



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government Bill: Stakeholder Forum

28 November 2013

NORTHERN IRELAND ASSEMBLY

Committee for the Environment

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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 Alban Maginness
Mr Ian McCrea
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

Ms Anne Donaghy	Ballymena Borough Council
Mr Pat Cumiskey	Banbridge District Council
Mr Stephen McCrory	Belfast City Council
Mr John Walsh	Belfast City Council
Ms Jonna Monaghan	Belfast Healthy Cities
Ms Louise McNeill	Community Places
Mr Nigel Lucas	Construction Employers Federation
Ms Linda MacHugh	Department of the Environment
Mrs Roisin Mallon	Equality Commission for Northern Ireland
Alderman Alan Graham	North Down Borough Council
Councillor Brian Wilson	North Down Borough Council
Mr Ken Smyth	Northern Ireland Commissioner for Children and Young People
Mr Derek McCallan	Northern Ireland Local Government Association
Councillor Sean McPeake	Northern Ireland Local Government Association
Mr Bumper Graham	Northern Ireland Public Service Alliance
Ms Helen Harrison	Royal Town Planning Institute
Mr Gavan Rafferty	Royal Town Planning Institute
Ms Anne Moore	Save the Children
Ms Angela Dunbar	Turley Associates

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.

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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?

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?

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?

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.

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. Derek will deal with the second issue.

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.

Mr Weir: You feel that you still need some level of sign-off from the Department?

Mr McCallan: There should always be some flexibility; otherwise you cannot put the "local" into government.

The Chairperson: It is difficult to be highly prescriptive as well, is it not? There needs to be local agreement and solutions.

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?

Councillor McPeake: That is correct.

Mr A Maginness: Is that position agreed by all parties on NILGA?

Councillor McPeake: It is. The default mechanism is d'Hondt; that is agreed throughout NILGA.

Mr A Maginness: And it is agreed that there could be local solutions in certain circumstances?

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.

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.

Mr A Maginness: Thank you. That is very helpful.

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?

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.

The Chairperson: Are there any other comments from the floor?

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.

The Chairperson: Thank you. If there is no other input —

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.

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.

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.

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.

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.

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.

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.

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.

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.

The Chairperson: Thank you, Ms MacHugh. We move on to the next Part.

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.

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.

Mr A Maginness: So, the Bill would have to be amended to include what NILGA suggests.

Ms MacHugh: Yes.

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.

Ms MacHugh: They could have local solutions based only on the three methods determined in the Bill.

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.

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.

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.

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.

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.

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.

The Chairperson: You can foresee delays in the decision-making process.

Mr McCrory: Yes.

The Chairperson: Does anyone from the Floor wish to speak on this Part about meetings and procedures? Do any members wish to speak?

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?

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?

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.

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.

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.

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.

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.

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.

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.

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?

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?

Mr Weir: Yes, that is the point that I am making.

Mr Walsh: And I am making the same point back. How do you select —

Mr Weir: We may be in violent agreement here. *[Laughter.]*

Mr Walsh: How do you select someone who is the final arbiter in all things?

Mr Weir: The point is this: is that not a flaw in the current draft of the legislation?

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?

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.

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.

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."

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?

Mr Walsh: Having just advocated the removal of the provision, I am now being asked to comment on how we can make it better.

Mr Elliott: With all due respect, it is in the Bill, so we have to deal with what is there.

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.

Mr Elliott: So, do the decisions of the lawyers come down to 15% call-in as well? *[Laughter.]*

Mr A Maginness: That is their fee.

Mr Boylan: Do we have to take a vote on that now, Chair?

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?

Mr Elliott: Clearly, you believe that it should not be the position of the lawyers.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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?

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.

Mr Walsh: Could I ask you to restate your question?

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?

Mr Walsh: That would go some way to alleviating some of my concerns.

The Chairperson: It would provide more clarity, really.

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.

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.

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.

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.

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.

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.

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.

The Chairperson: Thank you. Does anybody else wish to raise any other issues?

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.

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.

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.

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.

The Chairperson: There could be a conflict of interests.

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.

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?

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

The Chairperson: It may get fairly confusing. Are they members of staff, or are they councillors?

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?

Ms MacHugh: It is not intended to deal with decisions of councils; it is about the conduct and behaviour of councillors and only that.

Mr Boylan: That is grand.

The Chairperson: We will move on to the next discussion.

Mr Elliott: Sorry, Chair, but someone wants in.

The Chairperson: Sorry, Mr McCrory.

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.

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.

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.

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.

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.

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.

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.

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.

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".

That passive and over-bureaucratic language is unlikely to encourage good practice.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

I think that I have covered most of the points. If I have not, I will be very glad to take specific questions.

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.

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.

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?

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.

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.

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".

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.

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.

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?

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.

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.

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.

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?

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.

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.

The Chairperson: Linda, you mentioned capacity building for councillors and council officials. What about capacity building in communities? Who will fund that?

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.

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.

The Chairperson: Mr McCallan, you can make a brief comment. We need to move on.

Mr McCallan: I am conscious of your time, Chair, and that of the Committee.

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.

The Chairperson: Thank you.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

The Chairperson: Any other comments?

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.

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.

The Chairperson: Linda, it is overly bureaucratic, top-down and needs to be re-examined. What is your view?

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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?

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.

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.

Ms MacHugh: We can certainly look at the wording if you believe that it would help.

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.

The Chairperson: Mr McCallan, do you want to come back on that?

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.

The Chairperson: Are there any comments or responses from members?

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.

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.

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.

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.

The Chairperson: Thank you very much. We have about 20 minutes left. Are there any other burning issues that anyone wants to raise?

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.

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.

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.

Linda, do you want to respond?

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.

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.

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.

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.

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.

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.

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.

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.

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.