



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government Bill: Research and
Information Service Research Briefing

14 November 2013

NORTHERN IRELAND ASSEMBLY

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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

The Chairperson: Suzie, do you want to brief us on this and take us through?

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.

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?

Lord Morrow: It is not on, Chair. Not guilty this time. Sometimes I might be but not on this occasion.

The Chairperson: OK. Cathal, is anybody's phone on?

Lord Morrow: Guilty man.

Mr Boylan: I am trying to answer this call here, Chair. *[Laughter.]*

The Chairperson: We have just been told that it is interfering with the recording. There you go, it is all done.

Mr Boylan: I am only in the door. *[Laughter.]* Do not record that.

The Chairperson: It is not going to be minuted. Sorry, Suzie, for the disruption.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

By way of illustration, members will have received a couple of copies of the maps. I think that those are in the tabled papers.

The Chairperson: Yes. There is just one page.

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.

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.

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.

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.

The Chairperson: Thank you. Your paper covers a lot of the issues that we need to look at.

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.

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.

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?

Ms Cave: Yes.

Mr Boylan: How have you found that to be working? Do they call it neighbourhood planning?

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.

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.

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?

Ms Cave: Yes. Certainly.

Mr Boylan: I think that there may be a role.

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?

Ms Cave: OK.

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.

The Chairperson: The default position is to use d'Hondt if there is no voluntary agreement.

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.

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.

The Chairperson: What colour are those? Purple?

Mr Boylan: Dungannon looks good on paper.

The Chairperson: That is a lovely, trendy colour.

Mr Boylan: They are not lovely, trendy rates. Do not record that, by the way.

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.

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.

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".

The Chairperson: What page is that on, Tom?

Mr Elliott: Sorry, I am reading from the legislation here, but it relates to section 4.2 on page 21 of Suzie's paper.

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."

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)."

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.

The Chairperson: There will be a raft of guidance coming through as well.

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.

The Chairperson: I find it difficult to interpret.

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.

The Chairperson: What does that mean when you drill down into it?

Mr Elliott: Maybe Suzie can help us with that. There might be scope for more investigation and research into that.

The Chairperson: Give us some examples of what they mean. Peter, what is it, do you know?

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.

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.

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.

Mr Elliott: As you do from the legal profession.

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.

The Chairperson: It depends who answers the question.

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.

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."

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.

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.

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?

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.

The Chairperson: I think that would be very hard.

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.

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.

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.

The Chairperson: Do members want to raise any other issues that Suzie can look into? Everyone seems happy enough. Thanks very much indeed, Suzie.