p> <p>Maintain levels of testing and treatment for blood borne viruses (BBV) (including HAV and HBV) for service users accessing treatment</p> <p>Continue the safe provision of Naloxone distribution and training across the 'at risk' population</p> <p>Ensure the Wales wide 'point of contact' service has an accurate information base of the Newport Drug and Alcohol Service (N-DAS) and support services</p> <p>Continue enforcement activity in relation to alcohol, including underage sales and licensing</p>	<p>active role in their treatment and more control over the development of care plans</p> <p>Maintain and develop the concept of a case worker or key contact for each service user</p> <p>Establish a recovery community or network of ex-service users to support clients in treatment</p> <p>Increase opportunities for practical training, volunteering placements, activities and employment to service users</p> <p>Expand the programme of 'employment skills'</p> <p>Provide safe and stable housing for service users in recovery and service users in crisis</p>	<p>Provide a package of support and training to family members to help them understand and address the implications of substance misuse</p> <p>Ensure staff are aware of the procedures for making referrals to social services or the police where a child is considered to be at risk</p> <p>Increase the links between substance misuse services and domestic abuse services</p> <p>Ensure substance misuse providers are fully integrated into safeguarding processes and procedures</p>	<p>development projects</p> <p>Prevent nuisance drinking in the city centre</p> <p>Engage current and ex-service users to gather intelligence about supply</p>
<p>What will success look like?</p>	<p>Increased calls and interactions with N-DAS in the short term as awareness of the service is increased</p> <p>Increased take up of the Needle Exchange provision and greater intelligence about the client group</p> <p>Increased numbers of workers who</p>	<p>Increased number of service users reporting improved outcomes</p> <p>Increase in the number of service users in stable housing</p> <p>Increase in the number of service users in sustainable employment</p>	<p>Increased number of families reporting improved family resilience</p> <p>Reduction in the numbers of children in care where substance misuse is a factor</p>	<p>Reduction of substance misuse related anti-social behaviour incidents reported (in Newport and in the city centre)</p> <p>Reduced 'test on arrest' figures</p> <p>Improved identification of</p>

	<p>can identify and signpost advice and support</p> <p>Reduction in risk factors amongst those in treatment</p>	<p>Increase in completion rates for treatment</p> <p>Decrease in the numbers of those who DNA (do not attend)</p> <p>Decrease in the numbers of those who fail to complete treatment</p> <p>Increase in the numbers of individuals accessing treatment services</p> <p>Police recorded crime where alcohol has been recorded as a contributory factor</p>		<p>substance misuse on arrest</p>
<p>We can measure success by</p>	<p>% of adults who drink above the recommended guidelines</p> <p>% of adults who binge drink</p> <p>Alcohol specific & attributable conditions – hospital admission rates</p>		<p>Number of children in care where substance misuse is a factor</p> <p>Number of Children in Need where parental substance misuse is a factor</p>	<p>Quarterly anti-social behaviour (ASB) rate in the city centre</p> <p>% of alcohol related crime and disorder in the city centre</p>
<p>Who needs to be involved</p>	<p>Aneurin Bevan Health Board, Public Health Wales, Newport City Council Social Services, Education Service, Gwent Police</p>	<p>Newport City Council Social Services, Aneurin Bevan Health Board, Gwent Police, Public Health Wales</p>	<p>Newport City Council Social Services, Aneurin Bevan Health Board, Gwent Police, Public Health Wales</p>	<p>Newport City Council Social Services, Public Protection, Gwent Police, Public Health Wales, Aneurin Bevan Health Board</p>

13. Programmes

The following programmes contribute to the delivery of the LSBs key priorities:

Newport Communities First – this programme aims to improve the living conditions and prospects for people in the most disadvantaged communities across the city. The programme focuses on locally funded activities that contribute towards three strategic outcomes:

- Prosperous Communities
- Learning Communities
- Healthier Communities

Health Challenge Newport - a partnership programme between the City Council and Aneurin Bevan Health Board working closely with Communities First and Public Health Wales. The aim is to raise awareness of healthy living behaviours to people living and working in Newport, and to inform them to make healthy choices and signpost them to services available to assist them in preventing ill health and maintain independence. This is undertaken through three approaches

- raising awareness across the city
- supporting individuals through health improvement projects
- working closely with Communities First to ensure information and services are accessible to people in areas of need

Newport Integrated Family Support Service (IFSS) – the IFSS helps some of the most vulnerable children and families. The service focuses on families where parents have substance misuse problems, and concerns about child welfare. The service aims to support families with complex problems by providing targeted support and helping connect children and adult services, focusing on the family as a unit. IFSS is part of broader support for disadvantaged families with complex needs, complementary to the **Flying Start** and **Families First** programmes.

Supporting People - the Supporting People programme is primarily concerned with the funding and planning of housing-related support services for vulnerable people. The main aim of the programme is to ensure that people who are eligible have the necessary support services to enable them to live independently in their communities. A wide range of people from different groups can be supported under the programme, including sheltered housing tenants, people with mental health and/or substance misuse problems in supported housing projects and people with learning difficulties in long-term supported living schemes.

Domestic Abuse – the aim of the programme is to ensure that women, men and children whose lives are or may be affected by domestic abuse and violence are able to access appropriate services adequate to their need, and that perpetrators are held accountable for their actions and behaviour.

14. Engagement

The LSB, as part of its Engagement Strategy, aims to provide a coordinated and better planned approach to ensuring effective community engagement, and will adopt the National Principles for Public Engagement in Wales. In addition, the National Participation Standards will be developed across all age ranges as a monitoring and evaluation self-assessment tool across the partnership enabling partners to ensure that all participation and public engagement activities are effective and ethical.

People benefit most from public services that have been developed with a clear understanding of their needs. In order that services, procedures and policies are fit for purpose and meet the needs of the community, it is necessary to consult with and engage local residents throughout decision making and planning processes. Community engagement encourages and enables

residents to participate in their community, involves marginalised and 'hard to reach' communities and helps inform the development of services while realising community need and meeting demand. This is important because involving the local community ensures services are right and that local priorities are considered.

We currently undertake a range of engagement and participation activities including the Involve Newport Citizens Panel, Residents Survey, national and local arrangements for children and young people, Newport Youth Council and adult special interest groups. The information gathered from these activities, along with collection and analysis of a range of additional customer data and the expertise of the third sector, enables residents and communities to be involved in decision making, shaping the development and delivery of service provision, and improving local services.

In addition, the Neighbourhood Working approach will improve links between partners, citizens and other agencies, and will involve local people in decisions specific to the area in which they live. By ensuring citizens and communities have the tools to become active citizens, they will be at the forefront in the design and delivery of local public services and improving their communities.

15. Assurance

LSB Governance

Governance of the LSB partnership is detailed in the Terms of Reference for the following groups:

- Local Service Board
- Local Service Board Executive Group
- Strategic Priority Lead Group
- Performance and Commissioning Group

Performance Management

One Newport's Performance Management Framework sets out the LSB's vision for how it plans to manage performance and delivery of the Single Integrated Plan. A summary of the PMF is available [here](#).

The LSB's Performance and Commissioning Group is responsible for:

- a) Ensuring that there is an effective performance management framework in place to support the work of the Local Service Board (LSB)
- b) Supporting an environment of joint commissioning of services based on best value approaches to meeting the needs of Newport

Scrutiny Arrangements

The Local Government (Wales) Measure 2011 places a new requirement on local authority scrutiny committees to scrutinise designated public service providers (known as 'designated persons' in the Measure) in their local area. Public service scrutiny is aimed at clarifying different organisations' contributions to delivery and promoting shared responsibility for shared outcomes.

As part of the LSB's annual performance cycle, reports against the four strands of Healthy Newport, Safer Newport, Young Newport and Prosperous Newport will be considered as part of the Council's Scrutiny work programme. The Council has three Scrutiny Committees:

- Scrutiny Committee Learning, Caring and Leisure
- Scrutiny Committee StreetScene, Regeneration and Safety
- Scrutiny Committee Community Planning and Development

16. Legislation

This Single Plan meets the statutory duties in relation to the development of plans and strategies required under the following legislation:

- Local Government (Wales) Measure 2009 (Part 2: Ss37-46) – Community Strategies
- Children Act 2004 (Part 3: S26) – Children and Young People's Plan (which includes plans required in accordance with section 2 of the Children and Families (Wales) Measure 2010 and Part 1 of the Mental Health (Wales) Measure 2010)
- National Health Service (Wales) Act 2006 (Part 3: S40) – Health, Social Care and Wellbeing Strategies
- Crime and Disorder Act 1998 (Part 1:S6) – strategies for the reduction of crime and disorder, strategies for combating the misuse of drugs, alcohol and other substances, and strategies for the reduction of re-offending

The Welsh Government's statutory guidance 'Shared Purpose – Shared Delivery' states there is only one statutory partnership, identified as a 'strategy group' in regulations made under the Crime and Disorder Act 1998. This role has previously been fulfilled by the Community Safety Partnership but will now be fulfilled by members of One Newport LSB.

17. Equalities and the Welsh Language

The LSB partnership is aware of their responsibility to promote equal opportunities and the Welsh language and will act in accordance with the Equality Act 2010, the Welsh Language Act 1993 and the Welsh Language (Wales) Measure 2011.

Prior to the development of the Single Plan an Equality Impact Assessment (EIA) was undertaken and additional EIAs will also be completed as necessary for any individual projects.

In developing and implementing the Single Plan, LSB partners will work together to provide inclusive non-discriminatory services that can be targeted in communities where there is most need.

18. Sustainable Development

Sustainable development is the overarching policy framework which integrates social, economic and environment actions to achieve a common vision. It involves ensuring that all actions are economically, socially and environmentally sustainable and so contributes to overall community wellbeing now and in the future. It is about:

- conserving our unique natural environment
- reducing, reusing, and recycling the waste we produce
- fairness and justice for everybody who lives in the city or comes here to visit
- smarter public services that make the best use of public money
- a happier, healthier Newport now, and for the generations to come

The [Sustainable Development Bill](#) will place a duty on organisations delivering public services to have sustainable development as their central organising principle. Sustainability lies at the heart of the Welsh Government's agenda for Wales; it also lies at the heart of this legislative programme. Taken as a whole, it will promote the economic, social and environmental wellbeing and enhance people's quality of life in Wales. It is about defining the long term development path for our nation. It means healthy, productive people; vibrant, inclusive communities; a diverse and resilient environment and an advanced and innovative economy.

The LSB is committed to continuing carbon reduction, making better use of resources, improving the natural environment, improving the health of the population and encouraging people to make their local community more sustainable.

ANNEX:

Enabling strategies

- [Information strategy](#) – sets out how partners will make best use of resources in order to provide the LSB with the right information at the right time to inform its work. Significant resource needs to be committed to analysing evidence, both broadly across the whole range of outcomes, and in depth in respect of the highest priorities.
- [Engagement strategy](#) – sets out how partners intend to engage with people and communities, with a very clear focus on how this will best support service improvement and improve the experience of people using the services.

Other plans and areas to consider

There are a number of other plans and strategies that support this SIP, including:

- [Newport Safeguarding Children Board](#)
- [Local Development Plan](#)
- Police and Crime Plan (5 year) – Police & Crime Commissioner

Links to other key plans and strategies

- [Newport Economic Development Strategy 2011-2015](#)
- [Newport Unlimited 2020 Masterplan](#)
- Communities First Strategy
- [Local Housing Strategy 2010](#)
- [Public Health Wales Strategic Framework 2011-2015](#)
- [Aneurin Bevan Health Board Five Year Framework 2010-2015](#)
- Local Biodiversity Action Plan

This is not an exhaustive list of all other key plans and strategies.

For further information about One Newport LSB, the Single Integrated Plan or partnership arrangements in the city please visit our website at <http://onewportlsb.newport.gov.uk>

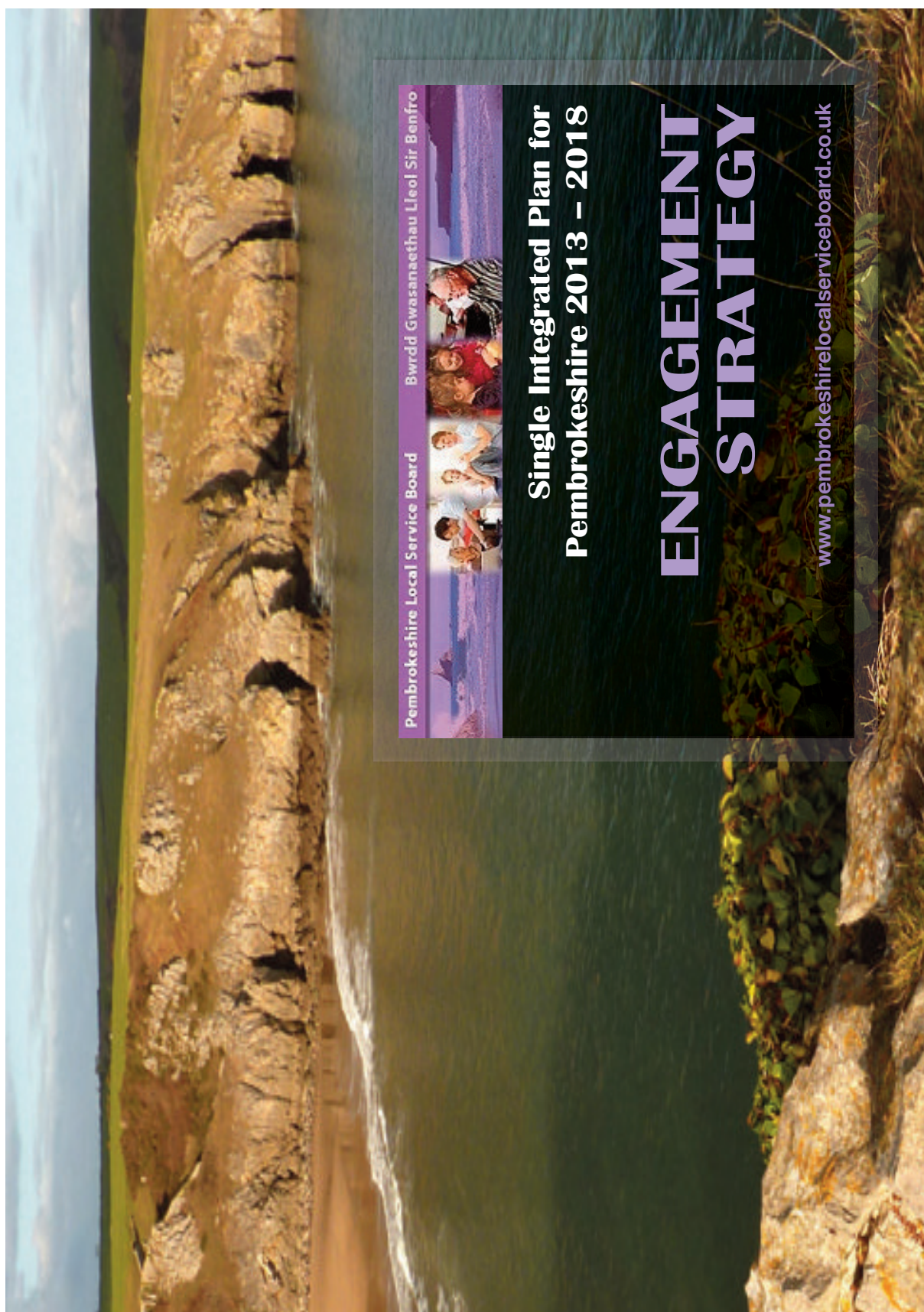
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Appendix B	Annual Action Plan

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For a copy of this document in large print, Braille, audio tape or an alternative language please contact Jackie Meskimmon on (01437) 776613.

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Background

LSBs are not statutory bodies. They are an expression of engaged public service leadership locally, whose role it is to lead change through:

- Agreeing strategic priorities for multi-agency working to support the agenda set out in Programme for Government and respond to clearly evidence local needs
- Achieve improvements by ensuring appropriate systems are in place and that managers and front line staff across agencies are working together effectively, and that agreed priorities are reflected in individual organisations' corporate plans
- Ensure partnership and delivery structures are fit for purpose and accountable
- Challenge where there is underperformance or coasting and implement changes that reflect evidence based best practice to improve outcomes for the local population
- Review and report periodically on progress – to the public, Welsh Government, democratically elected members, PLSB and other organisations

The Single Integrated Plan

In June 2012, Welsh Government issued guidance that details the requirement for Local Service Boards to produce Single Integrated Plans for their areas by April 2013.

The Single Integrated Plan will replace the following existing plans and strategies:

- The Community Strategy
- The Children and Young People's Plan
- The Health, Social Care and Well-being Strategy
- The Community Safety Strategy

Single Integrated Plans are underpinned by two 'enabling strategies': an information strategy and an engagement strategy.



Introduction

This document is aimed at members of the public, as well as representatives of organisations with an interest in Pembrokeshire.

It sets out the consultation and engagement work that Pembrokeshire Local Service Board (PLSB) partners have undertaken in the development of the Single Integrated Plan for Pembrokeshire 2013 – 2018. It also outlines the objectives the PLSB partners will aim to meet through the delivery of engagement activities over the life of the plan. A detailed Annual Action Plan is attached as Appendix B. The Action Plan will be reviewed and refreshed annually by the Engagement Strategy Development Group, which is made up of representatives from the main partner organisations.

The PLSB's engagement with children and young people is also covered by this document.

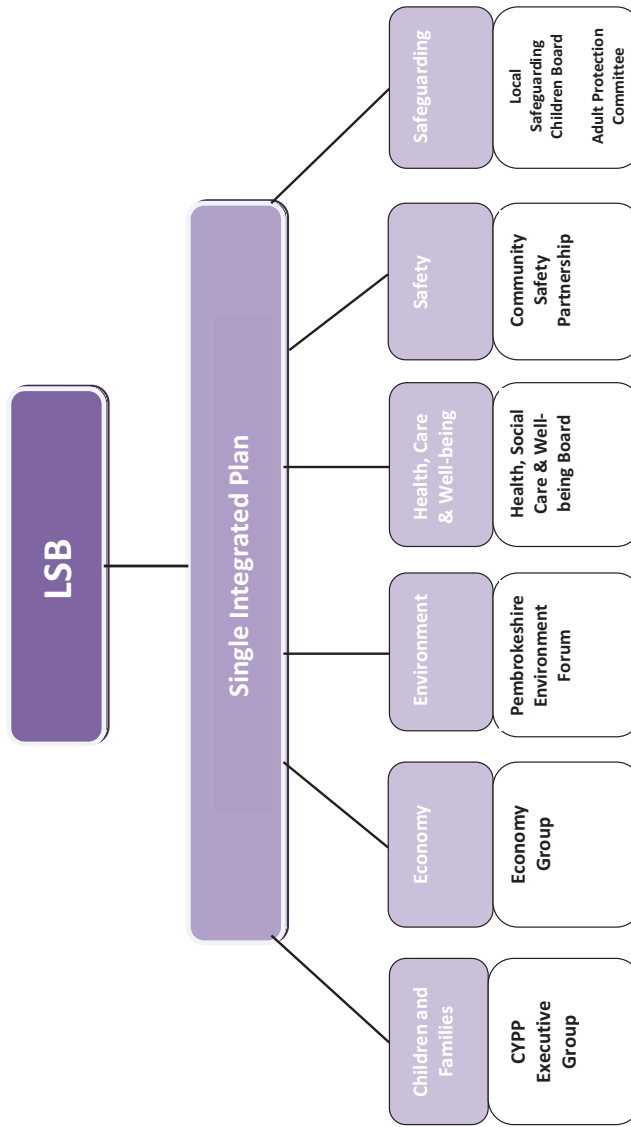
The Strategy will be taken forward by the PLSB and its associated partnerships (see Partnership Arrangements in Pembrokeshire) with support from the Partnership & Scrutiny Support Team (which is based at Pembrokeshire County Council) and Communications Teams within the main partner organisations.



Partnership Arrangements in Pembrokeshire

The Pembrokeshire Local Service Board (PLSB) is made up of Pembrokeshire County Council, Dyfed Powys Police, Hywel Dda Health Board, Pembrokeshire Association of Voluntary Services (PAVS) and Welsh Government.

However, it is underpinned by a wider partnership comprising public, community and voluntary sector organisations:



Our Commitment to Engagement

Pembrokeshire Local Service Board partners are committed to putting engagement at the core of the design and delivery of the Single Integrated Plan in order to:

- Provide evidence on which to base decisions
- Ensure resources are targeted more effectively
- Help give a voice to a wide section of society
- Increase the opportunity for local people to develop their own responses to the issues they face, encouraging co-production of services where feasible.

Our Objectives

Pembrokeshire Local Service Board partners will work together to:

- 1). Raise awareness of the Local Service Board and the Single Integrated Plan 2013 - 2018
- 2). Make best use of existing joint engagement mechanisms
- 3). Develop new joint engagement mechanisms where appropriate, to help overcome barriers to participation
- 4). Maintain records of engagement activities undertaken, in relation to the development and delivery of the Single Integrated Plan, and ensure that information from engagement activities is fed back into the planning cycle
- 5). Feedback the outcomes of engagement activities to those who have taken part and, where appropriate, to a wider audience
- 6). Recognise and share best practice

The Focus of our Engagement Activities

The focus of engagement activities will be in relation to the following priorities, which have been identified through a comprehensive needs assessment and consultation process.

Children, young people and families in Pembrokehire have the opportunity to fulfil their learning potential and to live healthy and happy lives

- Pembrokehire's children, young people and families have the opportunity to achieve their full potential
- Pembrokehire's children, young people families' safety and well-being is protected and promoted
- Pembrokehire's children, young peoples and families' rights are protected and supported
- Pembrokehire's children, young people and families' are not disadvantaged by poverty

Pembrokehire has a competitive, productive and sustainable economy

- People with the learning, skills and confidence to improve their employment prospects
- Successful businesses which grow, prosper and employ
- Infrastructure and investment to support a dynamic and prosperous economy

People in Pembrokehire enjoy an attractive, sustainable and diverse environment

- Pembrokehire will address the challenge of climate change
- The quality of Pembrokehire's environment will be protected and improved
- Pembrokehire will have good communication links to and within the County

People in Pembrokehire are healthier

- Help and support people to take responsibility to improve their health and well-being throughout their lives
- Reduce inequities through cross-sectoral working
- Provide the people of Pembrokehire with appropriate and sustainable health and social care services

Children and adults are safeguarded

- Pembrokehire will ensure the safeguarding of children, young people and vulnerable adults

Communities in Pembrokehire feel safe

- Provide an effective and co-ordinated response to anti-social behaviour, focusing on prevention and early intervention
- Reduce the harm caused by substance misuse
- Protect every individual's 'right to be safe'
- Reduce the impact of reoffending within our communities
- Prevent violent extremism

Who We Will Engage With

Below are examples of groups at which engagement activities will be targeted.

The public

Members of the general public, in their role as residents and business people.

Other individuals and groups

Customers – people in their role as recipients of our services

This group may include current users of a service, previous users of a service and potential users of a service

Beneficiaries – people who benefit from the receipt of a service (e.g. pupils as beneficiaries of education)

Non-users – people who do not use a particular service

This group may include those who have actively chosen not to use a service or those who are denied access to it

Stakeholders – people who will be affected by a particular issue and can influence it, although they are not directly involved in working on it

While, in some engagement activities, members of the public will be ‘stakeholders’, it usually means someone who is affected by an issue in a more formal sense, through their professional role or through their involvement in a group or organisation.

Examples of stakeholders include:

- Professionals outside the organisation
- Community and voluntary organisations and the people who work and volunteer for them
- Campaign groups and campaigners
- Regulatory or enforcement agencies
- Members of industry or the business community
- Elected officials
- Community representatives

Employees – employees in PLSB member organisations will have an important role to play in the design and delivery of the plan

Partners – people in their role as representatives of partner organisations, including other public sector bodies, private sector businesses and community/voluntary organisations

Providers – people in their role as representatives of organisations that provide services to customers on behalf of LSB members

Children & Young People – children and young people aged 0 – 25 years

Hard to reach/seldom heard - These are people whose voices are sometimes marginalised in more routine consultation activities

Every effort should be made to ensure they are given the opportunity to participate fully in any public engagement activity likely to affect them. They include individuals who share one or more of the following protected characteristics:

- Age (including children and young people and the elderly)
- Sex
- Gender reassignment
- Sexual orientation
- Marriage and civil partnership
- Pregnancy and maternity
- Disability
- Race
- Religion or belief

In addition to the main partner organisations the PLSB is underpinned by a wider partnership of public, community and voluntary sector organisations. These wider partner stakeholder organisations will be a strong focus of engagement activities.



Accessibility, Welsh Language, Guidance and Best Practice

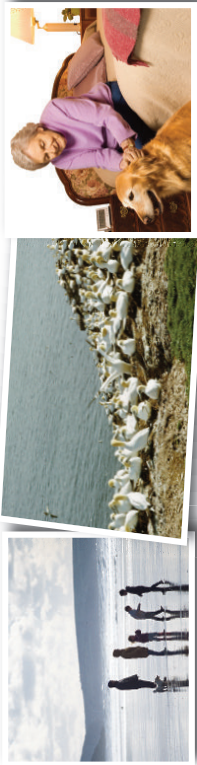
Those undertaking engagement in relation to Single Integrated Plan priorities should ensure that engagement activities are undertaken in line with guidance issued by their organisations in order to that the following requirements are met:

- Accessibility
- Welsh Language
- Ethics
- Data Protection

Participation Cymru’s National Principles for Public Engagement in Wales
<http://www.participationcymru.org.uk/national-principles-for-public-engagement-in-wales>

National Co-ordinating Centre for Public Engagement (Higher Education)
<http://www.participationcymru.org.uk/national-principles-for-public-engagement-in-wales>

Involve (National Consumer Council)
<http://www.involve.org.uk/deliberative-public-engagement-nine-principles/>



Evidence of Activities Undertaken in Preparation of Single Integrated Plan 2013 - 2018

Partners can already demonstrate that they are working well together to deliver against these objectives, through activities undertaken in the preparation of the Single Integrated Plan 2013 – 2018.

Objective 1 – Raise Awareness		
Action	By Who	By When
Develop LSB Branding	Partnership and Scrutiny Support, with support from PCC Marketing	Complete
Launch of Consultation – 28/11/12	Partnership and Scrutiny Support, with support from PCC Marketing	Complete
Develop exhibition material	Partnership and Scrutiny Support, with support from PCC Marketing	Complete
Press release Public Services Day 21/01/13	Partnership and Scrutiny Support, with support from PCC Press Team	Complete

Objective 2 – Make best use of existing joint engagement mechanisms		
Action	By Who	By When
Development of Consultation Plan for the Single Integrated Plan	Partnership & Scrutiny Support Team, Engagement Strategy Development Group (PCC, Hywel Dda, CSP and PAVS)	Complete
Consultation and engagement activity undertaken in relation to existing partnership plans: Community Plan 2010 - 2015; Children & Young People's Plan 2011 - 2014; Health, Social Care & Well-being Strategy 2011 – 2014 and Community Safety Strategy 2011 – 2014	Relevant partnerships	Complete
Residents Opinion Survey May 2012 to inform development of the Plan	Citizens Panel	Complete

Objective 2 – Make best use of existing joint engagement mechanisms (continued)		
Action	By Who	By When
Annual Community Safety Consultation Event (Oct 2012)	Community Safety Partnership	Complete
Early stage session for all Overview & Scrutiny Committee Members (02/11/12).	Partnership & Scrutiny Support Team	Complete
Draft plan included as agenda item for individual Scrutiny Committees in Nov.	Partnership & Scrutiny Support Team	Complete
Feedback session with Pembrokeshire Youth Assembly	Pembrokeshire Youth (Gennex)	Complete
Consultation documents on www.pembrokeshire.gov.uk/haveyoursay	Partner Communications Teams	Complete
www.pembrokeshirelocalservice.board.co.uk (28/11/12 - 15/02/13) and other partner websites		
Easy read consultation documents for children and young people on www.pembrokeshireyouthzone.co.uk (28/11/12 – 15/02/13)	PCC Marketing	Complete
Promotion of consultation on PCC social media sites	PCC Marketing	Complete

Objective 3 – Develop new joint engagement mechanisms where appropriate to help overcome barriers to participation		
Action	By Who	By When
Establish www.pembrokeshirelocalserviceboard.co.uk to replace existing partnership websites	PCC Marketing	Complete
Consultation with partner organisation on Economy and Environment priorities, with a view to establishing new sub-partnerships	Partnership & Scrutiny Support Team	Complete
Public Services Day - 18/01/13 for representatives of community and voluntary sector organisations and Council members	Partnership and Scrutiny Support Team, Engagement Strategy Development Group	Complete
Pembrokeshire Association of Voluntary Services (PAVS) feedback day (Feb 2013)	PAVS and Partnership and Scrutiny Support Manager	Complete

Objective 4 – Maintain records of engagement activities undertaken and ensure that information is fed back into the planning cycle		
Action	By Who	By When
Consultation comments passed to appropriate associated partnerships for consideration, record of partnership responses made and compiled into Consultation Report	Associated partnership members with support from Partnership & Scrutiny Support Team and Engagement Strategy Development Group	Complete

Objective 5 – Feedback the outcomes of engagement activities to those who have taken part		
Action	By Who	By When
Publication of Consultation Report on www.pembrokeshire.gov.uk/haveyoursay and other partner websites	Partner Communications Teams	May 2013
Distribution of Consultation Report to all those who took part in the consultation, and other interested parties	PCC Marketing + All	May 2013

Footnote

Pembrokeshire Citizens Panel

The Pembrokeshire Citizens Panel was established in 2005 and is a joint initiative between Dyfed Powys Police, Pembrokeshire County Council, Hywel Dda Health Board and Pembrokeshire Coast National Park Authority. The Panel is a representative group of approx 1,000 people living in the county who have agreed to offer their views and opinions on services delivered by the partners.

