



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Local Government Bill: DOE Briefing

26 September 2013

# NORTHERN IRELAND ASSEMBLY

## Committee for the Environment

Local Government Bill: DOE Briefing

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 Environment
Ms Linda MacHugh	Department of the Environment
Mr Tommy McCormick	Department of the Environment
Mr John Murphy	Department of the Environment

**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?

**Mr Weir:** As you can probably guess, I declare an interest as a member of North Down Borough Council.

**Lord Morrow:** I declare an interest as a member of Dungannon and South Tyrone Borough Council.

**Ms Brown:** I declare an interest as a member of Antrim Borough Council.

**The Chairperson:** Ian, you as well?

**Mr I McCrea:** I declare an interest as a member of Cookstown District Council.

**The Chairperson:** Can you take us through it in five or 10 minutes?

**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.

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.

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.

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.

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.

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.

**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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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).

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.

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.

**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.

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?

**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.

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.

**The Chairperson:** That is reassuring.

**Ms Broadway:** The Bill sets it out in detail.

**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?

**Ms Broadway:** That is right; he could not.

**Lord Morrow:** At what level is that cut-off?

**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.

**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?

**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.

**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.

**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.

**Lord Morrow:** Could the 15% come from one party?

**Mr Murphy:** It could come from one party.

**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.

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.

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?

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 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.

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?

**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 —

**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 —

**The Chairperson:** It looks only at the process rather than the decision.

**Mr Weir:** Yes, and I have reservations about that. We may have to look at that when we come to scrutinise the Bill.

**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.

**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.

**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.

**Mr Weir:** And on the appointments to the partnership panel?

**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.

**Mr Weir:** Maybe that should be more explicit in the legislation.

**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.

**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.

**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.

**Mr Boylan:** Thanks very much for the overview. I am sorry that I am third because all the questions have been asked.

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.

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?

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?

**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.

**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.

**The Chairperson:** Sorry, Cathal, for jumping in. We heard before about capacity building for community organisations and individuals. Is that included in the Bill?

**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.

**The Chairperson:** You need to have the right level of staff to be involved in that work.

**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.

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.

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.

**Mr Boylan:** I see that the Bill contains only 128 clauses, which should make for interesting scrutiny.

Is the commissioner's decision final? Is there no appeal process?

**Mr Weir:** I just asked that question.

**Mr Boylan:** I am sorry.

**Mr Weir:** Great minds think alike.

**Mr Boylan:** That is why I should have got in first; I am sorry.

**The Chairperson:** Will the commissioner's costs be shared out equitably among the councils?

**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.

**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.

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.

**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.

**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?

**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.

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.

**Mr Elliott:** OK, but my specific query was whether the council must have executive arrangements.

**Mr Murphy:** No.

**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."*

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.

**Ms Broadway:** No, if a council wants to have what is the current committee system —

**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.

**The Chairperson:** I am very surprised that it states that the two top posts are not to be in the executive.

**Mr Elliott:** Yes.

**The Chairperson:** It is very strange that an executive will not have the two top people —

**Mr Elliott:** It does not have the chair or vice-chair.

**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.

**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.

**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.

**The Chairperson:** That is new. At the moment, you do not have that Cabinet style in councils.

**Mr Murphy:** No.

**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?

**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.

**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.

**The Chairperson:** They do not know what is going to hit them.

**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.

**Mr Elliott:** That would be useful.

**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.

**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.

**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.

**Mr Elliott:** It must go through all the stages of the Assembly to have the election, is that right?

**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.

**The Chairperson:** Yes, the pressure is on.

**Mr Boylan:** Do you think that we will suspend Standing Orders for Tuesday?

**Mr Weir:** We do not need to; there is no time limit on Tuesday.

**The Chairperson:** Thank you very much. We will see you very soon.