The Panel is created to give a broad representative balance of the County in areas such as age, gender, language and geographical area. Membership is refreshed each year to avoid the panel becoming unrepresentative over time.

In Spring 2012, Local Service Board partners worked together to develop a Residents Opinion Survey for the Pembrokeshire Citizens Panel, the results of which were used to inform the development of the Single Integrated Plan.

Appendix A

Pembrokeshire Local Service Board branding



A branding strip has been developed for the Pembrokeshire Local Service Board. The purpose of this is to allow member, and other, organisations to promote the role projects and actions they are involved in have in helping to deliver the Single Integrated Plan.

Helping to identify projects and actions which are being undertaken under the Pembrokeshire Local Service Board umbrella will be one of the main ways in which we will communicate that local public sector organisations are committed to working together to improve outcomes for local people.

LSB member organisations, and other organisations, involved in delivering projects and actions as part of the Single Integrated Plan are encouraged to use the PLSB branding wherever appropriate.

PLSB branding includes the branding strip above and/or one of the following acknowledgements:

- A Pembrokeshire Local Service Board Project
- Supported by the Pembrokeshire Local Service Board
- In partnership with Pembrokeshire Local Service Board

Using the PLSB branding will communicate the partnership message more quickly and effectively than could be achieved by member organisations working in isolation under their own, individual identities. Organisations should, however, continue to use their own corporate identities alongside should they wish to do so.

Further information on use of PLSB branding can be obtained from Sarah Worby, Marketing Officer, Pembrokeshire County Council on 01437 775263 sarah.worby@pembrokeshire.gov.uk



Appendix B

Action Plan 2013 – 2014

The Action Plan will be taken forward by the PLSB and its associated partnerships (see Partnership Arrangements in Pembrokeshire) with support from the Partnership & Scrutiny Support Team (which is based at Pembrokeshire County Council) and Communications Teams from main partner organisations.

The Action Plan will be reviewed and refreshed annually by the Engagement Strategy Development Group, which is made up of representatives from the main partner organisations.

Objective 1 - Raise Awareness		
Action	By Who	By When
Prepare final Single Integrated Plan	Partnership and Scrutiny Support Team with graphic design support by PCC Marketing	April 2013
Official Launch Single Integrated Plan - 14/05/13	LSB Partners, support from PCC Press	May 2013
Establish baseline, Citizens Panel June 2013	Citizens Panel	Results for July 2013
Promote use of LSB branding and acknowledgement of LSB support for actions and projects - Raise awareness with key officers in partner organisations	Partnership and Scrutiny Support Team, Partner Communications Teams	March 2014
Use of local media	Partner Communications Teams	Ongoing

Objective 2 - Make best use of existing joint engagement mechanisms		
Action	By Who	By When
Publication of the Single Integrated Plan on www.pembrokeshirelocalserviceboard.co.uk and partner websites	Partner Communications Teams, with support from PCC Marketing	May 2013
Further develop www.pembrokeshireyouthzone.co.uk as the main website for public service and third sector organisations to engage with children & young people in Pembro	All, with support from PCC Marketing	Ongoing
Promote activities and encourage feedback on PLSB member social media www.twitter.com/pembrokeshire www.twitter.com/hywelddahb www.twitter.com/DyfedPowys www.facebook.com/pembrokeshirecountycouncil www.facebook.com/pembryouthzone and other Council social media sites for children and young people www.facebook.com/hywelddahealthboard http://www.facebook.com/dafyddp www.youtube.com/pembscouncil www.youtube.com/hywelddahealthboard http://www.youtube.com/user/VicIndiaCharlie	Partner Communications Teams	Ongoing
Promote use of the Pembrokeshire Citizens Panel as a mechanism for consultation and engagement	Partnership & Scrutiny Support Team	Ongoing
Promote use of 'Bringing views to the attention of an Overview and Scrutiny Committee', as a mechanism for engagement http://www.pembrokeshire.gov.uk/content.asp?nav=101,2159&parent_directory_id=646&id=27380&template=20186	Partnership & Scrutiny Support Team	Ongoing
Promote use of existing forums as a mechanism for consultation and engagement. These include: Youth Forums and Assembly Talking Health/Siarad Iechyd Housing Forum Third sector forums co-ordinated by PAVS	All	Ongoing
Promote the use of existing partner publications. These include: Siarad Iechyd Newsletter Community Safety Partnership Annual Consultation Day – autumn 2013	PAVS Newsletter Tenants News etc	

Objective 3 - Develop new joint engagement mechanisms where appropriate to help overcome barriers to participation		
Action	By Who	By When
Add 'comments' link to PLSB web pages to enable people to contribute directly	PCC Marketing	June 2013
Encourage partners to link to www.pembrokershirelocalserviceboard.co.uk	Partner Communications Team	June 2013
Continue to develop www.pembrokershirelocalserviceboard.co.uk to reflect full range of PLSB activities	All partners encouraged to contribute. Partnership and Scrutiny Support Team to co-ordinate content, PCC Marketing to support	Ongoing
Develop PLSB newsletter	All partners encouraged to contribute. Partnership and Scrutiny Support Team to co-ordinate content, PCC Marketing to support	Ongoing
Public Services Day 2014 for representatives of community and voluntary sector organisations and Council members	Partnership and Scrutiny Support Team, Engagement Strategy Development Group	March 2014
Stronger Communities: Better Services Portfolio Project	Co-ordinated by PAVS	April 2018

Objective 4 – Maintain records of engagement activities undertaken and ensure that information is fed back into the planning cycle		
Action	By Who	By When
Maintain records of consultation and engagement activities undertaken and ensure that information is fed back into the planning cycle	Lead Officers in partner organisations with responsibility for delivering actions as part of the Single Integrated Plan, Partnership and Scrutiny Support Team	Ongoing

Objective 5 – Feedback the outcomes of engagement activities to those who have taken part		
Action	By Who	By When
Feedback the outcomes of consultation and engagement activities to those who have taken part	Lead Officers in partner organisations with responsibility for delivering actions as part of the Single Integrated Plan, Partnership and Scrutiny Support Team	

Objective 6 - Recognise and share best practice		
Action	By Who	By When
Inform Partnership & Scrutiny Support Officers of best practice for showcasing at Public Services in Pembrokeshire Day	Lead Officers in partner organisations with responsibility for delivering actions as part of the Single Integrated Plan, Partnership and Scrutiny Support Team	Ongoing

Footnote

Stronger Communities: Better Services Portfolio Project

PAVS has secured funding from the Big Lottery to support the Strong Communities: Better Services Portfolio Project.

Officers in lead organisations may find it useful to link with opportunities provided as part of this project in order to help deliver some of the engagement aspects of their action plans. In Pembrokeshire the portfolio is made up of projects that:

- Work with specific service users through communities of interest, identified through consultation processes as being a priority for service commissioners and where citizen voice needs to be strengthened
- Work in communities of place to develop sustainable and co-productive approaches to community-based service development and provision
- Offer innovative and creative methods of engagement that can be used with different groups of service users as a resource for groups leading on portfolio projects

Further information is available from Michelle Copeman, Pembrokeshire Association of Voluntary Services, on 01437 769422
michelle.copeman@pavs.org.uk

Cardiff What Matters

Annual Review
2012 / 2013



Introduction

Organisations in Cardiff have worked hard to successfully transform partnership working in the city. Our intention has been to develop genuinely integrated and responsive services, capable of meeting diverse and complex challenges. We have sought to realise this ambition through a process of partnership rationalisation and realignment, which commenced with the development of our single integrated plan; *'What Matters: The 10 Year Strategy for Cardiff'*, which was formally agreed by each partner organisation in June 2011.

Since then we have made impressive strides forward, establishing an integrated partnership model which replaces all previous statutory partnerships and is overseen by a single Cardiff Partnership Board (CPB), our Local Service Board. In this way we have not only been successful in reducing the number of partnerships from four to one and realised significant financial savings, but we have synthesised our activity into a coherent framework, supported by robust performance monitoring.

The model, overseen by the Cardiff Partnership Board (CPB), assumes the duties of each of the previous partnership boards. As such, the **CPB provides high level management** of the partnership agenda to ensure effective delivery of key areas of work and resolve operational issues which have previously proved intractable.

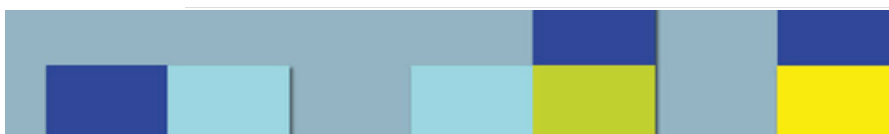
Strategic leadership is provided by the 'Cardiff Leadership Group' which

is comprised of the leader of the council, cabinet members with responsibility for children and young people; health, social care and well being and community safety as well as other public, private and third sector bodies. They group oversees all partnership activity and directs the strategy and review process, providing vision and leadership.

Our new approach also builds on our successful neighbourhood management model, demonstrating our commitment to embedding collaborative working from the strategic to the operational, whilst responding to local need. A case study report explaining how this work was developed can be viewed [here](#).

Having made this progress over the course of the last 2 years now is the time to reflect on the maturing partnership structure. The purpose of this second annual review is to explore the progress we have made so far towards achieving the outcomes we collectively set for the city in 2011. Having adopted the Results Based Accountability approach, we have built in an ethos of self-evaluation and continual improvement. Our reporting framework has also matured, bringing with it a requirement to modify the annual review process to demonstrate the Partnership's progress in a more coherent manner.

Furthermore, whilst we have successfully redefined strategic partnership working, ensuring a focus on the most prominent challenges we face, there is a wealth of collaborative working that takes place on a daily basis, with partners working together



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as a matter of course to deliver necessary service to citizens and improvements to the city. As a result, this annual review makes reference to many examples of the excellent ongoing work which is essential to effective operational delivery.

We are required to review our progress each year and, as outlined in the new Welsh Government Guidance, 'Shared Purpose – Shared Delivery', make explicit links between service improvement and well-being and community planning. Therefore, our review demonstrates how we are continuously advancing and developing our work to improve quality of life for people in Cardiff.

Delivering What Matters

Having aligned our intentions and aspirations, it seemed clear that the next phase of development was the alignment of structures and resources. As a result, partners developed a new and innovative partnership model, bringing the breadth of activity into a single coherent framework.

The new partnership model delivers through two mechanisms; **7 city-wide programmes**, covering the key challenges affecting Cardiff as a whole and the **neighbourhood management** programme, targeting activity towards local need.

Neighbourhood Management is an essential component of the new partnership model and is an effective tool in addressing local level issues in the city. By working in conjunction with local Elected Members and communities, each of Cardiff's 6

Neighbourhood Management teams have developed action plans aimed at tackling issues specific to their locality. By tailoring their activity to local need, their work makes an extremely valuable contribution towards achieving the strategic outcomes.

As part of our ongoing commitment to ensure neighbourhood management work reflects the needs of the local communities a green paper consultation (**'Building Communities'**) has begun to review and seek ways of improving on current arrangements.

Whilst many examples of the neighbourhood management teams' achievements are referenced in this review, they have also produced a full annual review of their activity.

The remaining 7 programmes, which were informed by the strategic needs assessment, community engagement and statutory requirements, address the top issues currently facing the city.

They are;

1. **Families and Young People**
2. **Safer and Cohesive Communities**
3. **Older People**
4. **Emotional, Mental Health and Well Being**
5. **Healthy Living**
6. **Thriving and Prosperous Economy**
7. **Urban Environment**

The city-wide programmes are shaped around those strategic issues that either do not have a specific geographical dimension as they impact the whole of Cardiff, or affect multiple neighbourhood management areas. They also cover some of our

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ongoing statutory commitments. The detail that sits beneath each programme is the product of more extensive work of the needs assessment, which has continued since the strategy was published.

These programmes have been established to address the challenges we are facing right now. However, the outcomes and associated indicators of success extend across the next decade. As a result, the focus of the programmes is likely to change over the medium and long term so that they are responding to the foremost issues. Therefore, future annual reviews will be used to evaluate the suitability of the programmes as well as the progress achieved by them. This principle was put into practice in 2012 with the addition of a new workstream under the Safer and Cohesive Communities Programme. The "Addressing Exploitation" workstream was established to respond to emerging issues in human trafficking and street sex work in the city

The Cardiff Leadership Group plays a crucial role in directing the strategy and review process. Membership is drawn from a broad range of organisations and sectors and comprises the political representation for the partnership. The Group shapes the content of partnership working and considers the programmes and workstreams for mid-term and end of year review.

Engagement with a wider range of stakeholders is undertaken through a

series of thematic symposia, focusing on Children and Young People, Community Safety and Health, Social Care and Well-Being and the Third Sector. The aim of the symposia is to have a broader range of partners consider progress in Cardiff, review trends and identify areas where future action is needed. When combined with the existing reporting framework (in particular the quarterly highlight reports) this helps inform the priorities of the partnership for the next financial year.

Improved Programme Intelligence

Since undertaking the joint needs assessment in 2010 the Cardiff Partnership's intelligence framework has developed significantly; having establishing a live intelligence framework we are now in a position to identify changing trends in Cardiff as they emerge. By reporting on this continuous basis we will replace annual joint needs assessments with live data on city wide trends. Furthermore, using data in this way will allow partners to respond to trends as they emerge (or subside) thereby improving the efficiency of how we allocate our resources in times of increasing budgetary pressures and expectations. Analysis of trends in this form has already allowed partners to identify emerging issues particularly relating to census data and population growth; child poverty; young people not in education, employment or training.



Emerging Issues

Population Growth

Cardiff experienced significant economic growth in the first decade of the 21st century and was recently ranked 4th for growth potential in the UK and the city is now recognised as one of the UK's premier shopping, sports and entertainment centres. It is also home to the biggest media centre outside London.

With the projected expansion of the city centre and city region in the years ahead, the number of people coming to the city to work and visit is expected to increase significantly, potentially exposing the city's infrastructure to a great amount of strain.

Coupled with this, Cardiff's population increased from approximately 272,000 in 1991 to its current figure of approximately 341,000. A recent Welsh Government study predicted Cardiff's population to increase significantly in the next twenty years from a current level of 341,000 to 468,000 in 2033 – a 42% increase.

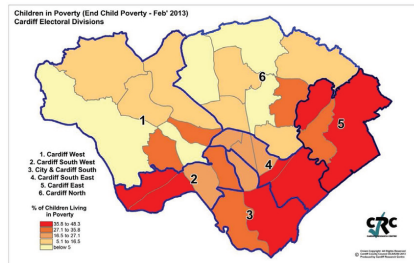
If this prediction proves to be correct this would represent the second highest increase for any local authority in the United Kingdom leading to higher demands for housing, amenities and new and improved infrastructure.

Child Poverty

Partners in Cardiff are committed to tackling the causes and consequences of child poverty. Not only does it damage the lives of young people in the short term, but it has been shown to be cyclical; poverty in childhood increases the risk of poverty in adulthood, adult poverty is associated with poverty in old age, and poverty in one generation of a family increases the chances of poverty in the next generation. Despite both pockets of affluence and wealth in the city, Cardiff has the highest percentage of its Lower Super Output Areas (LSOAs) in the most deprived 10% in Wales at 23.2%. For this reason, addressing child poverty was a foremost intention of 'What Matters'.

The Electoral Divisions marked in red have between 35.8 and 48.3% of children living in poverty and the pattern follows the well documented split between the north and '*Southern Arc*' of the city. Butetown, Ely, Adamsdown, Splott, Caerau, Trowbridge, Llanrumney and Grangetown all have a percentage of resident children living in poverty high enough to place them in the worst decile of poverty in the UK. A total of more than 10,400 children in these areas live in poverty as at February 2013.





Percentage of dependent Children Living in Poverty by Cardiff Electoral Division

Young People Who are Not in Employment, Education or Training (NEET)

Reducing the amount of young people who are NEET is a top priority for the Cardiff Partnership and the issue permeates almost every programme of work which is under way. Despite this there are the key programmes with direct responsibility for addressing this issue, in particular Families and Young People, thriving & Prosperous Economy, Families First and Communities First. A separate report on NEETs is also produced and updated on a periodical basis. However analysis of key trends reveal that:

- Currently there are approximately 800 young people aged 16-18 known to be not in education, employment and training.
- 2,745 young people (18-24yrs) claiming Job Seekers Allowance

Whilst these figures reflect the continued reduction in Cardiff, this

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rate is not rapid as other comparable Welsh local authorities.

Emerging trends and the Deployment of Key Services: The South Wales Programme

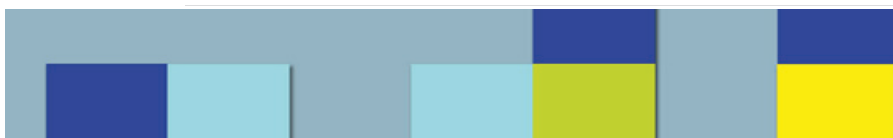
The South Wales Programme was established in response to the increasing fragility of important services recognising that, as a South Wales health community, there was a need for partners to address the issues that these services currently face.

Following a series of clinical conferences in May and June 2012, which involved hundreds of clinical staff from across the region, an extensive 12-week engagement process was undertaken in the autumn of 2012, involving a wide range of stakeholders, staff and the public.

The conferences raised awareness of the challenges faced by health services and explored how they could be reconfigured to provide safe and sustainable services in the future.

Consultation was sought on the reconfiguration of the following specialist services in the region: consultant-led maternity and neonatal care, inpatient children’s services and emergency medicine (A&E) for South Wales and South Powys.

In the context of the expected population growth these issues will form a key consideration for Cardiff over the next financial year.

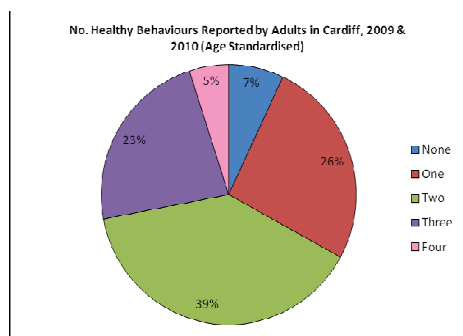


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OUTCOME **PEOPLE IN CARDIFF ARE HEALTHY**

In 2012 the Welsh Government produced information on the combined lifestyle behaviour of adults using data from the 2009 and 2010 Welsh Health Surveys. Previously the four key health-related lifestyles (smoking, alcohol consumption, fruit and vegetable consumption, and physical activity) had been studied individually. However, this analysis looked at adults' overall behaviour for these four lifestyles combined, which have been outlined below.

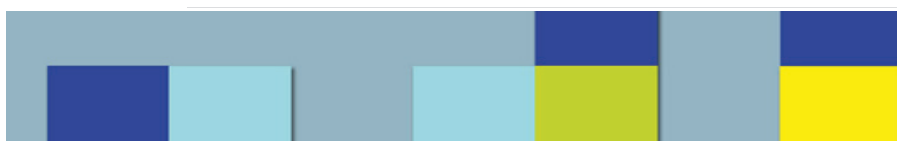
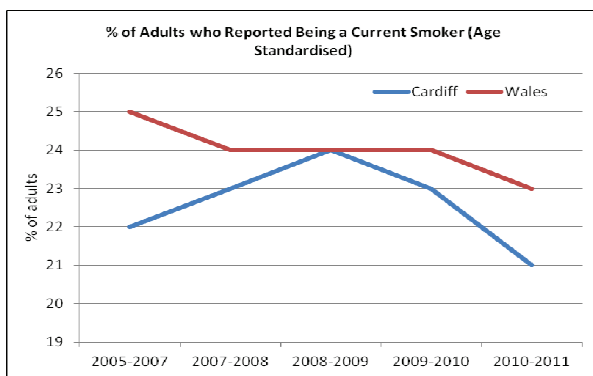
Lifestyle	Healthy	Unhealthy
Smoking	Non-smoker	Current smoker
Alcohol consumption	Did not report drinking above daily guidelines on any day in the previous week	Reported drinking above daily guidelines on at least one day in the previous week
Fruit and vegetable consumption	Reported eating five or more portions of fruit and vegetables on the previous day	Reported eating fewer than five portions of fruit and vegetables on the previous day
Physical activity	Reported doing 30 minutes of at least moderate intensity physical activity on at least five days in the previous week	Reported doing fewer than five days of at least 30 minutes of moderate intensity physical activity in the previous week



The mean number of healthy behaviours adhered to by adults in Cardiff was 1.9. Just 5% followed all four of the healthy behaviours, while 23% followed three, 39% followed two, 26% followed one, and 7% followed none. These were almost identical to the figures for Wales as a whole where the mean number of healthy behaviours was 2.0.

Smoking

Source: Welsh Health Survey



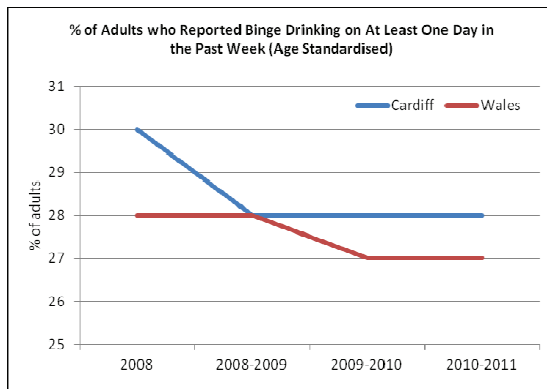
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Just over a fifth (21%) of adults in Cardiff reported being a current smoker in 2010/11; below the Welsh average of 23%. Despite matching the Wales proportion in 2008-2009, the Cardiff figure has been the lower of the two rates since the 2005-2007 survey. The local authority rate has followed a downward trend since 2008-2009, possibly as a result of the smoking ban that was introduced in April 2007.

In 2010-2011, around a fifth (19%) of Cardiff's adults said that they were regularly exposed to passive smoke indoors. Again this was below the comparative figure for Wales of 21%.

Damaging Alcohol Consumption

Source: Welsh Health Survey



Figures from the 2010-2011 Welsh Health Survey showed that 28% of adults in Cardiff reported binge drinking on at least one day in the past week, compared to 27% for the whole of Wales.

Also in 2010-2011, 45% of Cardiff's adults reported drinking above guidelines on at least one day in the past week; just above the equivalent figure for Wales of 44%.

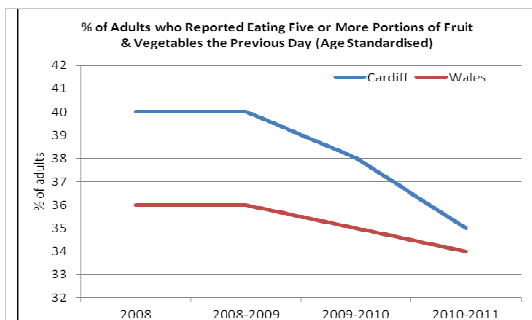
Information on alcohol-related mortality show that the age-standardised death rate was 18.21 per 100,000 population in Cardiff between 2008-2010, which exceeded the figure for Wales of 14.96 per 100,000 population. The rates for both genders were also higher within the local authority. The male rate was 26.46 per 100,000 population in Cardiff compared to 20.19 per 100,000 population in Wales. The difference for females, however, was negligible (10.08 per 100,000 in Cardiff v 10.04 per 100,000 in Wales).

Fruit & Vegetable Consumption

Reported Levels of Physical Activity



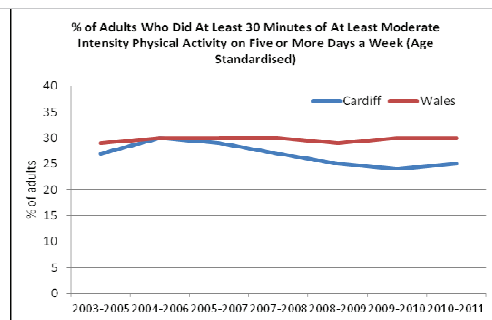
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Source: Welsh Health Survey

A greater proportion of adults in Cardiff eat five or more portions (one portion is 80g) of fruit and vegetables a day than across Wales as a whole, with the local authority rate having exceeded the national average since 2008. However, there has been a downward trend in both areas over the last couple of years, with the Cardiff percentage falling at a faster rate, causing the gap between the two rates to diminish.

Figures from the 2010-2011 survey showed that 35% of adults in Cardiff had eaten five or more portions of fruit or vegetables on the day prior to the survey date compared to 34% for the whole of Wales.

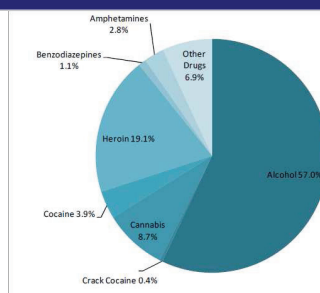
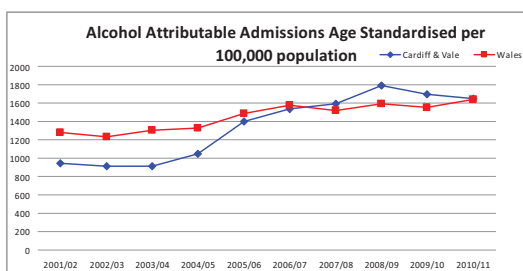


Source: Welsh Health Survey

Levels of physical activity in Cardiff compare poorly with the national average. In 2010-2011, a quarter (25%) of Cardiff's adults indicated that they did at least 30 minutes of at least moderate intensity physical activity on five or more days a week, compared with an all-Wales figure of 30%.

Since the 2003-2005 Welsh Health Survey the Cardiff proportion has predominantly been below that of Wales as a whole and from 2008-2009 onwards has had the lowest percentage of all of the local authorities in Wales. The Cardiff rate has also generally followed a downward trend since 2004-2006; when it was at a peak of 30% and matched the national figure.

Substance Misuse



Alcohol attributable admissions to A&E have followed an increasing trend for the past decade and have almost doubled over the period. In 2008/09 figures reached a peak of 1,791, since then there have been year on year reductions in Cardiff to 1,649 in 2010/11.

In 2011-12 there were a total of 1,544 referrals where the main problem related to drug misuse. This compares to 2009-10 when there were 1,610 referrals in Cardiff with the same issues.



What we have done:



The previous pages have already outlined that few people in Cardiff succeed in eating 5 portions of fruit or vegetables a day – part of the Welsh Government’s response to this issue is the Appetite for Life (AfL) Programme, a strategy for improving nutritional standards of food and drink served in schools across Wales. Key features of the project are to promote healthier foods and to restrict sales of confectionary, crisps, chips and sugar based drinks.

The project was fast tracked in 4 secondary schools in Cardiff last year and will be implemented in every school in the city by September 2013.

How Much/ How Well	Is Anyone Better Off?
<p>The AfL project was fast tracked in the following schools: Cantonian High School, Cathays High School, St Illtyd’s Catholic High School, Ysgol Plasmawr</p> <ul style="list-style-type: none"> • 754 pupils purchased school meals per day during the Summer Term 2012. • 444 pupils had Free School Meals per day during the Summer Term 2012. 	<ul style="list-style-type: none"> • There was a 100% decrease in the sales of confectionery and crisps • There was an 83.9% decrease in the sales of single portions of chips. • There was a 48.5% increase in sales of fruit and vegetables and an 88.1% increase in sales of Meal of the Day.
<p>Contributing Programmes: Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy</p>	

Sexual Health Initiatives in Cardiff South East

In response to reports that groups of young people were displaying highly and overtly sexualised behaviour, an initiative in Cardiff South East was rolled out to promote sexual health with particular emphasis on targeting young people in high schools. Teachers and Cardiff YMCA representatives delivered the programme which included key information on issues such as Sexually Transmitted Infections and contraception.

The issue was also presented at the Local Safeguarding Children Board’s Sexual Harm Panel in November for a multi-agency plan of action.

Sexual & Relationships Education (SRE) delivery: The SRE Toolkit for Key Stage 3 & 4 and recommended resources from the Public Health Team were delivered in schools where this was a priority

The YMCA delivered a ‘Sex, Lies & STIs’ programme in tandem with a girls homework club aimed at improving sexual health.

<p>Contributing Programmes: Neighbourhood Management; Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy; Safer & Cohesive Communities</p>



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Fairwater Leisure Centre Refurbishment

Fairwater Leisure Centre underwent an exciting new refurbishment project in June which has provided customers with an excellent, new modern facility.

The renovated centre now boasts a state-of-the-art air conditioned gymnasium with approximately 30 exercise stations, a licensed coffee and juice bar, dance studio and a multi purpose activity room for meetings, and fitness classes

A free open weekend took place on 22nd and 23rd, September where customers tried out the new facilities for themselves. This included the use of the gym and a range of fitness taster sessions including step, Zumba and pilates as well as a variety of free children's activities.



Contributing Programmes:

Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy

Bump Into Action

Bump into Action was launched in May to offer advice for mothers and their growing families. The programme provides a complete package of support throughout pregnancy, with an expert Midwifery team delivering education sessions at local leisure centres and encouraging mothers to stay active and healthy during both antenatal and postnatal stages of pregnancy.

- Active Cardiff, the Family Information Service, Flying Start and University Hospital Wales worked in partnership to deliver this programme which was the first of its kind.
- 2,180 pregnant women attended the Bump in Action programme in 2012/13



Contributing Programmes:

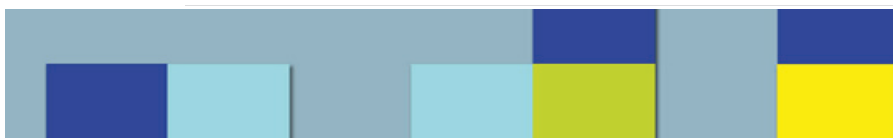
Healthy Living; Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy; Safer & Cohesive Communities



The Wyn Campaign under the Older People Programme is a milestone in the journey towards integrating community health and social services in Cardiff and the Vale of Glamorgan. The Campaign involves health, social care and third sector partners working together to improve the experience of older people in the area.

The targeted interventions phase was implemented in November 2012 and a 'Team Around Wyn' model was agreed. Specific targeted interventions which have been 'stepped-up' include: reducing harm from falls, improving chronic conditions management, care home in-reach, multidisciplinary support to Wyn as identified by Frail Older People's Advice & Liaison and the Elderly Care Assessment Unit.

Contributing Programmes:
Older People; Healthy Living; Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy; Safer & Cohesive Communities



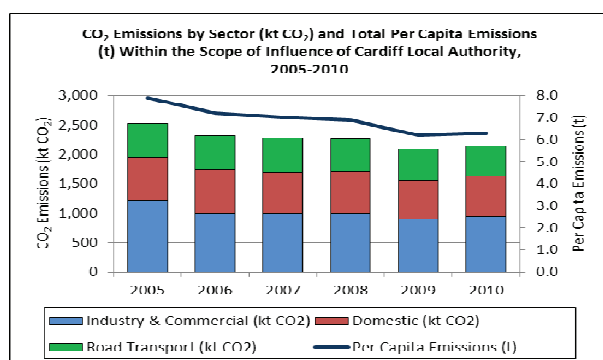
OUTCOME Cardiff has a Clean, Attractive and Sustainable Environment

At present the Cardiff citizen has an 'unsustainable' ecological footprint of 5.59 global hectares (gha) which is a measure of the consumption of resources for an area. This means that if everyone on earth lived the same lifestyles as people in Cardiff we would need nearly three planets' worth of resources to meet our needs.

This issue will become a major priority for partners in Cardiff over the next decade as upwards of 40,000 new homes are built in line with the Council's Local Development Plan. Partners in Cardiff will come under growing pressure to ensure the increased demand for resources does not adversely impact the city's progress towards this outcome, particularly in relation to its infrastructure and transport networks.

The indicators below demonstrate the work and progress the Cardiff Partnership is making towards ensuring Cardiff has a clean, attractive and sustainable environment.

Emissions



Source: DECC Data

The most recent data from 2010 shows the total CO₂ emissions within the scope of influence of Cardiff Local Authority was 2,145.1 kilotons. This represented a reduction of 14.9% since 2005, although emissions had increased by 2.8% over the previous year. In comparison, Wales saw changes of -10.7% and 3.7%, respectively, over these periods.

Per capita emissions in Cardiff have followed a similar pattern, falling from 7.9 tonnes in 2005 to 6.2 tonnes in 2009 before increasing slightly back up to 6.3 tonnes in 2010, and were consistently below the levels for Wales which decreased from 8.5 tonnes in 2005 to 7.4 tonnes in 2010.

Over two-fifths of Cardiff's CO₂ emissions come from the Industry and Commercial sector, although this proportion has fallen from 47.9% in 2005 to 43.6% in 2010 (42.4% in Wales). In contrast, both the Domestic and Road Transport sectors have seen their percentage shares increase over the same periods, even though overall CO₂ emissions within these areas have fallen. In 2010 the Domestic and Road Transport sectors accounted for 32.0% (33.7% in Wales) and 24.4% (23.9% in Wales) of all CO₂

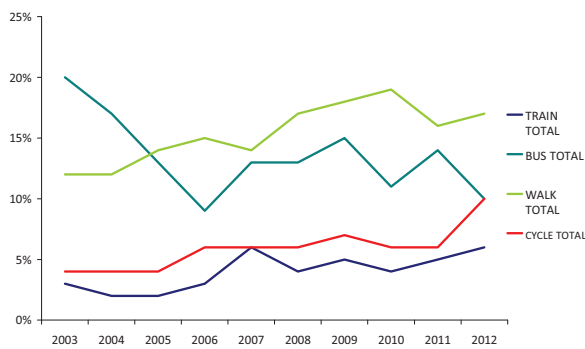


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emissions respectively.

Between 2009 and 2010 CO2 emissions in both the Industry & Commercial (3.1%) and Domestic (6.4%) sectors increased in Cardiff. However, Wales saw greater expansions of 3.6% and 7.2% respectively. Meanwhile, Road Transport emissions fell by 2.3% in the local authority compared to just a 0.6% reduction across Wales.

Car Total v Sustainable Modes

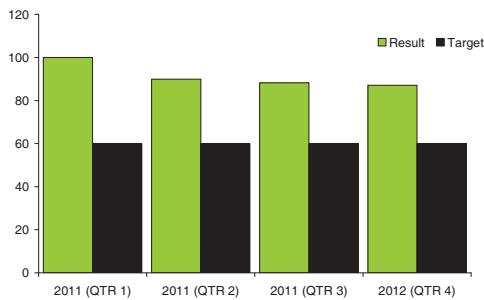


Individual Sustainable Travel Trends

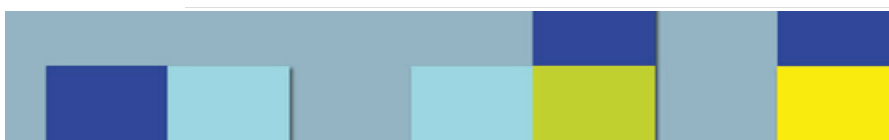
The overall trend indicates that the percentage of people travelling to work by sustainable modes in Cardiff is now beginning to increase each year. This is likely to be a response to promotion of these modes following an initial period where focus was on improving the infrastructure, in combination with the economic decline from 2008/2009 onwards. As of 2012, the percentage of people cycling has now reached 10%, with some of this shift appearing to have come at the expense of a decline in bus travel from the year previous.

The percentage of local authority municipal waste that is diverted from landfill

Source: Waste Performance Data



The amount of municipal waste that is recycled or diverted from landfill has continued to increase year on year. The authority remains on track to achieve the 2012/13 statutory recycling target (demonstrated above) and remains well within the biodegradable landfill allowance limits.



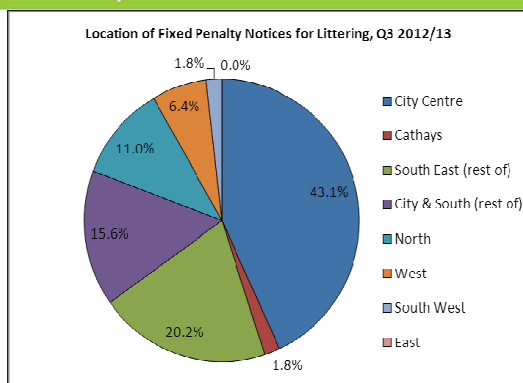
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What we have done:

Clean and Sustainable Environment : Reduce Litter and Fly Tipping

- In November 2012 Cardiff Council and South Wales Police collaborated to tackle dog waste on the streets and parks. Police Constable Support Officers (PCSO) have had the powers to issue Fixed Penalty Notices (FPNs) for dog fouling since 2009, and have now been trained to enforce the law and issue fixed penalty notices (FPNs) for this offence.
- A 'rubbish enforcement team' was introduced to patrol the streets of Cardiff as part of a new crackdown on litter in the capital. The new team targeted the city centre and surrounding areas as part of a one-year trial handing out on-the-spot £75 fines to anybody caught offending.
- Media messages have been broadcasted on Cardiff's zero tolerance approach on issues such as fly tipping, littering and waste in shop frontages. This was in addition to the Keep Cardiff Tidy (KCT) and social responsibility campaigns.
- Communications were increased prior to the Christmas period to promote the correct waste presentation over the period in partnership with the student union and landlord's forum.
- The 'naming and shaming' of offenders continued with over 10 offenders being publicly prosecuted between October and December.
- Natural Resource Wales (previously known as the Environment Agency Wales) and Cardiff Council are working with others partners to improve enforcement against fly tippers. Work is on-going to develop an intelligence led approach which will help target efforts against the worst and most persistent fly tipping offenders.
- The student focused education campaign is underway to educate the returning student community on waste disposal and refuse collection timetables.

How Much/ How Well



109 fixed penalty notices were issued for littering in the third quarter of 2012/13. Almost half (43.1%) of these were in the city centre. A fifth was in Cardiff South East (20.2%), over a sixth was in Butetown & Grangetown (15.6%), and more than a tenth were in Cardiff North (11.8%).

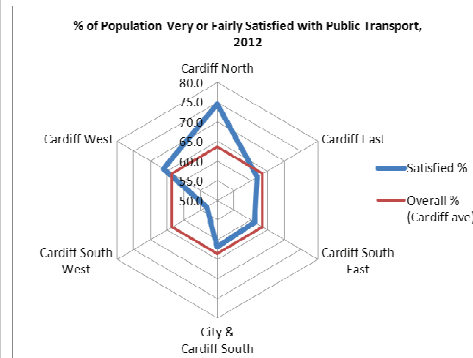
Source: Waste Education and Enforcement reports Q3 2012/13, Cardiff Council



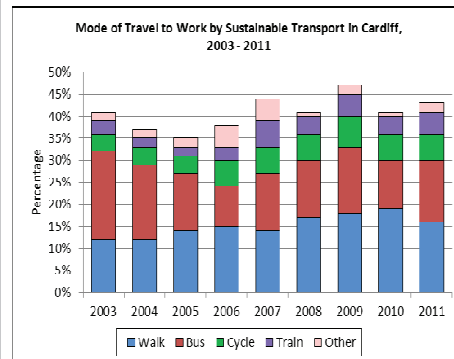
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Sustainable Transport

According to information from the 2012 Ask Cardiff survey, 63.6% of respondents were satisfied with public transport in the city, including 22.1% that were very satisfied. Across the city only Cardiff North (74.5%) and Cardiff West (66.1%) had rates above this figure, with satisfaction lowest in Cardiff South-West (53.2%). When asked about the severity of travel and transport problems in Cardiff (including congestion, parking costs, bus stations, condition of road network, cost of public transport, parking availability etc), almost half (47.0%) of the respondents felt that they were either serious (36.6%) or very serious (10.4%). Within the city, residents were most concerned about this issue in Cardiff North (48.0%) and Cardiff West (47.5%), which were the only two areas to exceed the overall figure for Cardiff. Meanwhile, those living in City and Cardiff South (43.8%) were least likely to deem it to be a serious or very serious problem.



43% of people in the authority used sustainable transport to travel to work in 2011. This comprised 16% that walked, 14% who used the bus, 6% who cycled, 5% that used the train, and 2% who used other sustainable modes of transport.



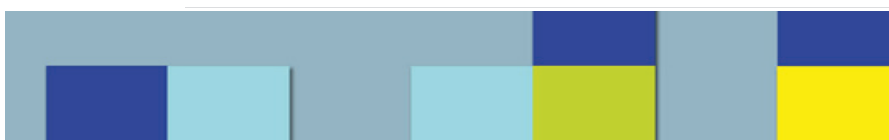
The proportion using sustainable transport has varied since 2003, falling to a low of 35% in 2005 and reaching a high of 48% in 2009.

In 2003 and 2004, buses were the most commonly used mode of sustainable transport for those travelling to work. However, from 2005 onwards walking has held this position.

Source: Ask Cardiff, Cardiff Council

It is expected that bus and rail results will improve in the 2012 survey following the delivery of Sustainable Travel City initiatives and Personalised Travel Planning advice to 50% of households across the city.

Contributing Programmes: Urban Environment, Neighbourhood Management



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Local Rail Station Improvements

A project to deliver local rail station improvements has been implemented. The project is designed to make specific improvements to the attractiveness of local stations for local people as a transport option. The project, which is run in partnership with Arriva Trains Wales, upgrades the waiting environment, improves facilities for active travel (e.g. by providing secure cycle parking) and provides high quality local information on station and useful signage in the area.

Contributing Programmes: Families and Young People; Thriving & Prosperous Economy

A470 Bus Corridor Improvements

Preparatory work has taken place on the A470 Bus Corridor Improvements prior work commencing on site during February. This work will provide a length of inbound bus lane which will improve bus reliability and journey times along this important bus corridor.



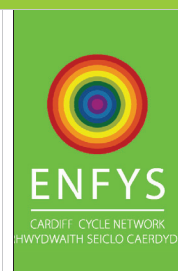
Contributing Programmes: Families and Young People; Thriving & Prosperous Economy

Personalised Travel Planning & Travel Information Days/ Walk To School Month

The third and final stage of the Personalised Travel Planning project in Cardiff commenced, which targeted households in the east of the city. The project provided households with personalised information on how to make routine journeys by sustainable travel modes. In total the project is targeting 63,000 households.

Leisure centres across Cardiff hosted 'travel information days' which provided advice and information active forms of transport, including advice about cycle training, experts checking over bikes to make sure they are roadworthy, and 'try it out' session with, standard, side by side and tandem bikes.

A Walk to School Month was successfully piloted in November to encourage more walk to school trips by primary age students. This will be run again in May. The aim is to reduce school run traffic, improve school gate safety and promote healthier travel choices for short trips



Contributing Programmes: Families and Young People; Thriving & Prosperous Economy



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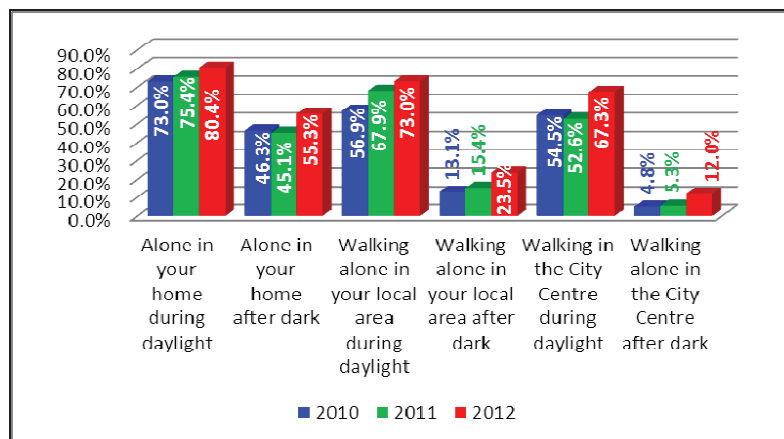
OUTCOME PEOPLE IN CARDIFF ARE SAFE AND FEEL SAFE

The data in this section captures annual trends relating to community safety. Seven high level indicators have been chosen which, cumulatively, give a comprehensive understanding of the issues that affect people in Cardiff.

The Cardiff Partnership's 8 Programmes all contribute to improving safety in the city and quarterly highlight reports provide an ongoing opportunity to monitor the progress of individual programmes. This report is intended as an end of year update on combined progress achieved by all the programmes against community safety outcomes over the course of 2012/13.

Respondents who feel Very Safe whilst at home and when walking at various locations within the city

Source: Ask Cardiff Survey Results

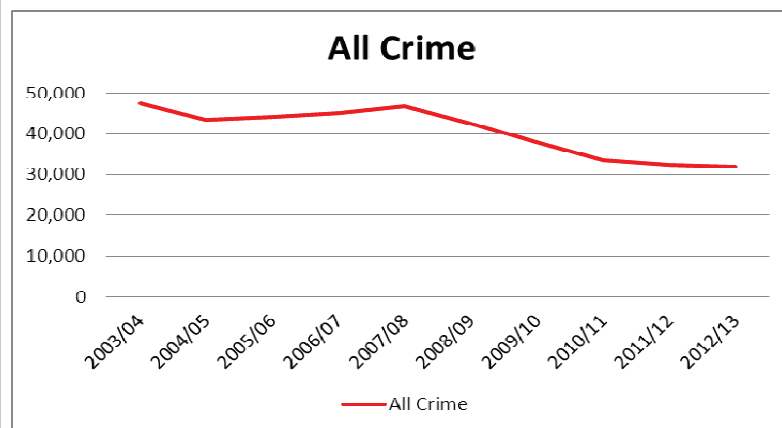


In 2012 the percentage of respondents who said they felt very safe improved in every scenario. There is clear work to be done to address the perception of safety in the City Centre after dark and it appears that multi agency work undertaken in 2012 has already had a significant impact: more than double the amount of respondents reported improved feelings of safety compared to 2011.

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All Crime

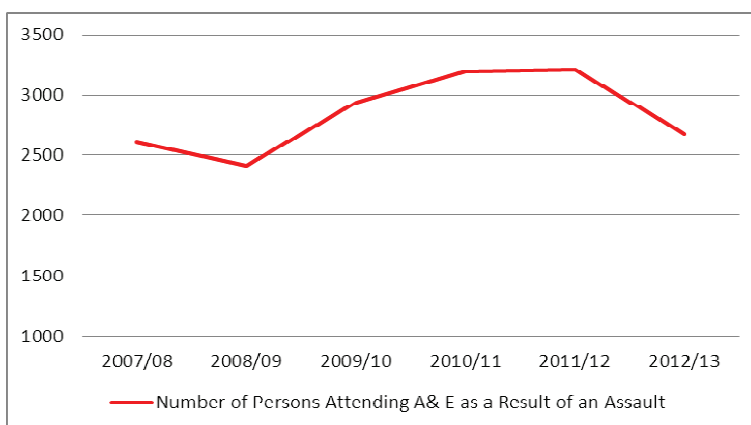
Source South Wales Police Performance Statistics



The total amount of recorded offences in 2012/13 fell by 2.6% to 31,652 compared to 32,497 in 2011/12. Overall offending has been falling consistently since 2007/8; however the rate of reduction has slowed since 2010/11.

Assault/ Violence Related A& E Admissions

Source: Health Data Unit Statistics



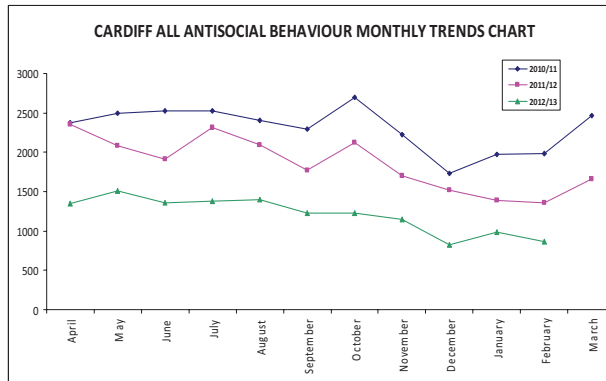
The number of people admitted to A&E as a result of assault/ violence reduced sharply in 2012/13 from approximately 3250 to 2750.



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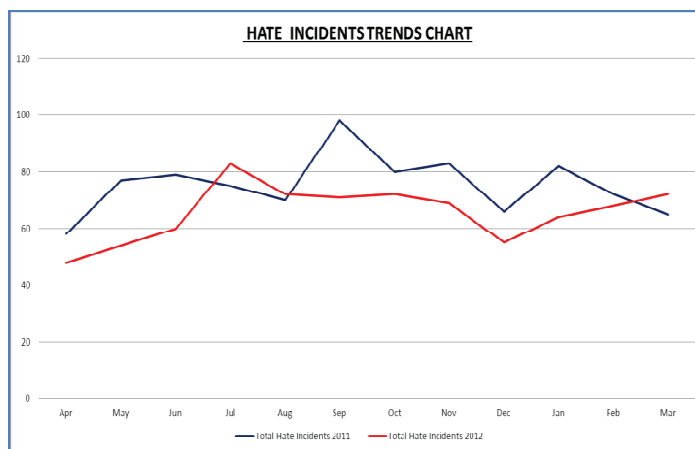
Anti Social Behaviour

Source: South Wales Police ASB Data



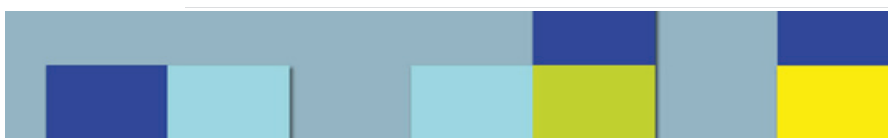
Police recorded antisocial behaviour incidents reduced by 37% in 2012/13 and there has been a downward trend in incidents since October 2010/11. The expected seasonal spikes associated with the summer months and Halloween/ bonfire night did not occur this year, suggesting multi-agency interventions and diversionary events had a positive impact. Prolonged periods of poor weather over the summer months are also likely to have impacted on the rate of ASB in 2012/13.

Hate Incidents



Source: South Wales Police Data

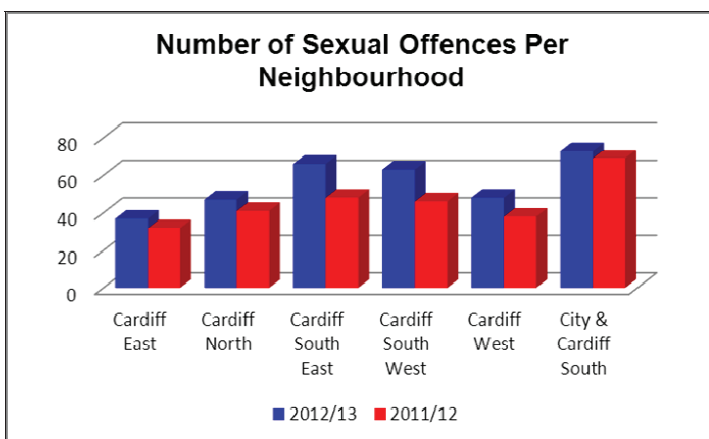
Hate crime incidents are divided into 5 categories: race, religion, sexual orientation, disability and transgender. Compared to 2011 figures there was an 8.2% reduction in race related incidents, a 37% reduction in religious incidents a 33% reduction in disability hate incidents and a 50% decrease in transgender incidents. However there was an increase of 19.4% in sexual orientation related incidents.



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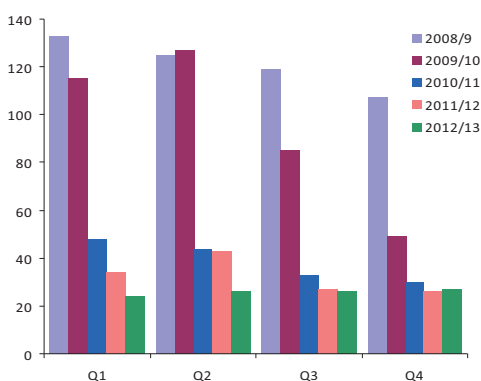
Domestic & Sexual Violence

Source South Wales Police Crime Statistics

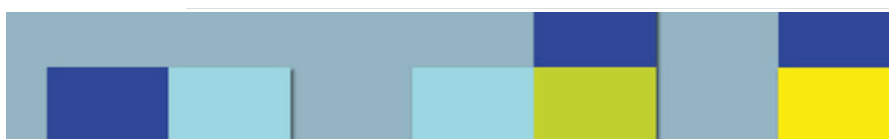


The amount of offences related to sexual violence increased in 2012/13 by 22% (from 274 in 2011/12 to 334 in 2012/13). Operations have taken place (and are ongoing) to encourage the reporting of domestic incidents, so an increase in reported sexual offences was expected to a certain degree, however an increase of over 20% evidences a clear need for additional work to be done in this area.

First Time Entrants to Youth Justice System




This year there were 103 first time entrants to the youth justice system (aged 10-17 years), representing a 20% reduction on last year (when there were 130). Since 2009/10 there has been a 73% reduction in first time offenders in the city, demonstrating a prolonged period of success in this area.



What we have done:

Operation Perception

Operation Perception is a community engagement initiative which focuses on safety in the community, and is a holistic approach to reducing the disproportionate fear of crime and personal safety among residents in the city. They are multi agency events coordinated by South Wales Police with close involvement from South Wales Fire and Rescue, Cardiff Council Waste Management & Enforcement, Cardiff Council ASB Teams, Neighbourhood Management and several other partners. A strong feature of the operation is the increased presence and high level of visibility in the community, allowing key messages to be delivered to local residents in an informal setting and providing the opportunity for residents to raise issues to local service providers. Themes in previous perception events have been ranged from crime and ASB to fire & home safety checks.



How Much/ How Well	Is Anyone Better Off?
<p>When Operation Perception ran in a section of Butetown in March 2013, 450 homes were visited and 166 residents were spoken with. Free Fire Home Safety Checks were an integral part of the visits, and they were carried out in 85 homes. Members of the operation also included Alice Street Mosque & Somali community members, allowing for effective engagement with previously hard to reach sections of the community.</p>	<ul style="list-style-type: none"> • 5.1% residents feel safer alone in their local area during daylight • 8.1% of residents feel safer alone in their local area after dark • 14.7% residents feel safer in city centre during daylight • 6.7% residents feel safer in city centre after dark
<p>Contributing Programmes: Safer & Cohesive Communities, Families and Young People, Older People, Urban Environment, Neighbourhood Management</p>	



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Operation Mistletoe

Operation Mistletoe is a flagship activity which takes place annually throughout December. It provides a multi agency response to the increased pressure on services caused by the large amount of visitors to the city centre over the festive period. The operation is a source of great pride for the Cardiff Partnership and is a brilliant example of how multi agency work can deliver positive outcomes.



How Much/ How Well/ Is Anyone Better Off?

The operation runs for the 3 weeks over the festive period which in 2012 was from 5th – 24th December. Measures to improve street cleanliness include the provision of additional litter bins, temporary urinals, increased community payback street cleansing teams, issuing plastic cups as a replacement for glass. Street pastors also played a key part in providing sandals, water and foil blankets to revellers in need of assistance.

- **Data from Police Headquarters Business Unit showed that since the operation began in 2007 there has been a 23% year on year fall in incidents of serious violence against the person during the 3 week periods.**
- **There was a 15% reduction in police recorded ASB in City Centre for the month of December (from 369 to 313)**

Contributing Programmes:

Safer & Cohesive Communities, Families and Young People, Thriving & Prosperous Economy, Urban Environment, Healthy Living, Neighbourhood Management

What Matters Annual Review 2012-13

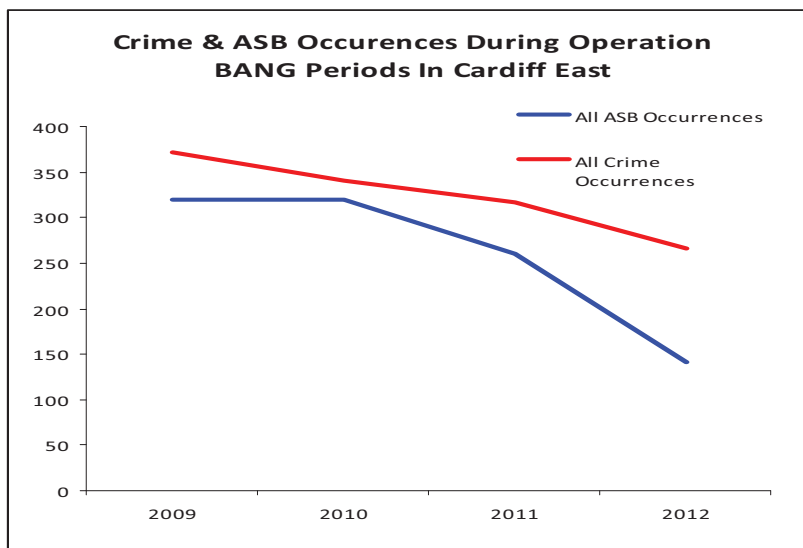
Operation BANG (Be A Nice Guy)

Historically Antisocial Behaviour and low level criminal activity has increased dramatically around Halloween and Bonfire Night resulting in significant pressures on local Police and Fire services. Operation BANG was developed as a multi agency response which featured diversionary activities and events, preventive gate/ alley closures, and a programme of school visits by police & fire representatives to raise awareness in the weeks leading up to Halloween.

How Much/ How Well

Interventions to reduce ASB included Gate/Gully closures in ASB hotspots, high quality diversionary events for young people (such as Sparks in the Park). Diversionary activities such as football tournaments during build up to Halloween and school visits by Police & Fire representatives were also held.

Is Anyone Better Off?



A 4 year study of Police Records in the Cardiff East area shows that over the period when Operation BANG has run, significant reductions in criminal and ASB activity have been achieved. Since 2009 ASB occurrences have reduced by 55.6% over the period, and criminal occurrences have reduced by 28.5% in the area.

Contributing Programmes:
Safer & Cohesive Communities, Families and Young People, Neighbourhood Management



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Many young people under the age of 18 congregate in the city centre to take advantage of the night time economy and socialise. Despite being unable to legitimately access licensed premises, the city centre presents an environment where young people can consume alcohol and other illicit substances without being detected amongst other night time revellers. A large proportion of these people are from outside Cardiff with no means of returning home late at night, have little knowledge of the surrounding area and become increasingly vulnerable when under the influence of alcohol or other illegal substances.

Stay Safe is a multi agency response to this problem and operates on key dates throughout the year (such as Halloween, Bonfire Night, Winter Wonderland, GCSE results night, Mardi Gras etc). The project utilises intelligence from various sources to target places and times where young people are at risk from harm in order to allow timely interventions to be made and for vulnerable young people to be taken to a place of safety.

Every operation that ran in 2012/13 included staff from the Youth Offending Service, South Wales Police, Barnardo's, Inroads, Education, Youth Service, Victim Support, Careers Wales and Health.

How Much/ How Well	Is Anyone Better Off?
46 Stay Safe Operations were run between April 2012 and March 2013 and approximately 4,800 young people were engaged during the Stay Safe safety patrols. The Project Lead received a Butler Trust Award in March 2013 for her contribution to crime reduction and public safety.	81 young people were removed to a place of safety as a result of serious concerns about substance misuse and vulnerability. All of these young people received an intervention from a member of the team which included an Alcohol Brief Intervention when the young people presented as intoxicated.

Contributing Programmes:
Safer & Cohesive Communities, Families and Young People, Neighbourhood Management

Operation Abigor

Operation Abigor addresses domestic abuse in the region and has two key priorities; to improve awareness, reporting and the detection of abuse and secondly to reduce occurrences of domestic abuse incidents. Although the campaign runs throughout the year, the period from February to March (during the RBS Six Nations competition) represents a key time for the operation as it has been identified that the rate of domestic abuse incidents tends to increase when high profile international rugby competitions are held.

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Is Anyone Better Off?

- In 2012 a 83.3% detection rate was achieved for all recorded Domestic Abuse crimes during match day weekends (compared to non match day weekends when no incidents were recorded).
- There has been an annual reduction in Domestic Abuse incidents of 39% since 2010

Contributing Programmes:
Safer & Cohesive Communities, Families and Young People, Neighbourhood Management, Healthy Living

Alcohol Treatment Centre

The Alcohol Treatment Centre began as a pilot in September 2012 as an initiative to divert intoxicated night time revellers in need of treatment from attending hospital thereby relieving pressure on local A&E during peak periods. The centre is open from 8pm to 8am on Friday and Saturday nights and provides a medical base where minor alcohol related injuries can be treated and intravenous fluids can be administered. The centre also acts as a safe environment where people can safely sleep off the effects of excessive alcohol consumption.



How Much/ How Well	Is Anyone Better Off
<p>From September to December the Alcohol Treatment Centre was open for 32 nights and 370 people attended the centre.</p>	<p>Only 14% (53) of attendees were referred to A&E from the Alcohol Treatment Centre between September and December; this figure highlights the benefits the ATC has had on local hospitals by diverting intoxicated and potentially problematic patients away from A&E, allowing for more efficient allocation of hospital resources.</p> <p>It is estimated that the ATC achieves a saving of £242 for every person it successfully diverts from A&E and ambulance services and once the bedding-in period is complete it is expected that the ATC will yield a valuable cost effective service.</p>
<p>Contributing Programmes: Safer & Cohesive Communities, Healthy Living, Families & Young People</p>	

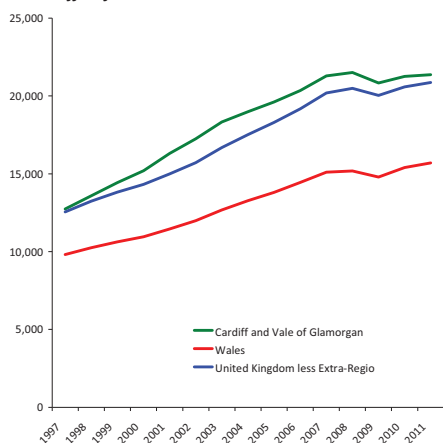
OUTCOME Cardiff has a Thriving and Prosperous Economy

Income and employment opportunities are fundamental for Cardiff to succeed and represent some of the most significant challenges given that the global economic downturn and austerity measures have slowed the levels of growth to those experienced at the end of the 1990s and early 2000s.

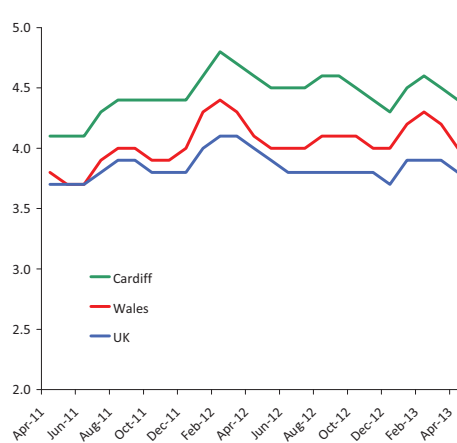
The following trends are common to many of our competitor cities in the UK. Currently, Cardiff (like Wales) is struggling to attract new jobs and investment. The city, in comparison with its rivals in England and across the UK, has relatively low levels of business density, low levels of business births, and low numbers of listed businesses. These fundamental problems need to be addressed.

Gross Value Added per Capita (£) Claimant Rate

Source: Office for National Statistics

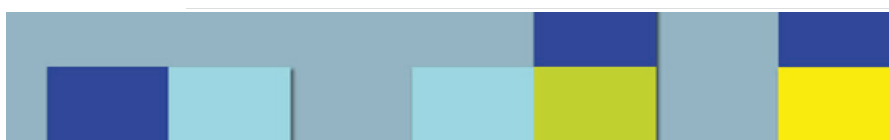


Source: NOMIS



GVA per capita in Cardiff and the Vale of Glamorgan remains above both Wales and UK averages (and is considerably greater than the Welsh average). Growth has returned after a brief dip following the economic downturn though Cardiff's lead in comparison with the UK average has diminished. As with a lot of economic data, changes in Cardiff often mirror national changes. The differential in GVA per capita between Cardiff and Wales is split evenly between productivity (output per worker) and levels of in commuting which boost overall output. In comparison with the UK however, labour productivity is broadly similar.

Following a brief dip at the end of 2009, unemployment began to rise again, albeit relatively slowly. By 2011 the claimant rate had started to level out around the 4.5% mark, and as of April 2013 the proportion of working age residents claiming unemployment benefit stands at 4.4% compared to the Welsh average of 4% and the UK average of 3.8%.



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House Price Ratio (Av Price / Median Earnings)	Visitor Numbers (STEAM)
<p>Source: Land Registry & Annual Survey on Hours & Earnings</p>	<p>Source: STEAM</p>
<p>Housing has become relatively more affordable, though this comes from a relatively high house price ratio. Concerns around unemployment and earnings growth will also have a real impact on affordability which is necessarily a more complex issue than simply average house price as a ratio of average earnings.</p>	<p>Tourist numbers and spend continues to rise in Cardiff despite the economic downturn. Investments in the city, such as St. David's 2 have helped to increase and maintain visitor numbers, and the city has no doubt benefitted from being able to complete such a large scale development prior to the economic downturn hitting many city investment projects.</p>
Employment Rate by Group	
<p>Source: Annual Population Survey</p>	

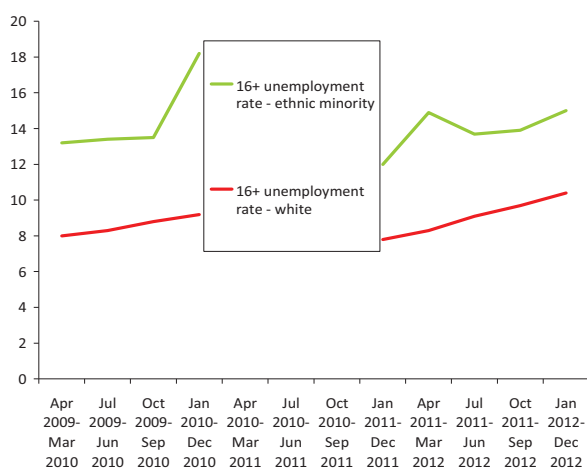


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Employment rates have fallen slightly over the year for all groups, though there was a slight increase for the last quarter of available data. Despite a number of years of convergence of employment rates between the disabled population and the population average as a total, the employment rate for disabled people of working age remains significantly below the all-population average.

Unemployment Rate 16+

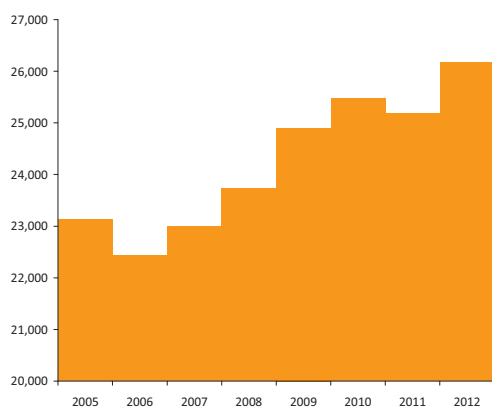
Source: Annual Population Survey



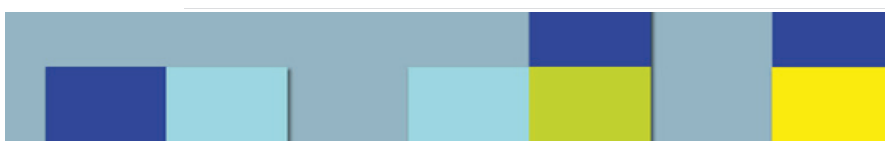
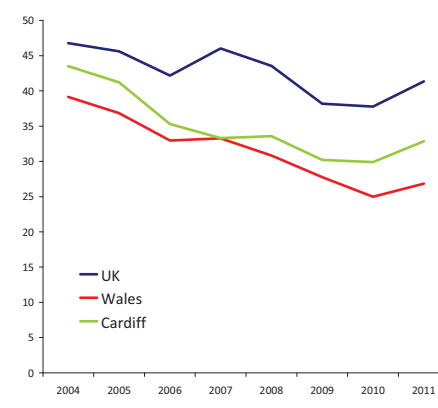
Unemployment rates for ethnic minorities in Cardiff remain higher than the same figure for the city's white population according to Annual Population Survey classifications. The latest figures for 2012 show an unemployment rate for those aged 16 or over for the city's ethnic minority population stood at 15% compared with a figure for the city's white population of 10.4% for the same period.

Average Annual Gross Median Earnings (£) | Business Birth Rate (Births per 10,000 residents)

Source: Annual Survey on Hours & Earnings



Source: StatsWales



What Matters Annual Review 2012-13

Average earnings in Cardiff remain above the comparable all Wales figures, but lag the UK average. As of 2012 average earnings per year (Full Time Gross Median) stood at £26,169, compared with a UK figure of £26,462 and a Wales figure of £23,934.

Business birth rates in Cardiff rose according to the latest data for 2011, after a number of years of decline. Birth rates are above the Welsh average, but still lag behind the comparable UK figure for the same period.

Working age population with NVQ4+			
	2010	2011	2012
Edinburgh	47.5	51.2	56.1
Bristol	37.1	42.2	42.6
Glasgow	33.2	40.1	40.3
Cardiff	39.7	38.9	38.2
Manchester	33.2	38.3	37.4
Leeds	28.5	33.4	35.1
Newcastle upon Tyne	28.1	32.8	34.9
GB	31.3	32.9	34.4
Sheffield	33.0	32.5	33.0
Wales	28.3	29.3	30.3
Nottingham	25.4	29.1	29.4
Birmingham	25.1	25.2	27.6
Liverpool	23.3	26.2	24.1

The proportion of Cardiff’s working age population with a NVQ4+ qualification or higher has fallen slightly in recent years, however the city remains one of the best qualified in the UK, and trails only Bristol in the English Core Cities in terms of levels of qualification.

What Matters Annual Review 2012-13

What we have done:

The following section outlines key projects undertaken by the Cardiff Partnership's work streams during 2012/13

Rebuilding Momentum


Cardiff Council recently released a green paper which sets out the framework for the development of a new economic vision and delivery arrangements for the city. The consultation paper looks at the economic challenges and opportunities faced by the city and examines how the city can regain momentum and position its image and brand outside of Wales.

**How Much/ How Well**

Green Paper 'Rebuilding Momentum' was launched in March 2013 for consultation on future economic development arrangements in Cardiff, including destination marketing and branding. The paper has since received consultation responses from local business, the Higher Education sector as well as other local public service providers and partners. A revised paper is being developed that will be taken to Council in June 2013.

**Contributing Programmes:
Urban Environment**

What Matters Annual Review 2012-13



Capital Cardiff Fund

In a direct response to the economic downturn, Cardiff Council allocated business support funding for new capital expenditure projects that will safeguard and/or create jobs in the city. The Fund offers business support through a range of financial assistance packages in the form of grants, loans and equity investments. The Fund is aimed at both start-up growth businesses and existing companies that need assistance to undertake investment. The Capital Cardiff Fund is available as follows:

New Enterprise Start-Up Fund

This grant fund is designed to assist new start-up companies in Cardiff. Financial assistance is available from £500 to £5,000 and eligibility is dependent on the following criteria:

- Companies trading for no more than 2 years;
- No retail or purely local services;
- Business plan with 3 year financial projections;
- Business address (not working from home or any residential premises);
- Fixed asset capital expenditure (machinery/equipment/refurbishment/fit out);
- Creation of Jobs (at least 3 jobs over a 2 year period);
- All companies should be receiving support from an appropriate business advisor.
- Capital Investment Fund

This fund consists of loans and equity investments up to £25,000, and is provided for the following business activities:

- Start-up growth businesses;
- Established and expanding companies;
- High technology and knowledge based companies;
- Companies demonstrating continuous improvement, competitiveness, innovation and creativity;
- Businesses looking to undertake capital works to buildings;
- Eligible companies will fall into the key economic sector and be based in a business premises. Companies should also demonstrate new job creation.
- Free and Confidential Advice

Assistance and advice can be provided at each stage in the investment process, to assist economic growth in Cardiff. Introductions to sources of specialist expert advice can also be made. All financial aid is discretionary. In all cases a fully documented application is required which will involve discussions with an officer from the Business & Investment Team.

How Much/ How Well

- In 2012/13, in addition to the support provided in terms of finance for small business work was also undertaken to promote and support the programme, including:
- The Capital Cardiff Fund was promoted alongside the Welsh Government Economic Growth Fund to over 150 businesses at an event in City Hall on 9th March 2013.
- A workshop has been arranged to provide UKTI with details of the Capital Cardiff fund and other sources of finance for circulation to their overseas offices to improve the internationalisation potential of the fund.



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- A presentation highlighting the availability of the Capital Cardiff Fund and Public Sector funding was given at an I Am Woman event in Cardiff during October.
- New marketing literature on the funding available from the Council and other sources has been produced.
- Over the course of the year the following number of businesses have been supported by Cardiff Council.

Result Period	Result
Apr-Jun 2012 (QTR 1)	10
Jul-Sep 2012 (QTR 2)	12
Oct-Dec 2012 (QTR 3)	21
Jan-Mar 2013 (QTR 4)	26

Contributing Programmes:
Thriving & Prosperous Economy

Employment Support

During 2012/13 a forum for the largest employers in Cardiff, including Legal & General, Celsa, British Gas, Tesco and Conduit, was set up to help address their recruitment needs. As a result companies in Cardiff have been speaking directly with schools to link their needs with those of pupils in Cardiff, with, for example, SWALEC working with Llanrumney High School and Tesco with Glyn Derw High School.



British Gas, Cardiff

In addition, a Summer programme of pre employment courses has been delivered at all five Local Training and Enterprise centres.

What Matters Annual Review 2012-13

How Much/ How Well

Over 250 school leavers attended the pre-employment courses. In addition to this and in partnership with the Youth Service and Leisure Services, a NEET Transition programme was delivered at three Leisure centres. This programme focussed on engaging with young people leaving school with no planned destination. Each event attracted between 60 – 80 NEET young people and approximately 80% signed up with a training organisation for further accredited learning opportunities. Whilst it is difficult to gauge the direct impact, there is evidence that suggests that the number of NEETs in Cardiff is falling. Nonetheless there will need to be further support given that the number of unemployed young people in Cardiff still outnumbers the number of identified vacancies in the city.

Living Wage

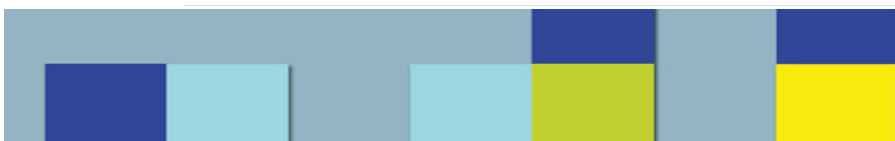
Cardiff Council introduced the living wage for its employees in June 2012, thereby boosting pay for over 2000 staff from the minimum wage of £6.08 an hour to £7.20 an hour.

Contributing Programmes:

Thriving & Prosperous Economy, Neighbourhood management; Families & Young People



Cardiff has supported Cardiff Start, an initiative by a group of entrepreneurs, founders, students and investors to encourage digital start-up business in the city and help create a cluster within the city.



What Matters Annual Review 2012-13

How Much/ How Well

At its launch over 350 potential business start-ups attended, and in addition there have been a number of additional Cardiff events, as well as a dedicated website at <http://cardiffstart.com>. There are now over 120 members of the on-line network.

Contributing Programmes:
Great Place to Live, Work and Play

Enterprise Zone

Shaping the development of Cardiff' Enterprise Zone and promote the city's enterprise zone status to encourage inward investment Cardiff Council's Cabinet Member for Finance, Business & Local Economy has been appointed to the Enterprise Zone Board, and a draft masterplan for the Enterprise Zone which is out for consultation and been presented to the Enterprise Zone Board. Welsh Government has now secured control of the Callaghan Square site from MEPC. The Council has entered into a lead generation programme to attract businesses from London and the South East into the Cardiff Enterprise Zone.

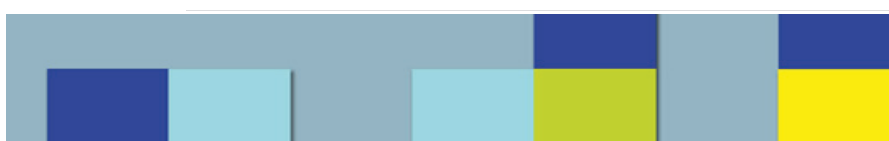
ENTERPRISE FOR GRADUATES

Cardiff University, in partnership with Cardiff Council, have been awarded over £600,000 by the Higher Education Funding Council for Wales to develop and deliver an 'Enterprise and Entrepreneurship' programme over the next 3 years. The programme will focus on driving innovation within the city-region through:

- delivering highly skilled graduates to the labour market who are equipped with the entrepreneurial and innovative skills required both to establish new businesses and to drive innovation in existing businesses;
- leading and developing innovation-based, challenge-led initiatives that will formulate holistic solutions to global challenges;

The University has appointed two people to take this project forward.

Contributing Programmes:
Urban Environment, Neighbourhood Management

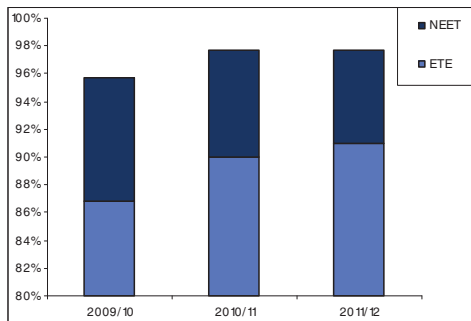


OUTCOME PEOPLE IN CARDIFF ACHIEVE THEIR FULL POTENTIAL

The main priorities under this outcome cover issues including education, employment, family and child development and care.

All of the Partnership's work programmes have a bearing on this outcome, however it is directly impacted by services provided as part of Families & Young People; Safer & Cohesive Communities; Healthy Living; Thriving & Prosperous Economy and Neighbourhood Management.

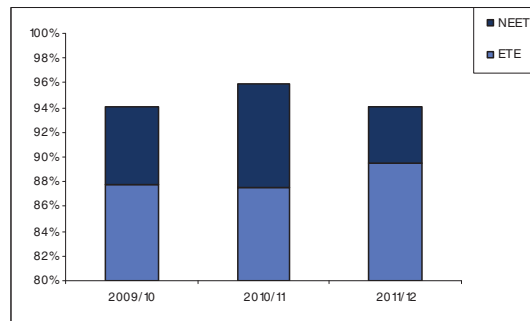
Annual Destination Data For Cardiff School Leavers at 16 & 18 years.



Annual Destination Data for Cardiff School Leavers at 16yrs

NEET at 16: The percentage of school leavers at 16 were known to be NEET (Not in Education, Employment or Training) improved by 1% in 2011/12 (from 7.7% to 6.7%), the 'unknown' percentage was unchanged at 2.3% over the period.

(Due to reporting timetables the data for 2012/13 will not be available until November 2013)

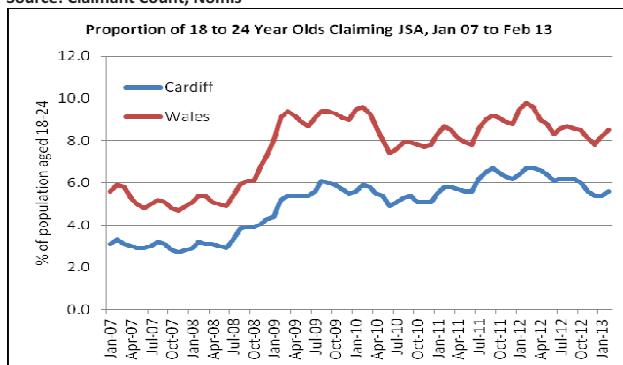


Annual Destination Data for Cardiff School Leavers at 18yrs

NEET at 18: The percentage of school leavers at 18 who were known to be NEET reduced substantially by 3.9% (from 8.4% to 4.5%) however the percentage of 18 year olds with an unknown destination increased by 2.9% (to 6%). Notwithstanding the increase in the 'unknown' cohort, there was an overall improvement of at least 1% in the amount of 18 year olds who were NEET.

Job Seekers Allowance Claimant Rate 18 -24 yr olds

Source: Claimant Count, Nomis



Since the beginning of 2007 the proportion of 18 to 24 year olds in Cardiff claiming jobseekers allowance

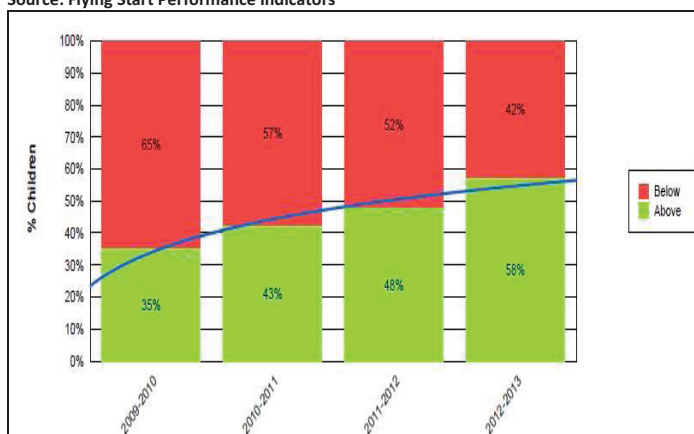


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(JSA) has consistently been below the Welsh average. In February 2013, this figure was 5.6% in Cardiff compared to 8.5% for Wales as a whole.

Flying Start Development Milestones at 2 & 3 yrs

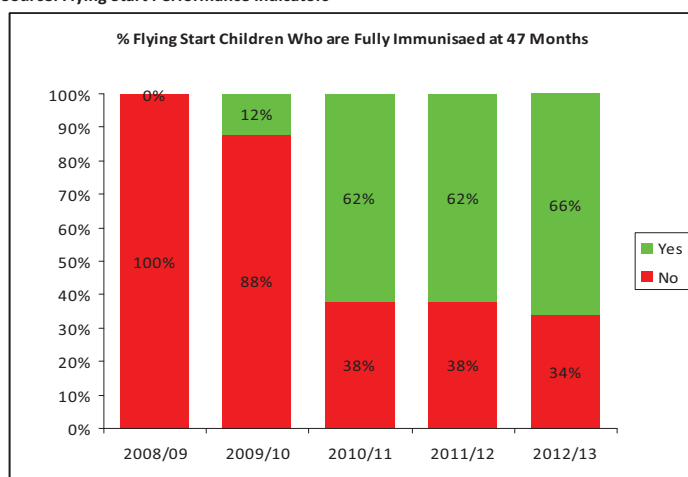
Source: Flying Start Performance Indicators



Flying Start children who reached key developmental milestones at age 2 and 3 improved by 10% in 2012/13 against the previous year. Significant and consistent headway has been made in this area of work, with greater proportions of children achieving developmental milestones year on year.

Child Immunisation

Source: Flying Start Performance Indicators

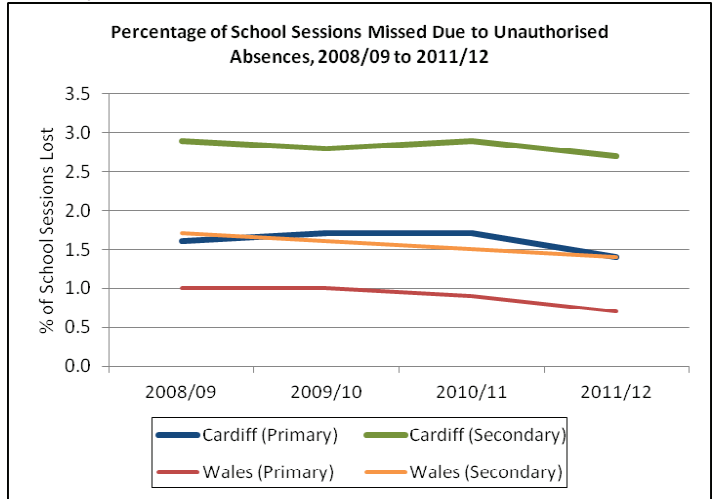


The chart above demonstrates the annual percentage change in Flying Start children who received their full programme of vaccinations before their 4th birthday. Having remained at 62% during the previous 2 years, additional progress was made in 2012/13 as the percentage increased to 66%.



Unauthorised School absence

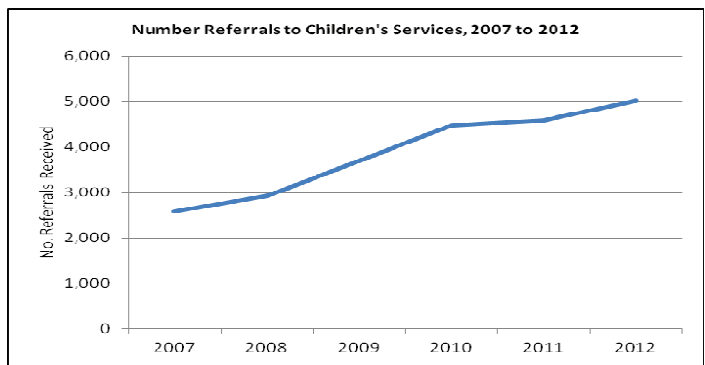
Source: Pupils' Attendance Record, Welsh Government, StatsWales



The percentage of school sessions missed due to unauthorised absences in both primary and secondary schools in Cardiff have been significantly higher than the Welsh average for some time. In 2011/12, 1.4% of primary school sessions were missed in Cardiff; double the figure for Wales (0.7%). Similarly, the proportion for the city's secondary schools (2.7%) was also around twice that of Wales as a whole (1.4%). The annual trend demonstrates that attendance at both primary and secondary level has improved by roughly 0.3% and 0.2% respectively.

Referrals to Children's Services

Source: Children's Services, Performance Indicator Referrals 1



The number of referrals to Cardiff Council's Children's Service has followed an upward trend since 2007. In 2012 there were 5,022 referrals; an increase of 9.6% on the previous year and almost double the figure seen in 2007, the percentage of re-referrals within 12 months into children's services has also seen an upward trend since April 2008 and reached a peak in November 2012 at 33.1%.



What Matters Annual Review 2012-13

What we have done:

The following section outlines key projects undertaken by the Cardiff Partnership's work streams during 2012/13

Families First

Families First is a Welsh Government programme to fund the development of effective multi-agency systems and support for families, particularly those living in poverty. The new Families First programme and the Team Around the Family were officially launched at City Hall on 5th March 2012

A comprehensive commissioning process for six service packages was carried out throughout 2012/13. Key milestones included:

- May 2012: OJEU Notice issued, inviting applications from potential bidders
- June 2012: Deadline for initial bid submissions
- July 2012: First stage evaluation (comprising of multi-agency teams for each of the six service packages and including parents, children and young people)
- July to September 2012: Dialogue phase between commissioning team and bidders
- September 2012: Final submissions of bids
- October 2012: Final evaluation stage (including presentations from bidders)
- December 2012: Contracts awarded
- January to March 2013: Mobilisation of services

The six service packages, and their lead providers, that have been strategically commissioned to deliver an early intervention in Cardiff are:

- Child and Youth Engagement – Cardiff Council Education Department
- Disability Focus – Action for Children
- Early Years – Cardiff and Vale University Health Board
- Emotional, Mental Health and Wellbeing – Barnardo's
- Healthy Lifestyles – Cardiff and Vale University Health Board
- Sustainable Employment – SOVA



A 'Young Commissioners' group was set up and involved children and young people (aged 8 to 21) who were given specialist support and training to enable meaningful involvement. The Young Commissioners group were directly involved in the evaluation of the tender submissions at both the outline and final tender stages and were awarded '....' At the National Procurement Awards

Further information on the Families First programme can be obtained [here](#).

Team Around the Family

The Team Around the Family (TAF) model brings a wide range of professional together to work with a family in order to help them address the breadth of challenges which cannot be met by one agency. Operating alongside the Families First programme it is focuses on working with the family as a whole; parents, carers and the wider family play a central role in the whole intervention and solution process.

Children and Young People Symposium

The annual Children and Young People Symposium was held on 5th March 2013 at City Hall. The event provided an important engagement event allowing partners in Cardiff to consider the issues affecting key statutory areas of work. It was co-produced between the Policy, Partnership and Citizen Focus Team and Cardiff Youth Council and provided a platform for service providers across the city to consider the priorities identified by the children and young people themselves. 120 delegates, of which a quarter were children and young people attended the event, which was co-chaired by members of Cardiff Youth Council



The symposium agenda was shaped around the priorities emerging from the Youth Council conference earlier in the year. Where over 230 young people’s views were represented. Workshops were focused on the following priorities;

- Playing in Cardiff - Youth Activities***
- Travelling in Cardiff – Transport***
- Working in Cardiff - Training and Employment***

A key priority to emerge from the symposium was accessible transport for young people, and following the event Cardiff Bus agreed to reduce fares for 16-18 year olds. The impact of this initiative will be monitored and close dialogue will be maintained amongst partners and Cardiff Bus.

5 Stage School Behaviour Strategy

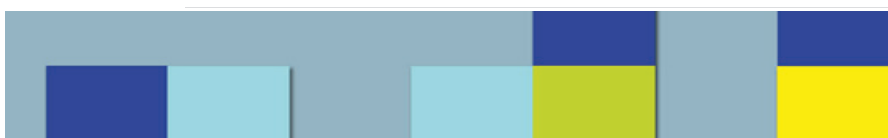
A new strategy was implemented to address challenging behaviours in schools, with particular focus on attendance, exclusions and bullying.

A service restructure (which brought Cardiff Anti Bullying, Education Other Than At School, Transition, the Fair Access Panel and the Exclusions Officer all under the remit of Behaviour Support Services) paved the way for a five stage Behaviour Strategy to be implemented with the high profile priority of reducing school exclusions by developing alternatives and supporting whole-school behaviour management procedures.

Is Anyone Better Off?

For the academic year to date there have only been 2 exclusions from Cardiff’s secondary schools and for the third consecutive year there were no exclusions from Cardiff’s primary schools.

**Contributing Programmes:
Families & Young People; Thriving & Prosperous Economy**



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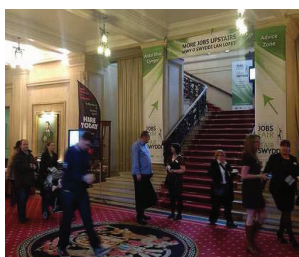
Employment Opportunities for Young People

Channel View Work Placements

28 young people were recruited into work placements at Channel View Leisure Centre in January. The placements are paid for 6 months and also provide participants with 15 hours of education a week. Once the placement ends they will also be provided with employment options at the end of the placement.

Employer Engagement Event

An employer engagement event took place on the 8th of March. The Park Inn hotel who hosted the event made a number of offers of employment and placements to the young people involved. A full list of all the offers made is being collated and made available to schools.



@33 Charles Street

The single point of contact @33 Charles Street was upgraded and redeveloped as an accessible route of support for young people disengaged from Education Training and Employment this year. The centre enables young people to have direct access to a range of services to help them overcome the sometimes complex barriers they may face as they move into adulthood and working life. The centre is resourced with learning coaches, Careers Advisors, Youth Workers, healthy Mind Workers, Young Persons Advice and Family Mediation Workers.

Is Anyone Better Off?

The amount of 16 year olds not in education, employment or training in 2011/12 improved by 1% against the previous year and the amount of 18 year olds who were NEET improved by 2% in 2012/13.

Contributing Programmes:

Families and Young People; Thriving & Prosperous Economy; Emotional Mental Health and Wellbeing

School Attendance

Attendance Hit Squad

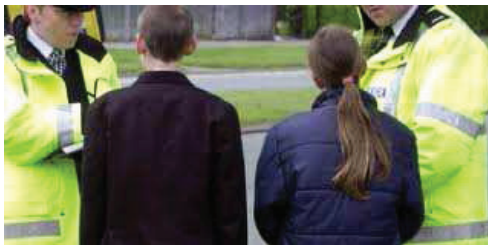
Education Welfare Services (EWS) ran 'Attendance Hit Squad' initiatives to target pupils with below 85% attendance; In Willows High School 68 pupils were identified for the intervention, and 52 in Llanrumney High School in October and November respectively. The 6 week interventions involved speaking with pupils on a one to one basis to address individual issues and agree improvements. The improvements are then detailed in 'attendance contracts' between pupils and the EWS.

Truancy sweeps

EWS undertakes regular Truancy Sweeps in partnership with South Wales Police and a large amount of children & young people were stopped in the city centre in the December sweep. Their families were spoken to and reminded of the importance of, and legal requirements for, good attendance.

The operation sent a very clear message to parents and pupils about the importance of school attendance and the consequences of absence. Feedback from all involved in the operation and from the public was extremely positive and generated good press coverage addressing the importance of good attendance.

Over 50 personnel from EWS, Police and Schools were involved; the high profile sweep received wide scale press coverage and sent a powerful message to families in the city that unauthorised absences will not be accepted. **During the December sweep 216 children were identified who were illegally absent from school.**

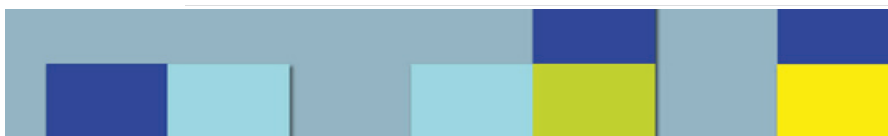


Is Anyone Better Off?

- Attendance levels in primary schools improved by 0.37 percentage points 3 months after the truancy sweep (92.75% to 93.12%) and in Secondary schools attendance levels increased by 0.1 percentage points 3 months after the truancy sweep (91.91% to 92.01%).

Contributing Programmes:

Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy



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Tackling child poverty together

The Child Poverty Strategy for Wales 2011-14 places a focus on how the Welsh Government's policies collectively contribute to three strategic objectives:

- (i) Reduce the number of families living in workless households.
- (ii) Improve the skills of parents/carers and young people living in low-income households so they can secure well-paid employment.
- (iii) Reduce inequalities that exist in health, education and economic outcomes of children and families by improving the outcomes of the poorest.

Child Poverty in Cardiff

To deliver on our commitment to tackle child poverty we have ensured that the issues surrounding child poverty run throughout the programmes and workstreams. Whilst tackling child poverty is a common aim across the partnership, there are particular workstreams which have an explicit focus on the issue, specifically those within the **Families and Young People programme (FYPP)**. Three programmes in particular will make a difference to the lives of children, young people, with FYPP directly involved with **Families First**, **Integrated Family Support Service** and **Flying Start**. These programmes will provide a range of services from preventative to remedial. As part of the same programme, partners will explore every opportunity to join-up deliver and maximise resource. Furthermore, we will make align work with partners in the Vale of Glamorgan where possible.

Similarly, other workstreams in the programme such as **improving attendance at school** and **reducing the number of young people who are not in education, employment or training (NEET)** will help young people to reach their potential and go on to be successful in their chosen field.

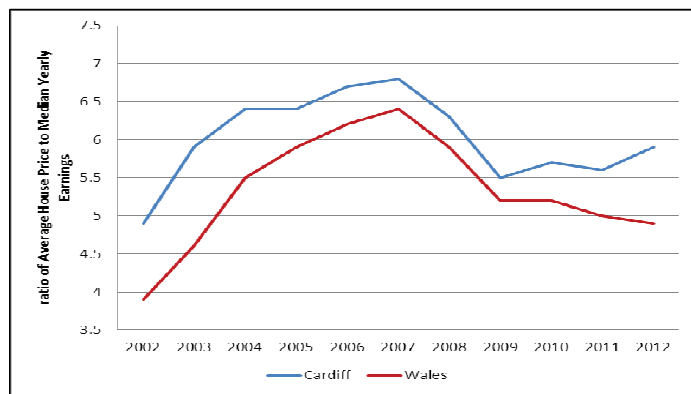
The **Thriving and Prosperous programme** will also make a major contribution by raising levels of employment and income. Furthermore, activities outside of these programmes will also make strong contributions, including the work carried out by *Communities First*. In this way partners in Cardiff will make progress towards meeting local need and our obligations, as set out in the Welsh Government's Child Poverty strategy.

OUTCOME

CARDIFF IS A GREAT PLACE TO LIVE, WORK AND PLAY

The key indicators the Cardiff Partnership are using to monitor trends under the “great place to live work and play” outcome are outlined below. Although all programmes of work contribute to this outcome, the most influential are Safer & Cohesive Communities; Thriving & Prosperous Economy, Urban Environment and Neighbourhood Management.

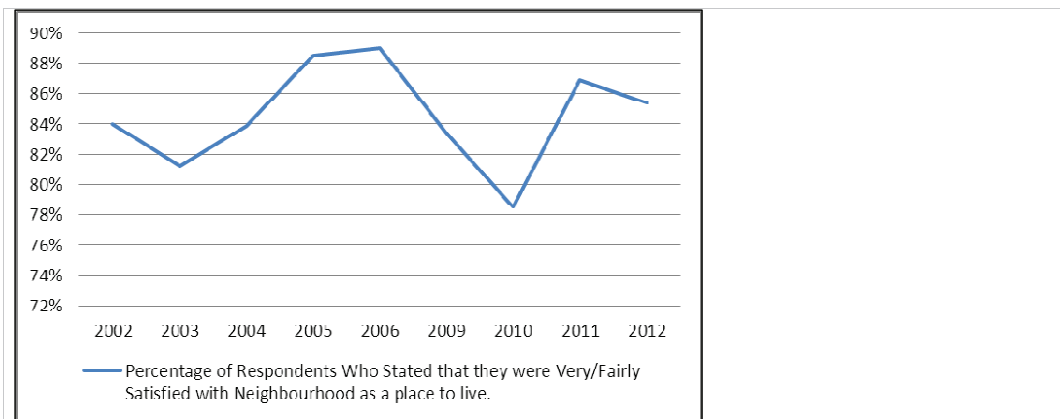
Ratio of Average House Prices to the Annual Full Time Earnings / Citizen satisfaction with the city as a place to live



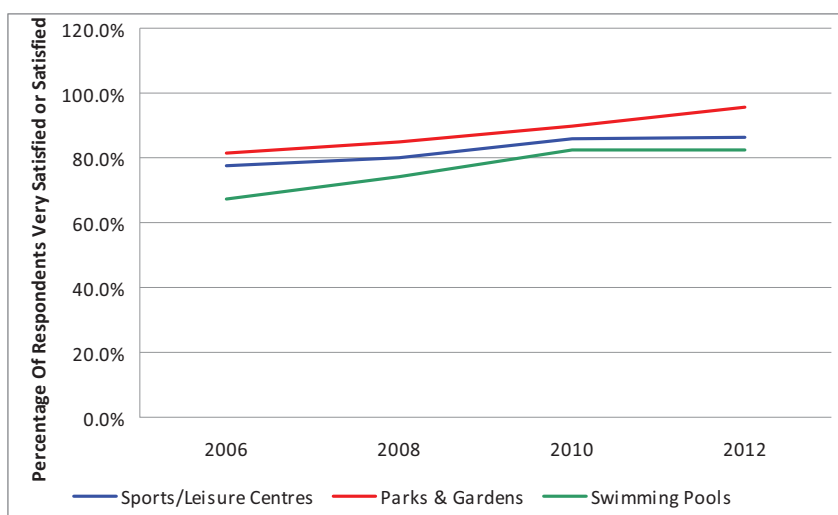
To determine the affordability of housing in Cardiff a ratio is taken by dividing average house prices in Cardiff with average annual full time earnings. In 2011 the ratio fell slightly indicating that house prices were more affordable over the period, before increasing again in 2012 to 5.9.

The percentage of residents who reported being satisfied with their neighbourhood as a place to live reached a peak of 89% in 2006, in the years leading to 2010 this reduced dramatically to approx 79%. Since then there have been improvements in citizen’s satisfaction levels, however it reduced again in 2012 by 1.6 percentage points (from 87% in 2011 to 85.4%).

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How Citizens Rate Sports Facilities in Local Area



In 2010 85.9% of residents reported they were satisfied with provision of local sports and leisure centres. By 2012 there had been an increase in the percentage of residents reporting satisfaction in sports and leisure centres in their neighbourhood to 86.4%.

Similarly, satisfaction with parks was at 89.7% in 2010, and had increased to 95.6% by last year.

There was no change in residents satisfaction in respect of swimming pools over the period.



What we have done:

Events	
<ul style="list-style-type: none"> • Olympic Football: The Millennium Stadium hosted the opening competition of the 2012 Olympics as well as the men's football bronze medal final. This provided an exciting climax to a fantastic few weeks in Cardiff. A free programme of events was provided, including comedy street entertainment and live music on St Mary Street, Queen Street, High Street and The Hayes. • Winter Wonderland: Opened on 23rd November with high quality performances from Only Boys Aloud and No Fit State Circus. • Paralympic Games Flame Festivals took place in Cardiff Bay on August Bank Holiday and included free disability sports demonstrations and have-a-go sessions. • Cardiff International Food & Drink Festival: Over 100 specialist food and drink producers contributed to the annual festival held in Cardiff Bay, with live music and entertainment featuring prominently over the course of the 2 day festival. • Cardiff Harbour Festival - Extreme Sailing Series: Waterfront visitors had a grandstand view of an international competition of Extreme 40 catamarans crewed by Olympic medallists, America's Cup veterans, World Champions and Round the World sailors • Cardiff Cycle Festival: Held between 16th and 30th June, with activities for all ages and abilities promoting the fun side of cycling. • Urban Games: A Cardiff wide sports event took place in June 2012, celebrating National School Sports Week. The Games provided children aged 12 and 13 with the opportunity to take part in several competitive, Olympic style sporting activities including football, athletics, street dance, baseball, volleyball and tug of war whilst mixing with other children from neighbouring schools. The project aimed to promote community spirit through sport amongst children. 	
	
How Much/ How Well	Is Anyone Better Off?
<ul style="list-style-type: none"> • Cardiff played host to 11 of the Olympic football games during London 2012, leading to an increase in footfall the city by over 22% during the Olympic period. • In a recent survey carried out by Virgin Money, Cardiff was placed in the top ten of the UK's most cycle-friendly town/cities based on the following criteria: bike thefts, accidents, serious injuries and deaths, the availability of cycle routes and bike repair shops. 	<p>During the week that Olympic football was hosted in the city, retailers reported a significant increase in trade; local shops, hotels, bars and restaurants reported the Games had been very lucrative. St David's shopping centre reported its second highest number of shoppers of the year during that week.</p>
Contributing Programmes:	
Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy	



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Regional Collaboration

Cardiff Council in collaboration with The Vale of Glamorgan Council was successful in applying to the regional collaboration fund for 6 strategic projects across the Cardiff & Vale region. The process involved the first joint cabinet meeting between both councils to discuss strategic priorities at a regional level and the six successful bids were as follows:

- £650,000 for Health & Social Care Service Integration
- £250,000 for Integrated Regulatory Services
- £180,000 for the CYD Cymru Collective Energy buying scheme
- £140,000 for the development of the Sexual Assault Referral Centre (SARC)
- £270,000 for the Alcohol Treatment Centre
- £50,000 for Cardiff & Vale Joint Local Service Board

Contributing Programmes:

Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy; Healthy Living; Safe & Feel Safe; Urban Environment;

Meeting the Welsh Housing Quality Standard

Cardiff Council became the first local authority in Wales to meet the Welsh Housing Quality Standard, completing the work over two months ahead of the Welsh Governments December 31st Deadline. The WHQS was developed by the Welsh Government to provide a common target standard for the condition of all housing in Wales by December 2012.



How Much/ How Well

Improvement was completed work to 13,688 council houses. These improvements included replacement windows and doors, new kitchens, new bathrooms, upgraded electrical systems and strategies to tackle issues of fuel poverty.

Contributing Programmes:

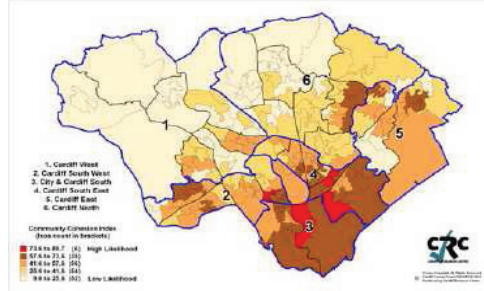
Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy

OUTCOME Cardiff is a Fair, Just and Inclusive society

Cardiff is a vibrant and diverse city, with a proud history of multiculturalism and communities that pride themselves on being open and accepting. Partner organisations have committed to ensuring that what the services we provide reflects the communities that we serve. Ensuring that nobody is disadvantaged by any protected characteristic as set out in the single Equality Act. We are committed to giving everyone a voice and an opportunity to affect change in their life and in wider society and are working with the people of Cardiff to shape the future of the city and its services.

Cardiff Community Cohesion Index

Source: Cardiff Council, Customer & Business Knowledge Team

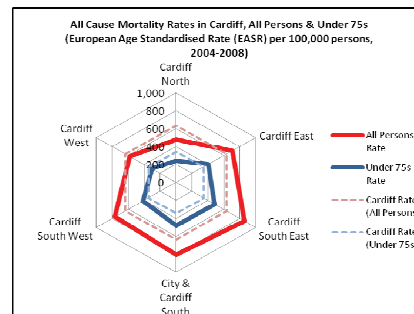


The Cardiff Community Cohesion index is a spatial model developed by Cardiff Council in partnership with CACI, a community intelligence research organisation. The model draws upon a range of socio-demographic data including crime, ethnicity, religion, deprivation and migration in order to gain a better understanding of the communities of Cardiff.

The index highlights the areas of Cardiff that are likely to be the least cohesive using the methods outlined above. These areas appear to draw a parallel with similar maps which outline the areas with highest levels of deprivation such as: Grangetown, Riverside Splott and Adamsdown which appear in red above.

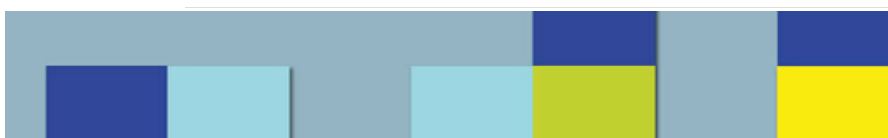
This tool is an indicator and takes into account only quantitative data sets and should not be viewed in isolation. It should be considered alongside qualitative/anecdotal information to give a more informed picture of where particular cohesion issues may have arisen.

Mortality Rates



This chart demonstrates mortality rates in Cardiff by Neighbourhood Management area per 100,000 population.

In Cardiff South East there were 859 'all cause mortalities' per 100,000 population, compared to 482 per 100,000 population in Cardiff North. The pattern is very similar across the southern arc of the city, revealing the significant health inequalities people in these areas are faced with. One of the Cardiff Partnership's key priorities is to address this divide and improve health outcomes in the more deprived areas of the city.



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What we have done:

The following section outlines key projects undertaken by the Cardiff Partnership's work streams during 2012/13

Protected Characteristics

The Equality Act 2010 states that we must adhere to a series of duties in order to eliminate unlawful discrimination and harassment, promote equality and develop good relations between people in relation to age, gender reassignment, sex, race, disability, pregnancy and maternity, sexual orientation and religion or belief. As such, *all* partnership work must ensure that these duties are taken into account throughout workstream and Programme Board activity but the following items highlight a snap shot of some of the targeted work relating to the Protected Characteristics identified within the Equality Act.

- **IDAHO (International Day against Homophobia)** event held on 17th May 2012. City Hall was bathed in pink light to mark the event.
- **Cardiff Strategy for disabled children and young people** was launched in April 2012. A rolling programme of work has been established, within the Vulnerable Families workstream to take this strategy forward.
- In collaboration with the priorities of the **Autism strategy**, an **Orange Wallet Scheme** has been implemented. The wallet is a communication tool, which can be used by people who sometimes find difficulty communicating their needs to staff when using public transport. It contains space for the user to insert written and / or visual prompts to show staff their requirements. Staff in public transport services have been trained to recognise the wallet and how to provide appropriate help. The wallets are available in Cardiff libraries.
- As part of the Families First programme of services, the **Disability Focus** package was commissioned in early 2013. The package will provide additional support to disabled children and young people aged 0 – 25 and their families to ensure they are able to maximise their life chances. Led and coordinated by Action for Children, the package will also provide a Disability Team around the Family which in partnership, will delivered to support children, young people and their families with additional needs. Within the package, grants were awarded to a variety of organisations to provide additional support for services targeting the needs of disabled children and their families.
- This year saw the introduction of Out of Hours registration and short notice funeral provision for those with a cultural need.
- A variety of forums have been convened to increase participation and engagement with various communities in the city: Cardiff's Older Person's Forum reached 105members, Cardiff Minority



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Ethnic Elders had 43 members and Cardiff Access Focus Group reached 30 members. Each forum met on a bi-monthly basis

- An intergenerational project took place between Peterlea Primary School, Ysgol Gyfun Plasmawr. The project involved films that young and older people contributed to and a launch was held in Fairwater Leisure Centre
- A Somali Integration Society project to engage older people from Cardiff South was funded by Neighbourhood Management to encourage increased physical activity and reduced social isolation.
- An Over 75's Welfare Check Report has been developed and commenced in December 2012, as a pilot with the Four Elms Medical Practice and Care & Repair.

Welsh Language Provisions

Welsh speaking city tour guides have been employed to ensure a bilingual service is delivered

Families First Contract requirements also stipulated that each service provider must provide a bilingual service and were also expected to promote the Welsh language

Contributing Programmes:

Families & Young People; Emotional Mental Health and Wellbeing; Thriving & Prosperous Economy

Community Covenant

Partners in Cardiff signed a Community Covenant on 5th March 2013 at a high profile event hosted by Cardiff City Football Club. In signing the covenant, partners committed to give the Armed Forces community their support.



Led by Cardiff and Vale UHB, the Armed Forces Forum will take forward the work of the Covenant and will administer the application process for the Community Covenant Grant Scheme. The grant scheme is set up to foster relationships between the Armed Forces community and the wider, local communities in which they live.

Signatories of the Covenant include representatives from the three Armed Forces, Cardiff Council, Cardiff and Vale UHB, C3SC, South Wales Police, South Wales Fire and Rescue, Wales Probation Trust, Cardiff City Football Club, Job Centre Plus, the Royal British Legion and other charities that support the Armed Forces and veterans.

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Community Hubs

Community Hubs in Cardiff bring together the work of the Council and other partners under one roof, allowing citizens to access services more quickly and conveniently than before. The hub in Butetown, @Loudoun, officially opened in June 2012 and builds on the success of the existing two hubs in St Mellons and Llanrumney.



How Much/ How Well	Is Anyone Better Off?
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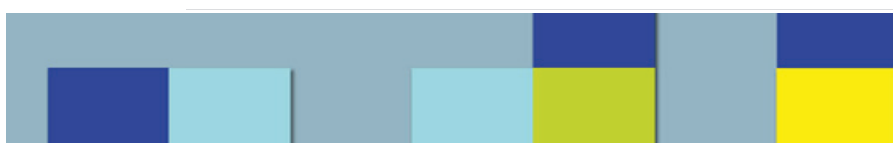
During 2012, both St Mellons and Llanrumney hubs responded to a total of 6,411 Housing Benefit and Council Tax related enquiries.

Members of staff have also been recruited with Somali and Arabic language skills in order to promote benefit take up in the area.

Over 2012/13 there has been increased visits to the new hubs which illustrates citizen need for accessible advice services, which correspond to the recent changes regarding Welfare Reform. Partners are committed to ensuring that all citizens are supported during the transitional period in relation to the upcoming changes instigated by Welfare Reform.

Communities First

Communities First is a Welsh Government funded programme that works with residents, community organisations, business and other key agencies in four cluster areas in Cardiff, focusing on the long term sustainability and wellbeing of communities. Involving local people in all aspects of this work is an essential feature of the programme. Communities First aims to contribute, alongside other programmes, to narrowing the education/skills, economic and health gaps between our most deprived and more affluent areas. The Programme has three strategic objectives helping to achieve these outcomes:



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- Prosperous Communities
- Learning Communities
- Healthier Communities

Communities First has a shared emphasis with Families First on reducing child poverty and improving outcomes for families in poverty. The reporting frameworks for the two programmes have been brought together and opportunities to join up delivery are being explored. The four clusters where communities first will operate in have been established and the recruitment phase began in the fourth quarter of 2012/13. They include:

- Splott, Tremorfa, Adamsdown & Roath/Plasnewydd (STAR)
- Butetown Riverside & Grangetown (BRG)
- Cardiff West (Ely, Caerau and Fairwater)
- Cardiff East, Llanedeyrn & Pentwyn (ECLP)

Launch of Ask Cardiff Website

The Ask Cardiff website was launched to provide a resource for partners in Cardiff to access key information about the population of Cardiff. Key additions to the site included the publication of 2011 Census Key Statistics Profiles which were analysed and broken down into the following geographical levels:

- Cardiff & Wales
- 29 Electoral Divisions
- 211 Lower Super Output Areas
- 47 Middle Super Output Areas
- 6 Neighbourhood Management Areas



Welfare Reform

A Welfare Reform Task Group was established to ensure the societal effects of welfare reform can be minimised. The group consists of partners from Cardiff Third Sector, South Wales Fire and Rescue, South Wales Police, Public Health and Housing Associations. An impact assessment was performed on the potential risks of welfare reform, such as digital and financial inclusion. Each task group looked at how these effects can be minimised through working in partnership and pooling resources to ensure specific areas and individuals are targeted. Through business intelligence, the task groups adapted their priorities to solve new demands as and when they arise.

How Much/ How Well

- A website dedicated to Welfare Reform in Cardiff received over 5,000 hits
- Around 1,000 people attended welfare reform road shows.
- 249 discretionary housing payments have been made to community members.
- 95% of people affected by extra bedrooms have been contacted with 21% being helped to move with moving costs.
- Links have increased with the registered social landlords and facts sheets have been produced to advise services and community members.



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Influencing Policy & Coproduction

A key priority of the Cardiff Partnership is to increase inclusion and involvement of service users in decision and policymaking. Parents, children and young people were all actively involved in commissioning Families First services and participated fully in the evaluation process.

A ‘Young Commissioners’ group was set up and involved children and young people (aged 8 to 21) who were given specialist support and training to enable meaningful involvement. The Young Commissioners group were directly involved in the evaluation of the tender submissions at both the outline and final tender stages.

A **Co-production group** has been established to further the priorities of the ‘Supporting Inclusion and Citizen Involvement’ workstream. The group consists of South Wales Police, Cardiff University, Public Health Wales and local authority service area representatives and promotes the ethos and value base of co-production as a shared practice methodology and coordinates localised pilot initiatives to promote better citizen engagement in the design, delivery and evaluation of services.

How Much/ How Well **Is Anyone Better Off?**



The Young Commissioners followed the same evaluation process as the adult evaluation team, using the same criteria. The parallel teams each agreed their scores which were weighted to form a single final set of scores. The Young Commissioners’ scores were given a weighting of 25%, while the adult team was given a weighting of 75%.

The Young Commissioners won the Innovation Champion Award at the 2013 Welsh National Procurement Awards, in recognition of their innovation and commitment which placed the views of children and young people at the centre of the decision making process during the commissioning process of new services.

This approach has been of great benefit to the individuals involved. The Young Commissioners group built a range of skills and expertise, including achieving accredited qualifications. 12 younger children have now completed 5 entry level AQA modules for the ‘Passport to Participation’ and 18 older young people have completed 4 AQA’s in Commissioning.

“The Young Commissioners were a fantastic addition... the questions posed by our young commissioners were fresh and insightful. In some cases they asked questions from a very innocent perspective that raised some significant issues about the bid that weren’t automatically visible from the professional focussed minds of our panel.”
 (Evaluation Team Member, Third Sector)



Community Cohesion

Cardiff is celebrated for having a wealth of diversity in its communities and as a growing European capital city it is important that people from all backgrounds are welcome and feel safe in the region.

The Cardiff Partnership monitors community cohesion closely in an effort to ensure that people from different cultures do not become isolated or targeted; to this end a Cardiff and Vale Community Cohesion Officer was appointed and a Community Cohesion work plan developed. The following items provide an update on some of the partnership work that aims to promote and improve community cohesion across the city:

- The Cardiff Prevent Delivery Plan was completed and submitted to the Home Office.
- A successful conference was delivered and attended by the Somali community on 28th June, supported by Cardiff's partners. The focus of the conference was to develop and ensure service provision effectively meets the need of the community. An action plan, prepared in collaboration with Communities First was prepared following the key messages stemming from the conference.

Contributing Programmes:

Safer & Cohesive Communities; Neighbourhood Management

Restorative Approaches

Cardiff is committed to becoming a restorative city and the Cardiff Partnership is playing a key role in equipping service providers in the city with the skills and training to resolve issues together using restorative principles and practices.

Restorative working ensures that those most affected by an issue are supported and challenged to resolve problems themselves. Building, maintaining and repairing relationships becomes a positive driving ethos in organisations committed to RA, and is central to early intervention and prevention work with children and young people and their families.

In 2012/13 we focussed on:

Restorative Approaches training, and training Cardiff's own trainers:

- In pilot areas, with community safety, residential care, education services, youth services, youth offending services, and ASB teams.
- Developing centres of best practice with trainers from specific sectors such as schools and care homes.

Embedding restorative approaches into family based working in Cardiff through intensive training of Families First and Team Around the family staff.

Education Improvement Partnership

The merger of Rumney and Llanrumney High Schools was identified as an area where restorative approaches would be pivotal to ensuring a smooth transition for pupils and employees throughout the process. A series of events were organised including uniform consultation and design with pupils, which helped to build relationships and identify concerns and solutions prior to the opening of Eastern High.



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Youth service, Communities First, YOS, Gypsy and Traveller support staff and the Princes Trust worked together to ensure all pupils and community needs and concerns are met and addressed, with restorative processes being employed to ensure all voices are heard.

Community Cohesion funding enabled Peer Mediation training to enable pupils to resolve low level issue themselves. It has also ensured that some of the groups most vulnerable to the merger e.g. Gypsy and Traveller community families were kept fully informed and had their specific needs addressed.

Residential Care

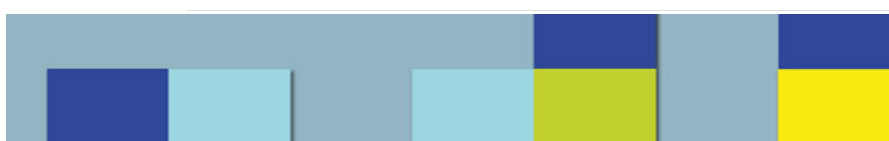
All staff in Cardiff's residential care homes were trained and will receive ongoing development to ensure daily practices within care homes in the city is restorative in nature. We are to ensuring full restorative partnership working by collaborating with agencies such as YOS, ASB and police to problem solve issues for the most vulnerable children in Cardiff as early as possible. Children themselves have also been trained in basic restorative practices, especially circles. The home had its practices recognised as consistently good by Estyn.

How Much Did we Do/ How Well Did we Do it/ Is Anyone Better Off?

- 96 staff were trained in family centred restorative approaches in line with workforce development of Families First providers.
- 103 additional multi agency staff were trained in RA
- Fitzalan High School in Cardiff implemented Restorative Approaches last year and has reduced days lost to fixed terms exclusions of pupils in 412 to 52 in one year.
-

Contributing Programmes:

Families & Young People; Thriving & Prosperous Economy



Recommendations

Over the course of 2012/13 a number of key issues were identified by the Cardiff Partnership which can only be resolved by a concerted multi agency response.

Young People who are NEET (not in education, employment or training)

Tackling the on-going NEETs agenda will be central to the success of delivering outcomes for people in Cardiff due to the fact that it impacts so many aspects of our work. One of the best ways we can address poverty, disadvantage, social inclusion, economic prosperity, health and wellbeing in our communities is by providing people with the tools which are necessary to achieve long term gainful employment.

It is important that partners in Cardiff further establish a coherent framework for delivery against this strategy early on in 2013/14, that is consistent with national best practice. Despite the fact that number of NEETs fell in Cardiff last year, the rate of reduction was slower than hoped. Partners will want to ensure greater successes over the next 12 months and it is suggested that programme boards clearly show how they contribute towards the NEETs agenda. Also, by providing data on trends on a more frequent basis, pertinent actions can be taken at an earlier stage thereby ensuring examples of best practice are capitalised upon. This improved strategy was recently recommended by the Cardiff Leadership Group and the Cardiff

What Matters Annual Review 2012-13

Partnership Board will be well placed to respond to any changes in trends as they arise.

Child Poverty

Recent statistics showed child poverty is a severe issue in Cardiff:

- Approximately 17,400 (24%) of children in Cardiff Unitary Authority are living in poverty;
- Over 10,400 children live in Electoral Divisions falling within the worst 10% of poverty in the United Kingdom
- The highest proportion of children living in poverty is in Butetown at 48%, closely followed by Ely with 47% and Adamsdown with 45%, seven other Electoral Divisions in Cardiff have more than 1,000 children living in poverty.

These striking figures raise immediate concerns for the wellbeing and health of children, and partners will be mindful of the long term ramifications of a generation raised in poverty. All programme boards need to be able to identify their commitment and contribution towards addressing child poverty. The partnership could build on its joint working in this area by developing more focused actions and high profile events such as a 'Tackling Poverty Day'.

Further work is also required to fully understand the geographic variations in child poverty in Cardiff so that currently packages such as Families First, Communities First and Flying Start together to provide a more coordinated response to child poverty.

What Matters Annual Review 2012-13

Responding to Emerging Issues

Cardiff's population is set to grow by 42% over the next 20 years to approximately 468,000. By necessity, services will need to respond to added pressures. An example of how services must evolve to meet the needs of the community is already taking place through the South Wales Programme. Health boards across South Wales are consulting on how best to reconfigure the provision of services in hospitals to create a safe and sustainable model for service delivery for people in the region. As these changes take effect in Cardiff the CPB will need to ensure it is ready to respond by establishing a clear watching brief on this agenda.

Partnership Engagement

Multi-agency working has made real progress since the inception of Cardiff Partnership, but there is a clear need to achieve greater join-up between the different programme boards. As such a formal approach to partnership engagement is required to ensure work is as joined-up as possible and that a clear understanding of where gaps in service exist and where value can be added. Over the next year it is recommended that a new engagement plan be written to outline the Cardiff Partnership's strategy's approach and provide a clear framework for connecting the programme boards.

Future Annual Reviews

There is an existing requirement for each programme board to produce highlight reports on a quarterly basis and it is now possible to aggregate four highlight reports over a 12 month

period into one 'annual' report for each programme.

Further to this Programme intelligence on high and mid-level indicators allows us to show the impact of partnership activities throughout the year. It is therefore suggested that future annual reviews should focus more on benchmarking progress relative to other cities, and highlighting flagship initiatives, given that the performance information already exists in the highlight reports and that trend information is available in the programme intelligence reports.

This approach also takes into account the fact that the high level indicators are slow to show change. It is therefore suggested that benchmarking the high level outcomes in Cardiff against other 'competitor' cities in the UK such as Bristol, Leeds, Birmingham, Manchester, Liverpool, Nottingham, Derby and Newcastle would be more useful. This could also assist in identifying areas of best practice across the UK where policy and actions that seemingly have a positive impact could be further explored.

Contact Information

If you would like further information please contact the partnership secretariat on 02920 872670 or email Whatmatters@cardiff.gov.uk

Alternatively, you could write to the Partnership Secretariat.

Room 412
County Hall
Cardiff
CF10 4UW

NILGA additional briefing notes 5 December 2013

Oral Evidence to Environment Committee – 5 December 2013

Key Points

Ald Hatch / President

- Overall purpose of evidence:
 - Cut out unnecessary bureaucracy and control from the Bill
 - Create the STRONG local government as per the Executive's vision
 - Ensure councils can self-manage since they are primarily accountable to ratepayers
- Proportionality – local solutions, which are politically acceptable, should be permitted.
- Strong need for clear guidance, developed in association with local government, on the definitions and applicability of call-in and qualified majority voting procedures.

Cllr Chambers

- NILGA supports openness and transparency – but submits that extending this to subcommittees is damaging to the democratic process since early discussions, on a free and frank basis, are desirable in some cases.
- In relation to complaints under the new Code of Conduct, a specific appeal mechanism is absolutely essential – appeals are a fundamental part of the justice system.
- Whilst we strongly welcome the proposed Community Planning legislation in principle, there is widespread concern within the local government sector that the proposed legislation is not strong enough to compel partners to fully participate, ensuring investment of time and budget by senior decision makers in order to fulfil the identified objectives.

Cllr McPeake

- We have various concerns in relation to the Performance Improvement proposals:
 - The model is based on the Welsh model and we have a number of concerns that it is not appropriate for the Northern Ireland situation, does not reflect a partnership approach, and fails to reflect the move away from a “top down”, managed approach to more local control which is taking place in other jurisdictions
 - NIAO is not currently adequately resourced or developed to undertake the proposed duties
 - An improvement body for local government is urgently needed - this is being developed and will be reported on to Committee in early 2014
 - Council performance improvement should be self managed, with much more limited powers for Audit and Departments than those currently proposed
- As is the case in Scotland and Wales, the local government association representing District Councils must be directly represented on the Partnership Panel. Local Government must also be able to select its own Membership through an agreed appointment process.
- NILGA is opposed to “Control” of councils by Departments – instead, Departments should work **with** Councils, in a spirit of partnership.

NILGA CEO

- Increased costs associated with some Bill issues should be considered “New Burdens”.
- Localism and Programme for Local Government – Committee should be interested in these issues being developed by NILGA.
- Re Planning and Regulatory Committees, guidance is urgently required as to the application of the governance arrangements expressed in this Bill.
- Overall conclusion: Madam Chair, let's make this Bill a triumph of local democracy. At present a lot of it is good, but some of it will divide, control and diminish local government. Our public spiritedness and professionalism are limitless, our capacity, resources and patience are not.

Policy Proposals – Service Delivery and Performance Improvement Framework

Summary: Outlining the Panel's agreed proposals in relation to the service delivery and performance improvement framework for the new councils, post 2011.

Action Required: Presented for approval.

Background

1. In response to Minister Foster's statement of 31 March 2008 on the future shape of local government, the Strategic Leadership Board agreed the establishment of three Policy Development Panels to support the reform and modernisation programme. Policy Development Panel (Service Delivery) is tasked with the development of policy and implementation proposals in relation to the modernisation of Local Government with specific reference to service delivery and performance management.
2. This paper sets out members' agreed policy proposals in relation to the key features of a new service delivery and performance improvement framework. Further work will be required to develop detailed proposals in relation to the systems to underpin the framework at an operational level within councils, and to develop guidance to support the effective implementation of the processes.
3. In developing the proposals members took the decisions announced by Minister Foster as the statement of the policy objectives, and used the report from the Taskforce Sub-group on Performance Management as its starting point. Additional desk research was undertaken to provide members with detail on more recent developments in other jurisdictions in relation to Best Value, the improvement assessment regimes and the inter-relationship between performance improvement and community planning

Policy proposals

4. The policy objective underpinning the development of the proposals, drawn from Minister Foster's statement, is the provision of high quality, efficient services by councils that respond to the needs of people, and continuously improve over time. Members noted the Minister's comments that there is scope to achieve more in terms of delivering modern, high quality and efficient public services and that the drive towards this will be supported by central and local government working in partnership to develop appropriate performance management systems.
5. The Policy Development Panel took the view that the term performance management does not adequately reflect what councils should be striving to achieve in meeting the overall policy objective. Often the term is used to cover the performance of personnel only and not the performance of the organisation as a whole. As a consequence members agreed that any new framework must relate to services and the improvement of performance in the delivery of these, hence the adoption of the new term Service Delivery and Performance Improvement. This more holistic approach recognises the proposed role for councils in the community planning process and the inter-relationship between this duty and improvements in service delivery.
6. There was also consensus amongst the members that the new system should i provide accountability to the citizen and place their needs at the heart of the council's business;
 - ii ensure ownership by councils and elected members;

- iii facilitate council's to plan and resource their objectives to deliver measurable results which have a direct impact on their communities;
- iv engender a commitment to continuous improvement and ensure the necessary systems and procedures are in place to achieve this;
- v encourage sharing of best practice across councils;
- vi put in place robust arrangements for effective improvement management including practical support for services in difficulty; and,
- vii allow valid comparison across councils, and the flexibility to be able to demonstrate the delivery of national standards and locally agreed priorities.

7. Against this background members consider that the following elements should form the basis of a new service delivery and performance improvement framework.

A duty to secure best value

8. Members agree that the key foundation for the new framework will be restatement of the statutory duty on district councils to secure Best Value. Drawing on the experiences in other jurisdictions it is considered that this duty should be defined in terms of the continuous improvement of the performance of council functions. The aim is that the councils will be better at delivering public services that meet the expectations of the citizens through the achievement of continuous improvement. This improvement needs to be viewed in terms of both the delivery of services and the overall organisational effectiveness of the council.
9. In considering the Best Value duty it is recognised that it is essential that all citizens are provided with value for money services which demonstrate a due regard for the need to promote equality of opportunity. Members therefore take the view that the more expansive provision in Scotland provides an appropriate template for the way forward here than the provision in England and Wales. The adoption of such an approach would provide that councils, in achieving Best Value, will be expected to maintain a balance between the outcome of the service delivered and the cost of that service. In doing so councils will be expected to consider the efficiency, effectiveness and economy of their actions and how well those actions comply with the requirements of Equal Opportunities legislation, the impact on the Council's Community Plan and the achievement of sustainable development for the district.
10. It is anticipated that the methodology to be adopted to achieve the delivery of the continuous improvement will be a matter for each district council to determine, under a common framework. Members consider that councils should have the flexibility to determine the methodology to be adopted to achieve the delivery of the continuous improvement. This approach will enable each council to take account of specific local factors and issues identified through the community planning process. Members however acknowledge that this flexibility needs to be balanced with a degree of consistency across the councils, through the provision of a common framework. They therefore consider that this approach should be underpinned by guidance developed in partnership between central and local government for issue by the Department as and when required, and that a duty should be placed on councils to have due regard to such guidance.

Performance Indicators and Standards

11. The members consider that the robustness of the new framework will be strengthened through the establishment of a regime of performance indicators and standards in relation to the deliver of services and functions. These indicators should as far as is practicable be outcome and citizen centred, and relate to key regional priorities identified in the Executive's Programme for Government and local priorities identified through a council's Community Plan.

12. Members consider that any regional performance indicators and standards must be determined and agreed through the Partnership Panel between central and local government proposed by the panel on governance and relationships. They acknowledge, however, that appropriate statutory mechanisms will need to be put in place for Departments to specify performance indicators in relation to regional priorities, through which individual councils performance can be measured and benchmarked and the performance standards which councils will be expected to meet.
13. In addition to the specification of regional performance indicators and standards members consider that the individual councils should have the flexibility to develop local performance indicators in relation to the delivery of their services and their operational effectiveness. These indicators would be linked with the objectives set by the council in its Community Plan.

Reporting on Best Value

14. In considering the constituent elements of the framework members acknowledge and support, as indicated earlier in the paper, the requirement to provide accountability to the citizen, and that a mechanism will need to be put in place to provide for this purpose. Accordingly members propose that a requirement should be placed on councils to prepare and publish a Corporate Plan, which should include an Improvement Plan for service delivery and performance.
15. Experience elsewhere points to a number of elements that are likely to form the framework for such a Plan, including reporting on progress towards the achievement of previous identified targets and the statement of targets for the incoming period. It is the members' view that further work should be undertaken to identify the key elements that would be required in the Improvement Plans and to develop guidance to support councils in the preparation of the Plans.

Monitoring Best Value

16. In order to ensure compliance with the legislative requirements of the framework, including any guidance issued by the Department, members recognise that appropriate monitoring and support mechanisms will need to be put in place. Taking account of these factors and councils' accountability obligations to citizens and central government members recommend that there should be the facility for the external assurance of the Improvement Plans developed by the Councils. This assurance role should be supported by a provision for Best Value inspections. The primary aim of the assurance and inspection functions would be to assess the degree to which councils comply with the requirements of the service delivery and performance improvement framework.
17. Members acknowledge that in England, Scotland and Wales these roles are undertaken by the respective audit bodies for local authorities, and that this would point to a newly defined role for the Local Government Auditor working with the sector, in the context of the reform of local government. Such a role is likely to encompass the current financial audit and certification of a Council's Annual Account, an assurance role in relation to the preparation of Corporate and Improvement Plans and an assessment of compliance with the requirements of the Service Delivery and Performance Improvement framework. Further work is required to develop proposals in relation to the outworking of this aspect.
18. Members are also of the view that the new statutory framework should be supported by the introduction of self-assessment and peer review at appropriate stages in the preparation of the council's Improvement Plan and the monitoring of its delivery. In order to enhance the support to councils in the overall delivery of performance improvement there is a view that consideration should be given to the establishment of a Local Government Improvement Service. Further work will be required within local government to determine the most appropriate approach to the structure of such a service.

A power of Intervention / Enforcement

19. Members recommend that any action required in response to a council's failure to adequately discharge its responsibilities should be reserved to the Minister with responsibility for Local Government.

DOE/NILGA Joint Secretariat

April 2009

Further Evidence from the Commissioner

Ms Sheila Mawhinney
Clerk to the Committee for the Environment
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
BELFAST BT4 3XX



Ombudsman Northern Ireland

27 January 2014

Dear Ms Mawhinney

The Local Government Bill

As you are aware, during the Commissioner's oral evidence to the Committee for the Environment (the Committee) on 16 January 2013, members of the Committee raised a number of matters concerning Part 9 of the Local Government Bill (the Bill) and the Commissioner's role in the investigation of, and adjudication on, complaints of alleged failures to comply with the mandatory Code of Conduct for Councillors (the Code). The Commissioner considers that it may be of assistance to the Committee, in its further scrutiny of Part 9 of the Bill, if he were to submit further written evidence on those matters.

The Commissioner is currently away from the Office but has asked me to forward the enclosed paper to you, for the Committee's attention. The paper outlines the scope of the Code; the proposed remit of the Commissioner within the local government ethical standards regime; the procedures by which he will investigate and adjudicate on alleged failures to comply with the Code; and the provisions within the Bill for reporting on the outcome of such investigations and adjudications. In addition, the paper sets out the Commissioner's views on the need for an appeal mechanism within the ethical standards regime and on how complaints of a more minor nature might be handled.

I hope the paper is helpful in expanding upon the oral evidence the Commission gave to the Committee at the meeting and in providing further clarification on the issues raised at that time.

Yours sincerely

Marie Anderson

Deputy Commissioner
Enc

ASSEMBLY OMBUDSMAN FOR NORTHERN IRELAND
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Local Government Bill

Introduction

1. At its meeting on Thursday 16 January 2014, the Committee for the Environment (the Committee) took oral evidence from the Northern Ireland Commissioner for Complaints (the Commissioner) in relation to Part 9 of the Local Government Bill. This paper is presented to the Committee by way of further clarification of the issues that were raised by Members during that evidence session.
2. The paper outlines the scope of the proposed mandatory code of conduct for councillors (the Code); the proposed jurisdiction of the Commissioner within the local government ethical standards regime; and the procedures by which he will investigate and adjudicate on alleged failures to comply with the Code. It also describes the provisions within the Bill for reporting on the outcome of such investigations and adjudications and paper sets out the Commissioner's views on the need for an appeal mechanism within the ethical standards regime and how complaints of a more minor nature might be handled. In addition, the paper outlines the arrangements by which the Commissioner will publish guidance on matters relating to the conduct of councillors.

The scope of the Code

3. Part 9 of the Bill¹ makes it clear that the proposed Code will apply to the conduct of councillors. Within the context of the Code, the term "*councillor*" will not only mean any person elected to office within a council but also any person chosen to fill a casual vacancy or any person treated as a non-voting committee member.
4. It is the Commissioner's understanding that the Code is to apply to the conduct of a councillor when conducting the business of, or on behalf of, his or her council; when acting in the role of councillor; when acting as a representative of his or her council; and at all times in respect of conduct concerning the use of his or her position or council resources or conduct that could reasonably be regarded as bringing the office of the councillor, or the council, into disrepute. In addition, there will be scope within the Code for its provisions to apply in circumstances where a councillor has been appointed or nominated to another body and that body does not have its own code of conduct.
5. The Code will not apply to the conduct of council employees. Their conduct will be a matter for the relevant council under the staff member's terms of employment and the code of conduct for council employees². Breaches of that code by council employees are dealt with in accordance with the provisions of the council's disciplinary procedures.
6. In addition, the Bill provides for a "*written*" allegation that a councillor, or former councillor, has failed, or may have failed, to comply with the Code to be made to the Commissioner by "*any person*". "*Written*" means "*words typewritten, printed, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in a visible form*"³. "*Person*" includes a natural person or a legal person, such as a company or unincorporated body. The current proposals clearly intend that council employees and other councillors, as well as members of the public, will be able to complain to the Commissioner about the conduct of councillors.
7. It is anticipated that the provisions of the Code will come into effect on 26 May 2014, following elections to the new councils, and subject to the draft Code having been laid before and approved by a resolution of the Assembly. From its effective date, the Code will apply to all "*councillors*", as defined in paragraph 3 above.

1 Clause 56

2 'Code of Conduct for Local Government Employees', Local Government Staff Commission for NI, February 2004

3 Section 46(1) Interpretation Act (NI) 1954

8. The Bill provides for a requirement on elected councillors to provide to the chief executive of their council a declaration of acceptance of office before they can act in the capacity of councillor, and for non-voting committee members to give a written undertaking to the chief executive. These declarations and written undertakings will include an undertaking that the councillor, or non-voting committee member, has read and will observe the Code.

The Commissioner's jurisdiction in relation to local government ethical standards

9. The Bill provides for the extension of the Commissioner's existing jurisdiction, with regard to complaints of maladministration by Northern Ireland public bodies, to include the investigation of, and adjudication on, alleged failures to comply with the Code.
10. As already outlined in paragraph 4 above, the Code will apply in circumstances where a councillor is appointed or nominated to represent his or her council on another body, and that body does not have its own code of conduct. It is important to note, however, that since the Bill, as currently drafted, makes it clear that the Code applies only to the conduct of councillors, and that the Commissioner's remit is to deal with complaints of alleged failures to comply with that Code, the Commissioner will have no jurisdiction with regard to complaints about the conduct of members of such bodies who are not councillors.
11. The Commissioner is aware that in examining the provisions of Part 9 of the Bill, the Committee has considered how the proposed Northern Ireland local government ethical standards regime, and the remit of the Commissioner in this regard, differs from the position in other jurisdictions. The arrangements in Wales, Scotland and England may be summarised as follows:
- In **Wales**, the Public Services Ombudsman for Wales (PSOW) can consider complaints about the conduct of members and co-opted members of county and county borough councils; community councils; and fire and rescue authorities and national park authorities. The PSOW may investigate complaints himself or may refer complaints (where the alleged breach is not likely to lead to a sanction) to the member's authority for local investigation. Where the PSOW investigates a complaint, he may refer the matter to an authority's standards committee or to the Adjudication Panel for Wales (AWP), both of which have the roles of determining whether there has been a failure to comply with the relevant code of conduct and if so, what sanction, if any, is to be imposed. In addition to adjudicating on cases that have been investigated by the PSOW, the AWP hears appeals against adjudication decisions that have been taken by an authority's standards committee.
 - In **Scotland**, the Commissioner for Ethical Standards (the CES) investigates complaints about the conduct of local authority councillors, members of devolved public bodies and also MSPs. The CES reports, where appropriate, to the Standards Commission for Scotland on the outcome of investigations of complaints about the conduct of councillors or members of devolved public bodies (and to the Scottish Parliament on the outcome of investigations relating to complaints about the conduct of MSPs). The Standards Commission for Scotland is responsible for adjudicating on alleged breaches of the relevant code of conduct.
 - In **England**, each local authority must have its own code of conduct and arrangements for investigating and adjudicating on alleged breaches of it. Complaints are investigated by an officer of the council or an independent investigator. A sub-committee of the authority will determine the complaint following investigation.

The Commissioner's procedures for investigating and adjudicating on complaints

12. The Bill⁴ provides the Commissioner with the authority to investigate written complaints, from any person, that a councillor (or former councillor) has failed, or may have failed, to comply with the Code. He may also investigate a case in which he considers that a councillor (or former councillor) has failed, or may have failed, to comply with the Code, which has come to his attention as a result of an investigation of a written complaint.
13. complaints of alleged breaches of the Code must be in writing. The Commissioner will not accept a complaint from an anonymous source. Councillors who are the subject of a complaint will be made aware at an early stage of the nature of allegation made against them and who has made it, unless the complaint is clearly not within the scope of the Code (for example, it relates to an action taken by a council rather than to an alleged failure by a councillor to comply with the Code).

Assessment

14. The process by which the Commissioner will examine a complaint will include an initial assessment of the complaint and of the evidence of the alleged breach that has been provided by the complainant, in order to determine if an investigation of the matter complained of is warranted. The assessment will include consideration of when the complainant became aware of the conduct complained of; whether that conduct, if it did indeed take place, would represent a breach of the Code; and whether evidence is likely to be available that would allow a finding to be made. Where no evidence is available to support an alleged breach of the Code, the Commissioner will not proceed to investigate the matter complained of. In these cases, the complainant and the councillor will be informed of the Commissioner's decision not to investigate, and the reasons for it.

Investigation

15. Where the Commissioner decides to investigate a complaint, the councillor will be informed of this decision, and will be given the opportunity to submit written comments on the allegation. The councillor may also be interviewed on one or more occasion during the investigation, if this is judged necessary. Since the Commissioner will not be conducting a criminal investigation, there will not be a right to legal representation during investigation interviews; however, a councillor may be accompanied by a friend, who will act in a supporting role. In addition, relevant documents may be inspected by the Commissioner during the investigation and other witnesses and relevant third parties interviewed, as necessary to establish the facts.
16. The Commissioner will have the same powers as the High Court in respect of the attendance and examination of witnesses and the production of documents⁵ and the failure to comply with his requirements in this regard may be treated as obstruction or contempt⁶.
17. The Commissioner will consider the facts and circumstances of each case on its own merits, and reasons for all decisions, and will provide in writing details of the reasons for his decisions on whether to investigate or not, or the outcome of an investigation.
18. All investigations by the Commissioner will be conducted in private. This means that all information relating to the investigation of complaints of alleged breaches of the Code will be confidential and will not be disclosed by the Commissioner until the investigation outcome is published in accordance with the provisions of the Bill, or with Article 19 of the Commissioner for Complaints (NI) Order 1996 (the 1996 Order), which require the Commissioner to report annually to the Assembly on the functions of his Office.

4 Clause 58(1)

5 Article 13 Commissioner for Complaints (NI) Order 1996

6 Article 14 Commissioner for Complaints (NI) Order 1996

19. The purpose of an investigation conducted under the provisions of the Bill⁷ is to determine which of three possible findings⁸ is appropriate. Those findings are:
- (a) that there is no evidence of any failure to comply with the Code;
 - (b) that no action needs to be taken in respect of the matters which are the subject of the investigation; or
 - (c) that the Commissioner should make an adjudication on the matters which are the subject of the investigation.
20. The Commissioner must produce a report of his investigation in cases where the investigation finding is that he should make an adjudication (finding (c) above). In addition, he has the discretion whether or not to produce a report if the investigation finding is that there is no evidence of a failure to comply with the Code (finding (a) above) or that no action needs to be taken in respect of the matters investigated (finding (b) above). In circumstances where a report is to be produced, the report, while still in draft form, will be sent to the councillor for before it is finalised by the Commissioner. At this stage, the councillor will have the opportunity to express a view on the accuracy of the facts stated in the report and to comment on the proposed investigation finding.

Adjudication

21. In circumstances where the Commissioner, having undertaken an investigation, determines that he should adjudicate on the matters investigated, he will decide whether or not there has been a failure to comply with the Code⁹. Where the Commissioner decides that there has been such a failure, he will decide whether no action should be taken, or whether a sanction should be imposed. Possible sanctions are:
- (a) censure of the person found to have failed to comply with the Code;
 - (b) suspension, or partial suspension, of the person from being a councillor for a period of up to one year; or
 - (c) disqualification of the person from being, or becoming, a councillor for a period of up to five years.
22. In adjudicating on a complaint, the Commissioner will afford the councillor concerned the opportunity to make representations, on his or her own account or through his or her legal representative, before he (the Commissioner) reaches his adjudication decision.

Reporting on complaints (and concerns about 'unfounded' or vexatious allegations)

23. The Bill does not require the Commissioner to publish details of all complaints of alleged breaches of the Code and his related investigation findings. Where having conducted an investigation, the finding is that the Commissioner should adjudicate on the matter investigated and, in doing so, the Commissioner decides that there has been a failure to comply with the Code, he will be required to publicise details of both the failure to comply and the sanction, if any, that he has imposed¹⁰.
24. However, in circumstances where the Commissioner's investigation has found no evidence of a failure to comply with the Code, or that no action needs to be taken in respect of the matter investigated, he will have a discretion whether or not to produce a report on the outcome of the investigation and whether or not to publicise a summary of that report¹¹. The

7 Clause 58(3)
8 Clause 58(4)
9 Clause 62(1)
10 Clause 62
11 Clause 60(1)

Commissioner's discretionary decision on whether to produce and publicise a report of the outcome of these investigations will depend on the particular circumstances of each case. For example, where the allegation made against the councillor has already been put into the public domain, the Commissioner may take the view that fairness requires him to publicise the outcome of his investigation.

25. It is also important to note that (as already explained in paragraph 14) not all complaints of alleged breaches of the Code received by the Commissioner will be investigated as the procedures by which the Commissioner will deal with complaints will include an initial assessment of the complaint to determine whether or not an investigation should be undertaken. Where no investigation is undertaken, no specific details of the allegation made against the councillor will be published by the Commissioner.
26. While this arrangement will ensure that unsubstantiated allegations against a councillor will not be put into the public domain by the Commissioner, there is, of course, still the potential for a complainant himself or herself to publicise an 'unfounded' allegation. The question as to whether a councillor has potentially been 'defamed' in these circumstances is a matter upon which an individual councillor may wish to seek legal advice.
27. The Bill is clear that all investigations by the Commissioner's will be conducted in private¹². This places an obligation on complainants, councillors and third parties, such as witnesses, who provide information to the Commissioner, to maintain confidentiality with regard to all matters related to the investigation. It is the Commissioner's view that a disclosure of confidential information relating to an investigation by any person 'without lawful excuse' may be contempt. By virtue of article 14 of the 1996 Order, the Commissioner may certify an offence of contempt to the High Court. Furthermore, the Code will place a specific obligation on a councillor to comply with any request of the Commissioner in connection with an investigation, which will include requests regarding the maintenance of confidentiality.
28. In addition, where the complainant is a councillor and he or she places a malicious or vexatious allegation in the public domain, there is the possibility of this being considered by the Commissioner to be a breach of the Code. It is important to stress, however, that the motivation of a complainant is not in itself an issue for investigation. The investigation must be confined to determining whether the councillor concerned has breached the Code and, if so, what outcome is appropriate.

The need for an appeal mechanism within the local government ethical standards regime

29. The 1996 Order provides the Commissioner with the authority to investigate complaints of maladministration. As already stated in paragraph 9, the Bill proposes to extend the Commissioner's existing jurisdiction to include complaints about local government ethical standards. The only means of challenging a decision of the Commissioner in relation to a complaint of maladministration is by way of judicial review.
30. The Commissioner has obtained the advice of Senior Counsel in relation to the matter of an appeal mechanism within the proposed local government ethical standards regime. Senior Counsel¹³ has highlighted the constitutional position of the Commissioner who sits outside (or in parallel to) the usual mechanisms of the justice system, and has advised that the introduction of an appellate tier to the Commissioner's processes would, arguably, undermine the general presumption that his decisions are final, 'binding and amenable only to challenge where there is an error of law. For this reason, and to be consistent across the Commissioner's jurisdiction, it is essential that the means to any challenge to a decision by the Commissioner in local government ethical standards complaints is the same as that which exists in cases concerning maladministration, that is, judicial review.

12 Clause 66(1)

13 Senior Crown Counsel, Dr Tony McGleenan QC

31. Judicial review has been described as *‘the principal legal procedure by which public power is defined, invoked or restrained’*¹⁴ and is an appropriate remedy *‘where a person seeks to establish that the decision of a person or authority infringes rights protected by public law’*¹⁵. It is not the case that judicial review applies only to the decision making process. Judicial review is a supervisory function of the High Court by which the lawfulness of a decision or action (or a failure to act) by a public body (such as the Commissioner) can be challenged. A decision may be unlawful for reasons of illegality (including breaches of human rights); irrationality; or unfairness (including bias).
32. It is also important to note that the first stage of the procedure is the application for leave to apply for judicial review, which in this jurisdiction, will usually be heard with both parties present. At this stage, a High Court judge will determine whether the application is one that should proceed to a substantive hearing. This is an important aspect of the judicial review procedure as it allows the parties to examine their positions, with the view to a possible settlement of some or all the issues. A judge may decline to grant permission for the application for leave for judicial review to proceed if the application is considered to be unmeritorious or vexatious. This filter will not only save the court’s time and the legal costs of the parties but will also result in overall savings to the public purse. The procedure will also secure access for all parties to the authority and status of a High Court judgement.
33. While it is the case that judicial review normally includes an examination of the manner in which the decision or action was taken and that it is not the court’s role to substitute its own decision for that of the public body, a judicial review court can quash (or strike down) an unlawful decision and require the public body to take the decision again. The court can also prohibit a body from taking an unlawful action; order a body to take a particular course of action; or declare the legal rights of the parties. Damages are another remedy a judicial review court can provide to a successful applicant, although this is a remedy that is not frequently provided by the court.
34. Although there has been discussion, during the Committee’s consideration of Part 9 of the Bill, about the introduction of an appeal mechanism, this has not clarified the nature of the appeal mechanism and whether consideration should be given to the establishment of a specific tribunal; the utilisation of an existing tribunal; or an appeal to the High Court. An appeal, either at tribunal or in the High Court, would involve a rehearing of evidence with examination and cross-examination of witnesses, discovery and interlocutory matters. As such, an appeal may prove to be a more costly and lengthy process than judicial review. Furthermore, the appellate body’s decision may also be amenable to judicial review. In essence, the creation of a middle-tier appellate within the local government ethical standards regime would not only add to the costs involved but would also increase uncertainty for the parties involved and, potentially, extend the process significantly. This is a particularly important consideration within the context of councillors’ time-limited appointments.
35. The decision as to whether to have an appeal mechanism in place of an ability to judicially review a decision of the Commissioner is a matter for the Minister and, ultimately, the Assembly. However, for the reasons outlined above, it is the Commissioner’s view that judicial review has a number of advantages compared to an appeal mechanism.
36. One issue that has not yet been fully debated is the proposed discretionary power for councils to indemnify councillors in respect of any legal challenge by way of appeal or judicial review, and the costs to the public purse resulting from the Commissioner’s defending of the same. The Commissioner is aware of the concerns expressed by the former Public Services Ombudsman for Wales (PSOW) in relation to the availability of indemnity for Welsh councillors. In one instance, the legal case lasted eighteen months and the matter remains unresolved. The interests of the councillor concerned, the complainant and the public are not best served

14 See footnote 5 Chapter 1 of Judicial review in Northern Ireland John Larkin QC and David A Scoffield BL, SLS 2007

15 Hutton LCj in *r v Chief Constable , ex parte McKenna* [1992] NI 116 at 123a

by protracted and costly litigation. In addition, consideration needs to be given as to whether legal aid may be available for a member of the public to challenge a Commissioner's decision about a complaint brought under the Code, in order to ensure equality of arms.

Dealing with complaints of a minor nature

37. The Bill proposes that the Commissioner will have the discretion to decide whether or not to investigate a written complaint that is made to him¹⁶. As already explained, there will be an initial consideration of complaints received to determine if investigation is necessary or appropriate. In undertaking this assessment, the Commissioner may determine that the nature of a complaint is such that it does not warrant an investigation.
38. In view of the potential for the Commissioner to decide that an investigation of a complaint is not warranted, he considers that it would be helpful if he had the discretion to take action, other than an investigation, to bring about a resolution to a complaint. For example, to recommend that the matter complained be dealt with informally within the council. The Commissioner has been in discussion with the Department regarding this matter, with a view to bringing a possible amendment to the Bill that would replicate a provision within in the Public Services Ombudsman (Wales) Act 2005¹⁷, which gives the PSOW the authority to take any action, in addition to or instead of conducting an investigation, which he considers appropriate with a view to resolving a complaint that falls within his jurisdiction.

The Commissioner's guidance on matters relating to the conduct of councillors

39. The Bill provides for the Commissioner to issue guidance on matters relating to the conduct of councillors and to arrange for the guidance to be made public¹⁸. The Commissioner intends to produce and publish guidance on the application of the Code. There will be consultation on this guidance, although the timing of this will be dictated by the timing of the consultation on the Code itself, that is, the Commissioner will not be in a position to produce his guidance on the Code until the Code's proposed content has been finalised by the Department.
40. The Commissioner will also be publishing guidance on making a complaint and on the processes by which he will assess, investigate and adjudicate on related complaints.

Conclusion

41. It is hoped that this further clarification of the Commissioner's role in relation to the proposed local government ethical standards regime will be of assistance to the Committee in its further scrutiny of Part 9 of the Bill.

16 Clause 58(2)

17 Section 3 of the Public Services Ombudsman (Wales) Act 2005

18 Clause 57



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Rates Convergence and Proposed Funding
Mechanism for Transferring Functions under
RPA: Department of Finance and Personnel

22 January 2014

22 January 2014

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
 Mr Dominic Bradley (Deputy Chairperson)
 Ms Michaela Boyle
 Mr Leslie Cree
 Mr Paul Girvan
 Mr Ian McCrea
 Mr Mitchel McLaughlin
 Mr Peter Weir

Witnesses:

Mr Andrew McAvoy *Department of Finance
 and Personnel*
 Mr Brian McClure

1. **The Chairperson:** I welcome to the meeting Andrew McAvoy from the rating policy division. Do you want to make a brief opening statement on this issue before we go to questions?
2. **Mr Brian McClure (Department of Finance and Personnel):** OK. As the Committee will appreciate, RPA is a DOE issue and a DOE-led issue. However, I think that it is important to brief this Committee, because there are certain implications for the rating system and the development of policy in RPA and for DFP's role in facilitating RPA by making changes to the rating system.
3. This has come up in some sessions; it certainly came up in the most recent session on the non-domestic revaluation, and questions were asked about it. That prompted us to think that now is the time to tell you what our thinking is, what our Minister's thinking is and what we are doing about helping to facilitate RPA in the context of rating.
4. The first element, and probably the most significant, is managing rates convergence and the development of a transitional relief scheme to protect ratepayers who would otherwise face sudden and excessive increases as a result of councils coming together and of some ratepayers moving into Belfast from Castlereagh and Lisburn. That is because without intervention they could face significant increases in district rates. So, that is our objective.
5. The Executive took the decision about, I think, a year ago to provide up to £30 million to fund a transitional relief scheme. We have been working on that since. As far as the legislation is concerned, we have already got an enabling power in the Local Government Bill to allow this to happen. We will be presenting regulations to the Committee in due course when we have finalised the scheme, because DFP will have to make regulations through the Bill.
6. We looked at a range of options for how the scheme will operate, such as providing grants to councils. However, we, and Ministers, have decided that the best way of doing this is to allow councils to strike their rates in the normal way and for a discount to be given to relevant ratepayers on the rate bill. So, councils will not have to strike differential rates to edge rates up to a common district rate; DFP, working with DOE, will apply that at bill level. Our current view is that we can develop a reasonably generous scheme by stepping the increases over a three- or four-year period. All the modelling that we have carried out with colleagues in DOE suggests that this is doable within the £30 million funding. We cannot take that analysis any further until we know the rates that district councils will be striking for the coming year. Once that takes place, we will be able to do a lot more analysis and to refine the scheme.
7. Elements of the scheme that have not been decided are the duration of the scheme, what the steps will be — 33%, 66% or 100% — and whether a threshold will be applied for acceptable increases. You might want to put in an inflationary threshold beyond which affected ratepayers will be protected.

- Those elements have still to be decided, and we will certainly be consulting on that in the spring when we have undertaken our further analysis and when we know what the district rates are.
8. The Institute of Revenues Rating and Valuation (IRRV) has validated the approach that we have taken. We as a Department thought it important to get an outside organisation to quality assure our policy thinking on this matter. The IRRV agrees with our analysis that the best way to do this is to provide it as a discount on a bill.
 9. We are not complacent about the matter; we are reasonably confident that a good scheme can be developed within a £30 million cost envelope. Our main concern is how we get it to operate alongside non-domestic revaluation, which takes effect on the same date. That is causing us a bit of a headache at the moment. However, I am sure that we will be able to find a way around that. In our view, a transitional relief scheme for RPA, on its own, is workable, deliverable and affordable. That is not to say that there is not an awful lot of work to be done. Further decisions are still to be made, and, as I said, we will consult on those in the spring.
 10. That is rates convergence. The other issue — Mr Weir touched on this in the previous session — is revaluation, which is a mechanism for helping to fund the functions that will transfer to councils. Two or three years ago, there was a lot of consideration of whether that could be done through increasing the district rate while having a regional rate offset. We did a lot of analysis on that, but we believe that it is not a workable solution.
 11. At the other end of the spectrum, we also looked at whether those transferring functions should be funded through direct payment of grants from the donor Departments. We also feel that that has major problems, because it brings it within the realms of public expenditure with all the associated bidding, monitoring and control issues.
 12. So, we are proposing a mechanism that is like a halfway house. It would operate like a grant, but we would hope to use the rating system in a way that would provide a rate-based supplement to each of the 11 new councils to allow them to pay for it. That would operate as a grant. We would then allow councils that extra rateable value to pay for those transferring functions. It is not going to work for some of the major capital projects, but it will work for recurring expenditure and maybe for some of the smaller capital projects. It is an approach that, again, the Institute of Revenues Rating and Valuation, as well as the two Ministers, endorsed. We have been engaging very heavily with the various reference groups that we deal with in local government to explain its workings.
 13. So, that is our current thinking on how we are facilitating RPA. The big issue for us is getting rates convergence and transitional relief to work with any support that is provided as a result of the non-domestic revaluation. We have currently reached a hiatus in our analysis; we cannot do any more until we know what the district rate is going to be next year. Once we have that information, however, we will undertake further analysis and go out to consultation. We are taking an enabling power in the Local Government Bill at Consideration Stage for the transferring functions scheme.
 14. **Mr Andrew McAvoy (Department of Finance and Personnel):** DOE is working with the Office of the Legislative Counsel (OLC) to draft a provision for the transfer functions mechanism. That would be tabled at Consideration Stage of the DOE's Bill, which is at Committee Stage.
 15. **Mr McClure:** There is a lot in that, and I am more than happy to take questions.
 16. **The Chairperson:** Can you elaborate any more on how the figure of £30 million for the transitional protection scheme was arrived at? You said that you were reasonably assured that we will live within that particular budget.

17. **Mr McClure:** The reason why I cannot say that I am absolutely assured is because I do not know what the district rates are going to be next year. That is a big unknown, and we do not know the impact of the non-domestic revaluation. I am not losing any sleep over that budget; I think that that should do it. The scheme will, at least, protect all ratepayers who would otherwise face sudden and excessive increases as a result of councils coming together or ratepayers moving from Castlereagh to Belfast or Lisburn to Belfast. I think that that can be done.
18. **The Chairperson:** How precisely will that be applied?
19. **Mr McClure:** It will operate as a discount in the rate bill, and Land and Property Services (LPS) will apply it. Councils will continue to strike the one district rate. An alternative was to give grants to councils and to allow them to strike differential rates, but I do not think that that would be deliverable.
20. **The Chairperson:** What forecasting has the Department undertaken to identify what savings or efficiencies will be realised once the transitional protection is exhausted?
21. **Mr McClure:** It is not an analysis that DFP has undertaken; the efficiency of the RPA process overall is more a DOE matter. It is our view that the savings from RPA should start to materialise after about three years, which will help to moderate district rate bills. So, that is another reason why it is a transition scheme. We believe that RPA will lead to the more effective delivery of local services at a lower cost, so district rate bills should be moderated accordingly.
22. **Mr Weir:** As you said, there is a lot to get our teeth into. I appreciate that, given that there is ongoing and developing work on rates convergence, we cannot get an absolutely precise picture. We talked about £30 million for a period of three to four years. Do you see that transition as a sliding scale of reduction over whatever the period is? If, for the sake of argument, it was a four-year period, it might well be £11 million in year 1, but it might end up being about £7 million in year 2. So, it might not be simply a straight line.
23. Do you feel that you would be able to proof this in such a way that means that there will not be unforeseen circumstances, such as any level of bad behaviour being rewarded? At present, there is some knowledge that this is coming down the line, so a council that already has a much higher rate than its neighbour could almost be incentivised to create a situation whereby it gains the maximum amount. It potentially is not that worried immediately about convergence; it could be happy enough before the merger to put things up a bit further to widen the gap a little bit and draw in more money. Do you think that it is likely that you will get something that is secure enough to prevent that?
24. **Mr McClure:** That is a very good point. We have considered that. We probably need a mid-term review mechanism in the convergence arrangements to ensure that that does not happen. So, if there are some undesirable behaviours in striking rates or council spend, DFP can go back and review.
25. **Mr Weir:** This is more of a point than a question about rates convergence. It is very understandable and quite reasonable that there is some protection for people who, through no choice of their own, would be left with very large rate rises if there were no intervention. The only way in which that could ultimately be applied is to have an overall suppressing downwards effect on the level of rates across the borough as a whole. That will mean that some people are better protected, but, on the flip side of that coin, other people coming in from councils will get a double benefit RPA. If you move from an area with much higher rates, the convergence with a lower rates area will automatically bring down your rates. You will also benefit from any transitional relief. If you take, say, a Fermanagh/Omagh situation, where there is a wide degree of divergence, and if there ended up being £2 million in the first year, it

- will not be just the people in Fermanagh whose rates would potentially be going up who would benefit from that £2 million; the people in Omagh would also benefit. So, there is a double bonus.
26. **Mr McClure:** The people in Omagh will not get a discount on their bill, but they will pay the new rate, which is likely to be lower. The transitional protection is only for those who are moving up to the new average rate from the lower rate. In that particular example, only Fermanagh ratepayers would see the benefit.
27. **Mr Weir:** It is almost a form of rate rebate.
28. **Mr McClure:** They will get a discount on their bill. You suggested a four-year scheme, so they could pay 25% of the increase in the first year, 50% in next year, 75% in the following year, and then up to the full amount. The transitional protection would be only for those who would otherwise face sudden and excessive increases as a result of councils coming together or as a result of ratepayers moving into Belfast. The same model should operate for both.
29. **Mr Weir:** That is interesting. I appreciate that, in the short term, rates convergence is the bigger issue for you in the context of what needs to be put in place. I take slight issue with your comment that that is the more important issue. To my mind, what is done on a long-term rates settlement is arguably the more important issue to correct, because it could be there for 20 or 30 years.
30. I have heard the hybrid model that you are looking at described reasonably as almost like the notional buildings idea.
31. **Mr McClure:** That is a good analogy.
32. **Mr Weir:** It is a reasonable enough approach. I see one issue with which there are potential problems with local government. How do you provide both local government and ratepayers with an assurance that, in taking that step, their position for the future will be protected? The one weakness with a single grant that was highlighted comes if you get into tougher economic times — maybe a cut in the block grant or whatever. Legally, you do not have to pay that grant, so it would be easy for a Minister with particular pet projects to cut that. That is why, to be honest, there is no enthusiasm for a pure grant. Do you enshrine in legislation a transfer like notional buildings? Do you have something that can provide a clear-cut reassurance that that —
33. **Mr McClure:** That is exactly what we are going to do. We will set out in regulations, which this Committee will scrutinise, a net annual value (NAV) for each of the councils. At some point, we will know what the cost of these transferring functions will be, certainly for resource and smaller capital. We will then work back and calculate an equivalent rateable value using prevailing rates, and we will enshrine that in regulations that will be subject to this Committee's scrutiny and the Assembly's will. So, that is the protection. That is not to say that, at some point in the future, the Assembly could decide that it does not want to do it that way or that it is not affordable or whatever. However, that is the protection for local government.
34. **Mr Weir:** That gets round the main bit.
35. A notional value will effectively mean a transfer of money. Do you inflation proof that in some way? Presumably, a notional block means that, in effect, £100 million worth of services — I am plucking a figure out of the air — will transfer over. If those services were not transferring over and simply remained in central government, the odds are that, five years down the line, they would cost not £100 million but £120 million or whatever it happens to be. How do we ensure that a notional value is not ring-fenced and set in stone or that any additional inflationary costs that emerge are not simply, by inference, simply transferring over to ratepayers?
36. **Mr McClure:** That is why it is geared to NAV. Whatever the prevailing district rate is will be the increase that that council will get as grant. That will protect local government from the vagaries

- of the bidding, monitoring and control of public expenditure. It takes it out of that annual negotiating realm and prevents donor Departments that are faced with budget cuts from deciding just to cut it. So, every year, the grant will be increased by whatever amount the district rate in that district council area increases by. That is your inflation proofing.
37. **Mr Weir:** That is very helpful, because, obviously, if you had something that is dependent on individual Departments, a Minister who is faced with having to make £10 million of cuts in his or her Department might think, "Here is a way of cutting £5 million without costing the Department a penny". That would be a tempting route for a lot of Ministers.
38. **Mr McClure:** It will operate in the same way as the derating element of what used to be called the general grant.
39. **Mr Weir:** Would the timescale mean that it would effectively take in 2015?
40. **Mr McClure:** Yes, it would be from 1 April 2015.
41. **Mr Cree:** That example covers ground that is exercising my thoughts. You will have two or three societies — if we can call them that — in a new council area. If, for example, that council decided that it needed a 5% increase, that, in effect, would be apportioned over those three areas depending on the historical rate base that they were used to. Is that right? How will it work?
42. **Mr McClure:** No, it would be a clean slate on the unified district rate based on the new values that are produced for the revaluation. Therefore, we would work back and provide a NAV. There would not be any need to apportion over the other district councils. It is kind of a new beginning. We will say, "Here are the NAVs produced by the revaluation and here is a supplementary NAV that we will provide to you by way of a grant".
43. **Mr McAvoy:** For each of the 11 councils.
44. **Mr McClure:** For each of the 11. That is how it would operate. It will not work for major capital projects that straddle 15 April, existing commitments or some of the big regeneration things. However, it could operate effectively for all the resource spend and for as much of the smaller capital spend as possible.
45. **Mr Cree:** I will take it a stage further. If, for example, the new council decided to dispose of assets, how would that go into the mix, bearing in mind that the assets would come from one particular area?
46. **Mr McClure:** That is all part of the financial management associated with that council. I am not sure that that would wash back on how much of the rating supplement grant they would be paid. They will be paid that rating supplement grant, and that will not vary.
47. **Mr Cree:** It will have no effect, then.
48. **Mr McClure:** It can vary by the district rate, but it will not have any effect on it. A recalculation will not be required because somebody sold a major asset. We accept that the proposal is far from perfect, but it preserves the independence of local government.
49. **Mr Cree:** How long do you think that will take to work its way out?
50. **Mr McClure:** We will prescribe it in regulations, and it will remain in place as long as it is needed and as long as the Assembly agrees.
51. **Mr Cree:** It should be for a fairly short period.
52. **Mr McClure:** For the foreseeable future, I would think.

Correspondence from the Fermanagh Trust re Planning and Community Benefits Ministerial Summit

From: Lauri McCusker [mailto:lauri@fermanaghtrust.org]

Sent: 04 February 2014 11:05

To: Lo, Anna

Subject: Community Benefit Summit Report

Dear Anna I hope you are well, Lauri McCusker here from The Fermanagh Trust. I am sending this email in your capacity as Chair of the Environment Committee, to bring the following to your attention and seek your support in getting the DOE moving on these actions which the Minister of the Department committed to.

I am attaching the minutes of a Planning and Community Benefits Summit which the DOE Minister Alex Attwood held on the 5th June 2013. There was a series of actions which the Minister committed to taking forward which is outlined in Section 9 of the paper (see below) which included a reconvened meeting in September 2013 to review what was achieved.

Anna sadly this has not taken place. The agreed actions had tremendous merit. Sadly it appears the 'conservatism' which exists in the Department in conjunction with the changing of the Minister has won out on the door and much of this good work is being ignored.

9. Next Step Actions - Minister Attwood

The Minister outlined three broad streams of work to build in and embed community benefits.

1. Policy and Practice:
 - a) develop a guidance circular on planning and community benefit
 - b) identify and promote good practice to communities;
 - c) introduce an assessment of Community Benefit opportunity (separate from Pre Application Discussions) early in the process;
 - d) escalate the range of Community Benefit opportunities - especially through Article 40;
 - e) re-examine how applications are advertised;
 - f) introduce a register of community benefits; and
 - g) establish a fund for communities to both set up community trusts and develop a business case.
2. Planners will identify any projects currently in the planning system where there are community benefit opportunities.
3. Government spending should have conditions attached to how the money should be spent for community benefit (e.g. facilities, labour clauses and placements; supply of services; etc.).

The Minister emphasised that it will be essential to get planning right – there remains 700 days to get planning right for local authorities. It will be important to prepare councils so that community benefit is a bigger part of the conversation.

In conclusion, the Minister stressed that he wanted the Department and others to begin implementing these actions and to gather again in September 2013 to review what has been achieved and take the issues forward.

Planning and Community Benefits Ministerial Summit Report

Wednesday, 5 June 2013 Mount Conference Centre, Belfast.

1. Welcome and Introductions

Colm Bradley welcomed participants and outlined the programme for the Minister's Planning and Community Benefits Summit highlighting that it would focus on participation, sharing experiences, debating ideas and action planning.

2. Summit Aims

- 1) To learn from practice here and elsewhere;
- 2) To explore what more could be done to further community benefit; and
- 3) To identify ideas and proposals for the Minister to consider.

Setting the Context

Dr Brendan Murtagh from Queen's University framed the debate noting that the issue dates back to 1947. More recently, the Barker review in England examined 'planning gain' and ethical issues relating to benefits gained by owners through the increased value of their land when planning consent is granted. The government in England didn't go as far as some of the recommendations from the Barker review but did introduce the Community Infrastructure Levy (CIL) which requires developers to pay monies towards the cost of wider infrastructure projects.

Brendan highlighted four key areas which informed this whole issue:

Firstly, there is a need for clarity on what community benefits are ultimately for and what they should seek to achieve. There should be a suite of instruments with a fair, equitable and ethical approach to 'planning gain'.

Secondly, while there are some existing provisions in Northern Ireland policy and legislation, it can be argued that the introduction of a Community Infrastructure Levy is a more sophisticated and comprehensive approach to securing planning gains from large scale development.

Thirdly, the definition and practice of community benefits is contested. Some view it as an unfair development tax and argue that it can make schemes unviable. Some environmentalists assert that it is the price for 'buying' planning permission, creating a slush fund. Others highlight that social and financial value should be accrued from the increased value which planning consent confers.

Lastly, in England the Localism Act provides the context to understand where 'value' goes – back into the community. In 2007/8 the UK Government received £4.9 Billion from 'planning gain', with over half of this Section 106 agreements for affordable housing. Here we are approaching local government reform and we need to consider what instruments make best sense. Local authorities here should think more creatively about the range of mechanisms available and manage them fairly, equitably and proportionately.

3. Types of Benefits and Developments

Colm asked participants to consider both the range of benefits which could be delivered and the types of developments which should provide community benefits. Participants' identified the following:

Types of Benefits	Types of Development
Quality Open and Amenity spaces. Public Realm Improvements. Environmental enhancement works. Natural landscaping. Heritage management. Community gardens/allotments. Play provision. Youth facilities. Social Infrastructure. Community Hub /Space /Centre / Meeting space – local services, community based social economy projects. Affordable housing. Reductions in energy bills. Infrastructure: sewage; roads; schools; health; footpaths and walking/cycling routes. Community Fund. Community Shares / Part ownership / Community-Private Partnerships Benefits in kind. Local Ownership. Local supply chains. Employment/Training/ Capacity building. Asset transfer. Menu of options – local community identify the best benefit for the locality, should be integral to evidence based local community needs.	Major applications, dependent on the agreed thresholds. For example, 20 houses or 1 large retail development could be a major development in a rural area. Housing (secure by design, safe, quality environments). Social Housing. Renewables e.g. wind turbines/farms, solar, hydro etc. Tourism. Regional and Local Government developments. Sporting/Recreation - Stadiums and arenas. Retail. Education. Health. Community based developments may already be delivering community benefit and should not be as highly taxed as e.g. private development.

Participants noted that it is important to be very clear about what we are trying to achieve with community 'benefits' and that the definition of benefit is not uncontested. There is a need to ensure that benefits do not make 'unacceptable' developments acceptable.

4. Briefing paper on approaches used to provide community benefits through the planning system

At this point Colm drew participants' attention to the briefing paper which had been prepared by Community Places to inform discussion at the summit and which posed a number of questions and conclusions:

1. Wider use is made of planning agreements in Scotland, England and Wales to support various facilities and infrastructure. There is broadly similar legislation and policy here but it is not used to the same extent nor in the same ways.
2. Developer contributions in various forms are more common in other jurisdictions on these islands and support facilities, infrastructure and affordable housing.

3. Planning circulars elaborating on agreements and contributions have been issued elsewhere but not in NI.
4. Agreements and contributions are used to secure affordable housing in England and Republic of Ireland. In 2009 DSD and DoE initiated work on how planning agreements could be used here for housing and a PPS 22 has been in preparation for quite a while.
5. Is there scope here (within Article 40 and PPS 1) for wider use of planning agreements to support facilities and infrastructure? Would a DoE circular explaining this (with examples) be helpful for developers and communities?
6. Is there a role for new local government and regional departments in promoting community benefit schemes - not linked to planning permission?

5. Introductory comments from Minister Attwood

The Minister explained that he had initiated the summit to provide an opportunity to bring ideas and actions together on how we can ethically embed community benefits into the planning system. He noted by way of example that the university development at York Street will be a key driver for the area but questioned the community benefit being derived from it and also noted that wind farms are another good example where communities should benefit. He said it is essential that the Assembly and other Ministers demonstrate leadership and buy into the need for improved community benefits from the planning system.

6. Discussion on Planning Agreements, Article 40 and Developer Contributions

A number of participants were asked to share their expertise and knowledge with the group:

Dr Geraint Ellis, Queen's University, highlighted that Article 40 is rarely used here and that the Department of the Environment has not created a culture where it is employed. Geraint asked the Minister why he thought this was the case. The Minister responded that the primary reasons are that Article 40 has not been driven politically; there has been no leadership on this matter; and the negotiation of any agreements has often been torturous and has delivered very little.

Derek McCallan, NILGA, stressed that there is good and bad practice everywhere. He noted that in Wales and Canada the government has explored developing Community Enhancement Areas, akin to Business Improvement Districts. Derek raised the potential which Community Planning can play in this matter in the future, how communities can engage and ultimately create 'community improvement districts' and locality based solutions which are monitored regionally.

Maurice Kincaid, Landmark East, cautioned that developers won't develop if it doesn't work for them. Commenting on Titanic Quarter, he noted that communities do want to have a relationship and stake in the area but that they have to develop a relationship which works for both the community and developer. He sympathised that developers may not want to incorporate social housing units within high end private housing and that it may be difficult to negotiate with them to do so.

Joe O'Donnell, Belfast Interface Project, stressed that communities don't want to be obstructive or to slow the planning process down but that there should be proper robust conditions in place. There should be clear social housing commitments so that developers know from the outset what they will be expected to deliver. Article 40 should be more widely utilised and community benefits should not be voluntary. Joe recalled the example of Laganside who initially sidelined the community until BCC and politicians demonstrated

support and leadership to rectify this. Joe noted that communities currently see the planning system as an obstacle rather than something which supports them.

Paul O’Neil, Campus Development Group, raised the University of Ulster development noting that the process of engagement with the local community has been extremely poor. He also noted that it was difficult to get planners to think outside of the planning ‘red line’. While major investment in the area was to be welcomed it was stated that there has been a failure to consider the application in an integrated manner (travel plans, student accommodation, parking being considered separately) and the design of the campus is banal. Paul asserted that there has been a missed opportunity to help transform inner North Belfast and that Belfast City Council would have been better placed to drive the proposal forward in a more positive way.

Participants identified examples of recent developments where an agreement or contribution could perhaps have been applied to deliver community benefits:

University of Ulster	Application was not considered in a holistic manner – the department failed to use the existing tools and mechanisms at their disposal to secure the types of outcomes that would have been desirable. Victoria Square, Royal Exchange and Laganside all undertook wider integrated strategic approaches.
Lagmore Housing Development	Should have had a master plan, lack of facilities e.g. 1 shop and over 2,000 houses.
Windsor Park Redevelopment	Additional time for a fuller consultation and time to identify community needs.
Titanic Development	Could have delivered integrated social housing. Good example is Pottinger Quay 2 development (one is private, the other social) both look the same and are adjacent to each other. Signature Project has been a success because it did have consultation from start to finish.
Casement Park	Needs to be meaningful engagement on the structure and design; independent facilitation; access to advice, knowledge and expertise. Planning process needs to incorporate community involvement at the very outset – better use should be made of Article 40.
Housing developments in small villages	Lisbane play facilities could have been provided. The scale of development should be proportionate to the size of the settlement.
Apartment developments	In West Belfast play facilities and allotment projects could have been provided.
Meantime Spaces	Social agriculture, allotments, example of containers as temporary spaces for artists in Bangor.

7. Learning from the experience of renewables

Lauri McCusker, Fermanagh Trust, noted that communities are currently ‘hosting’ a large number of renewable developments which can last for up to 25 years, yet the levels of community benefits and agreements are appalling. In some cases a £65 advertisement in the paper is the only ‘consultation’. Lauri questioned, how do communities get engaged if the private sector is not interested? He noted that communities, and local and central government must ensure that developers do things differently e.g. offer reductions in electricity bills and help address fuel poverty within 1.5 – 2 km from a wind farm; encourage community ownership models etc. Lauri noted that community engagement is going to be increasingly important and should be facilitated by the government. It was stressed that a public register of community benefits in a very effective way of informing communities.

Meabh Cormacain, NIRIG, explained the background to the Renewables sector developing the Community Commitment Protocol noting that it has identified a baseline across the industry in the UK of the levels of community benefits. It is recognition that communities are hosting developments which contribute to national and European targets. Meabh explained that the protocol took some time to be agreed and involved a lot of consensus building to ensure that industry would sign up to it. While it is voluntary there is broad agreement for the protocol and it will be applied to all projects of 5MW and above reaching commercial operation 6 months after adoption of the protocol. The protocol sets out the principles of how developers should engage with communities. It sets community benefits at £1,000 per MW for a large (e.g. 1.8 or 2.4 MW) turbine per year. Meabh explained that the protocol is flexible and broad and will be reviewed to reflect the recommendations of DETI's forthcoming study on Community Benefits.

Rachelle Craig, Strabane District Council, highlighted that Strabane and Omagh councils have established a Wind Farm Working Group to work proactively with industry to explore community benefits as 44% of turbines are located in west Tyrone, an area of high social and economic deprivation. Rachelle noted that the two councils don't feel that the protocol developed by NIRIG goes far enough and that it should include a Community Benefits Register. The working group are developing their own guidance to make sure communities benefit from renewable developments; are aware of the types of benefits they should be receiving; and have the support to develop community ownership schemes.

Trevor McBriar, DETI, explained that DETI will be publishing its report into community benefits very soon and it will look at how communities can engage with and benefit from renewable developments. He also noted that Scotland have pushed for £5,000 MW per year (as opposed to £1,000 in England, Wales and Northern Ireland. (Since the summit the UK Government have released a Ministerial Statement challenging the onshore wind industry to revise its Community Benefit Protocol, including an increase in the recommended community benefit package in England from £ 1,000/MW of installed capacity per year, to £5,000/MW/year for the lifetime of the windfarm (usually around 25 years).

Lauri McCusker, Fermanagh Trust, highlighted that there is a misperception that community benefits equates to buying planning permission but that evidence shows that this is not the case. Lauri stressed the importance of pre planning engagement with the community from the very outset.

8. Action Planning

Participants suggested a number of possible short and long term actions to embed community benefits in the planning system.

Short term Actions

- Produce a **Circular** on Article 40 and Community Benefits to provide guidelines, information and raise awareness of how Article 40 can deliver community benefits (inform communities, statutory transition committees, shadow councils, elected representatives).
- **Capacity building and support** for communities on opportunities for community gain (e.g. a conference on levels of community benefit; support to help groups/communities to develop social enterprise renewable projects; collate good practice, guidance and expertise; encourage and support community ownership schemes).
- Undertake an **Audit of applications** currently in the planning system which could potentially deliver community benefits through Article 40.
- **Screen future applications** at the outset for their potential to deliver community benefits – begin discussions early in the process.

- **Make better use of Article 40**, change the culture and ensure that DOE Planning utilises its powers more robustly and effectively.
- **Raise community benefit packages** from wind farms from £1,000 per MW to £5,000 per year.
- Introduce a **Community Benefits Register**.
- Develop a **menu of community benefits** – flexible approach.
- **Meaningful and early engagement and Guidelines** to inform **Pre Application Community Consultation**.
- **Improve** how applications are **advertised** e.g. use of social media, site notices, e-zines to network organisations.
- **Good practice guidelines** agreed between **DOE** and **NIRIG**.
- Facilitate and be more creative with **‘in the meantime uses’** with an emphasis on community gain e.g. allotments. A **Meantime Fund** should be developed to facilitate this.
- Minister could **report to Assembly** on community benefits accrued and not just on consents given.

Long term actions

- **Introduce Community Infrastructure Levy** – more strategic approach to infrastructure and greater clarity and certainty from the outset.
- **Local Councils** should **lead the way** and drive forward a focus on community benefits from planning – post 2015. **Up-skill** councillors.
- **Community plan** should set out community needs which could be met through developer contributions/ benefits.
- **Ensure a Plan led system** - up to date and fit for purpose Development Plans.
- Establish a **community energy organisation** in NI.
- Use **asset transfer** to empower community groups to enter into privatecommunity partnerships.

Other Comments

- A design guide for urban areas is currently being developed by the DoE and will incorporate ‘Secure by Design’ principles.
- Mixed communities, not social stratification, displacement and gentrification.
- Dispersed rural communities without community representation find it more difficult to benefit.
- Redistribute planning consent profits.
- Greater access to planners and clear communication.
- Monitor implementation of planning approvals.
- Sustainable development should be the driver for planning decisions.
- Review land banking and blight.
- Develop local Protocols.
- Address mis-information through an evidence base to counter anti-wind farm allegations.
- There will always be a number of community interests – it is not static.

9. Next Step Actions - Minister Attwood

The Minister outlined three broad streams of work to build in and embed community benefits.

1. Policy and Practice:
 - a) develop a guidance circular on planning and community benefit
 - b) identify and promote good practice to communities;
 - c) introduce an assessment of Community Benefit opportunity (separate from Pre Application Discussions) early in the process;
 - d) escalate the range of Community Benefit opportunities - especially through Article 40;
 - e) re-examine how applications are advertised;
 - f) introduce a register of community benefits; and
 - g) establish a fund for communities to both set up community trusts and develop a business case.
2. Planners will identify any projects currently in the planning system where there are community benefit opportunities.
3. Government spending should have conditions attached to how the money should be spent for community benefit (e.g. facilities, labour clauses and placements; supply of services; etc.).

The Minister emphasised that it will be essential to get planning right – there remains 700 days to get planning right for local authorities. It will be important to prepare councils so that community benefit is a bigger part of the conversation.

In conclusion, the Minister stressed that he wanted the Department and others to begin implementing these actions and to gather again in September 2013 to review what has been achieved and take the issues forward.

Community Places

June 2013

Planning and Community Benefits Summit: Participants

Name	Group
Michael Doran	Action Renewables
John Donaghy	An Creagan Visitor Centre
Jim Deery	Ashton Community Trust
Kieran Adams	Bann Maine West Community Cluster
Anne Doherty	Belfast City Council
Joe O'Donnell	Belfast Interface Trust
Brendan Murtagh	QUB
Nigel Brady	Bryson Energy
Paul O'Neill	Campus Development Group
Annie Armstrong	Colin Neighbourhood Partnership
Gerry Lynch	Cookstown and Western Shores Area Network
Frances McCormick	County Down Rural Community Network
Stephen Hamilton	DOE Planning Policy
Neil Galway	DOE Planning Policy
Trevor McBriar	Department of Enterprise Trade and Investment
Nial O'Neill	Donnelly O'Neill Architects Limited
Austin Herron	Federation of City Farms and Community Gardens
Lauri McCusker	Fermanagh Trust
Graeme Dunwoody	Fermanagh Trust
Geraint Ellis	QUB
Melissa Lynas	Greater Village Regeneration Trust
Eamonn Deane	Holywell Trust
Maurice Kinhead	Landmark East
Renee Crawford	Lenadoon Community Forum
Patrick McGrath	Morelands and Owenvarragh Residents Association
Derek McCallan	NILGA (Northern Ireland Local Government Association)
Orla Black	North Antrim Community Network
John McCorry	North Belfast Partnership
Carol Kelly	Northern Ireland Environment Link
Cameron Watt	Northern Ireland Federation of Housing Associations
Esther Christie	Northern Ireland Housing Executive
Meabh Cormacain	Northern Ireland Renewables Industry Group
Alan Herron	Playboard Northern Ireland
Angela Dunbar	Royal Town Planning Institute NI
Aidan Campbell	Rural Community Network
Bernie McConnell	Short Strand Community Forum
Juliet Cornford	Social Enterprise NI
Rachelle Craig	Strabane District Council
Murray Watt	Supporting Communities Northern Ireland
Community Places: Colm Bradley, Elaine Devlin, Clare McGrath, Louise McNeill, Doreen O'Neill and Ronan Kelly.	

NILGA letter re Partnertship Panel



Ms Anna Lo, MLA
Chair of the Environment Committee
Parliament Buildings
Ballymiscaw, Stormont
BELFAST
BT4 3XX

14th February 2014

Dear Ms Lo,

Re: Political Partnership Panel / Local Government Bill

NILGA has been closely following the Committee's detailed and thorough scrutiny of the Local Government Bill. We understand that your deadline is approaching, but having been made aware of your discussions with Departmental officials yesterday, I wanted to raise one particular matter with you.

From yesterday's discussion with officials, along with your scrutiny on this clause which was carried out on Tuesday 11 February 2014, it seemed that ***an amendment to clause 106 relating to the Partnership Panel was being proposed***. The nature of the amendment was that there would now be one elected member from each of the 11 Councils on the Panel, and thus the Department would remove the requirement to consult upon the composition of the panel with NILGA and Councils.

You are already well aware of NILGA's strong support for the introduction of this Panel, and indeed NILGA supports the proposed amendment which addresses ***only one*** concern which we had raised.

The issue it ***does not address*** is much more strategic and potentially damaging rather than strengthening.

NILGA asserts that it should also be a requirement to have the body representing the regional interests of local government's councillors to be formally present on the Panel. It is already the case that the Welsh Local Government Association has direct representation upon their equivalent – and indeed is joint secretariat. It is also the Welsh model which the Department and NILGA are intending to examine in relation to the proposed development of the Northern Ireland equivalent. The Regional Transition Committee has agreed that the Department and NILGA will work together and report back to the Committee on this issue.

Regional representation has already become an established concept within the reform process – the local government representation upon the Regional Transition Committee currently comprises the Chairs of the 11 Statutory Transition Committees along with the 5 cross-party NILGA Office Bearers. The Political Reference Group, comprised of Assembly members and local government representatives, has a regional focus with local government representatives being nominated by their parties, all of which are either NILGA members or has a NILGA member as substitute.

NILGA believes that the Partnership Panel will also require a ***regional policy and negotiation focus***, which may cover many topics of regional significance, such as:

Northern Ireland Local Government Association
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- Regional investment for communities and infrastructure across Northern Ireland
- Negotiating regional policy on common issues such as the Environment and the Economy
- Determining all NI (two tier government) level governance and investment mechanisms to deliver on infrastructure and economic development
- Assisting with development of OFMDFM's Social Cohesion policy.

NILGA is also soon to launch our **Programme for Local Government**. This will provide a link to the Executive's overall Programme for Government, and demonstrates NILGA's commitment to working with central government to the benefit of all our citizens.

Strong councils, as outlined in the Executive's vision, must include a strong regional focus and a strong local government association. This amendment sees the diminution of the Association after very substantial and high impact strategic work. Local government wants to work closely with central government going forward, and the Partnership Panel is a key way in which this can be achieved. But it is imperative that regional, all-party representation is a full and formal part of the forthcoming Panel.

"The membership of the Panel, which should have a **joint secretariat**, shall include representation from each of the 11 new district councils **and the regional, representative body for local government**" would seem a more pragmatic, relevant and politically inclusive foundation for the Panel's crucial work.

I trust that you will take these points into account in the very short time remaining for your scrutiny, and would again thank you for your strong interest in improving the Bill throughout the scrutiny process, with potential amendments such as these.

Yours sincerely,



Derek McCallan
Chief Executive

Community Places e mail re Local Govt Bill

From: "Bradley, Colm [Community Places]" <Colm@communityplaces.info>
Date: 14 February 2014 12:46:36 GMT
To: "Lo, Anna" <anna.lo@mli.niassembly.gov.uk>
Cc: "McNeill, Louise [Community Places]" <Louise@communityplaces.info>
Subject: Local Gov Bill

Hi Anna

We are following your discussions in Committee. There are however three major issues Community Planning issues which we all must get right or it will have been a big waste of time.

1. Tying in the statutory partners. This is achieved in Scotland through the legislation doing two things (a) specifying that Community Planning includes the planning and improvement of public services; and (b) requiring reporting on outcomes. These two are totally at the heart of it all in Scotland. They are what makes it work. The DOE officials are raising red herrings and confusing the issue.
2. Councillors and groups will need to work together to influence the big players who (like the officials) would rather play the one off against the other. Again this is the practice in Scotland where they have no problems having it in the legislation. The Bill should thus require co-operation with "relevant voluntary bodies and businesses".
3. The community involvement clause is very weak compared with both Scotland and England. It reads like the 1950s!

We will send more details on these issues to you and others on the Committee shortly. Please get in touch anytime if we can discuss further.

All best

Colm

Colm Bradley

Director, Community Places

2 Downshire Place
BELFAST BT2 7JQ
Telephone 9023 9444
Website www.communityplaces.info

Community Places - Letter to A Lo

17 February 2014

Community
Places



Ms Anna Lo MLA
Chairperson
Environment Committee
Room 378 Parliament Buildings
Stormont
BELFAST BT4 3XX

Dear Anna

Local Government Bill and Community Planning

I am writing to ask for a meeting with you as soon as possible to discuss the Community Planning elements of the Local Government Bill – there are four major issues which we all must get right:

- Improving Service Provision;
- Proactive Community Engagement;
- Involvement in shaping the Community Plan; and
- Outcomes based approach.

Improving service provision

Including reference to 'improving service provision' in the definition of Community Planning in no way constrains its remit. One of the strengths of effective community planning is its ability to improve the co-ordination and delivery of public services in local areas and constituencies. This is a fundamental aim of Community Planning and is included in the equivalent legislation in Scotland.

Thus **Clause 69 (2) (c)** should be amended to read: identify actions to be performed and functions to be exercised **including those related to the planning, provision and improvement of public services** by the council and its community planning partners for the purpose of meeting the objectives identified under paragraphs (a) and (b).

Proactive Community Engagement

The wording used in the Bill in relation to Community involvement is weak, underwhelming and unlikely to encourage meaningful engagement with communities or other interests. The clause should be amended to read (as the equivalent legislation does in Scotland and England):

Clause 76 (1) A council and its community planning partners must **seek the participation of and encourage persons** to express their views and ensure that their views are taken into account.

Involvement in shaping the Community Plan

Relevant voluntary bodies and businesses that will help with delivery should be included from the outset in the development of the Community Plan and not simply consulted on a draft Plan (as detailed in Clause 76). There is no need to individually name these partners but provision should be made to include them. The Bill should be amended to include:

Clause 69 (2) (d) and in –co-operation and conjunction with relevant voluntary bodies and businesses.

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Outcomes

An outcomes based approach is fundamental to councils and their partners setting clear goals and milestones in order to measure progress, make a difference and align regional, council wide and local priorities.

Clause 93 (c) (i) should read: measure the **improvement in the outcomes of its** performance during a financial year by reference to those self-imposed performance indicators which are applicable to that year.

The Department during Consideration Stage has stated in a number of occasions that much of the detail of Community Planning will be illuminated in the Guidance (not available until the Autumn). While we welcome statutory guidance, it is no substitute for weak legislation. We also agree that there should be flexibility at a local level across the 11 new council areas to forge community planning processes but the legislation must provide a robust framework for Councils and other stakeholders.

Please contact myself or Louise McNeill to discuss arrangements for our meeting.

Yours sincerely



Colm Bradley
Director



Northern Ireland
Assembly

Appendix 7

List of Witnesses

List of Witnesses

Mark Durkan	Minister of the Environment
Julie Broadway	Department of the Environment
Beverly Cowan	Department of the Environment
Mylene Ferguson	Department of the Environment
Tommy McCormick	Department of the Environment
Fiona McGrady	Department of the Environment
John Murphy	Department of the Environment
Ronan Cregan	Belfast City Council
Stephen McCrory	Belfast City Council
Peter McNaney	Belfast City Council
John Walsh	Belfast City Council
Marie Anderson	Commissioner for Complaints
Dr Tom Frawley	Commissioner for Complaints
Colm Bradley	Community Places
Clare McGrath	Community Places
Louise McNeill	Community Places
Louise Mason	Northern Ireland Audit Office
Laura Murphy	Northern Ireland Audit Office
Councillor Myreve Chambers	NILGA
Alderman Arnold Hatch	NILGA
Derek McCallan	NILGA
Pat Baker	NIPSA
Bumper Graham	NIPSA



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