



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government Bill: NIAO Briefing

12 December 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Cathal Boylan
Mr Colum Eastwood
Mr Ian McCrea
Mr Barry McElduff
Mr Peter Weir

Witnesses:

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| Ms Louise Mason | Northern Ireland Audit Office |
| Ms Laura Murphy | Northern Ireland Audit Office |

The Chairperson: I welcome Louise Mason, the Chief Local Government Auditor, and Laura Murphy, policy officer. This session is being recorded by Hansard, and it will be included in our report. The members all have your written submission before them, Louise and Laura. I know that you have a lot of concerns, but, if you could briefly outline the issues for us in about five minutes, we will then take questions from members.

Ms Louise Mason (Northern Ireland Audit Office): I am happy to do that. I start by thanking the Committee for its invitation to come here today to give our views on the Local Government Bill. Back in May, when I was before the Committee, I had with me Rodney Allen, who is the director responsible for the local government audit. Unfortunately, on this occasion, Rodney has not been able to accompany me because he has had a family bereavement. However, I would like to introduce Laura Murphy, who also works on our team. Laura has been looking at the draft legislation for me.

I hope that the Chair and Committee understand that our primary focus on the Bill has been looking at the Parts and clauses that refer to the role of the auditor. We see this as a good opportunity for the Assembly to do three important things: to modernise the audit requirements; to strengthen audit powers and independence; and to remove duplication of audit requirements. I have written twice to the Committee, and members have the information before them in my letters of 13 November and 2 December. The more recent letter has the more detailed observations that I have made. I want to cover some of the main observations relating to the clauses and also to touch on our audit resources, costs and skills, because I know that that has been raised by others.

Our thinking at this stage has been influenced and informed by some engagement that we have undertaken with some of our sister audit agencies, the Department, the ombudsman and some other interested stakeholders. The most major change for us, as auditors, are the proposals set out in Part 12 concerning performance improvement. Performance improvement and auditing and reporting is a

new role for the local government auditor and is in addition to our existing financial audit responsibilities, which, by the way, continue under the new regime. We welcome this new role.

The audit requirements set out in the Bill compare directly with the Welsh local government measures of 2009. However, there have been two subsequent amendments to the Welsh legislation affecting the auditor, which have not been reflected in the Bill, and I will touch on those later. I also suggest that the Committee may wish to review the specific clauses to ensure that they are proportionate and appropriate to local circumstances. There is also an opportunity, at this stage, to make some adjustments in light of the experience of operating the legislation in Wales, where they have the benefit of hindsight. I have spoken to our Welsh colleagues.

We all agree that we want to ensure that the legislation is drafted for the long term. Clauses 98 and 100 require performance audits of all councils each year with a minimum of three audit outputs for each council. That is a minimum of 33 annual outputs, which is a considerable undertaking and will require significant resource. That said, I anticipate that that extent of work will be necessary in the early years of the new arrangements, but I expect that, as the systems mature and embed, the audit role should be more focused on risk-based assessment. Therefore, I suggest that there should be some flexibility in the legislation to allow the auditor's judgement to be used on the extent and frequency of audit work to be undertaken. A simple legislative change in the wording, from "must" to "may", in clauses 96 to 100 might be sufficient to provide for that flexibility.

In clause 95, the proposed date for the publication of the council's assessment of its performance is 31 October, some seven months after the end of the financial year to which it refers. Perhaps an earlier date would be preferable and would better inform the overall process, including the scope for timely audit and for informing future performance improvement planning. Also in clause 95, it may be preferable for a specific date to be stipulated for the publication of the councils' improvement plans. Ideally, plans should be put in place before the year to which they relate; that is, by 31 March. An early date is important for timely audit of the information.

One aspect of the proposals in clause 97 requires some "crystal-ball gazing" — I have taken to calling it that — for the auditor. It asks me to assess whether the council is "likely" to comply with performance improvement requirements. That is unusual, as it departs from the traditional audit role, and it may perhaps be more appropriate to require the auditor to assess whether proper arrangements are in place that would allow the council to deliver its performance improvement plans. I also highlight the fact that the usefulness of the audit recommendations will depend on how quickly they can be communicated and applied. Therefore, the availability of improvement plans and the timeliness of the audit will be important to making the provisions successful in practice.

Clause 98 requires the auditor to provide copies of the audit reports by 30 November. That seems to me to be unachievable, as councils will only publish their assessment reports on 31 October. We suggest that a more realistic date for the audit reporting of this information would be no later than 31 January. In Wales, the 2009 measure has been revised to provide for that later date. An alternative and more proactive approach would be to bring forward the councils' publication date from 31 October to, say, 31 August, which would allow the audit reporting date to remain at 30 November.

This Bill has brought to light again the importance of the principle of the auditor's independence. Clause 101 provides the Department with the power to direct the auditor to carry out work. I am concerned that those proposals have the potential to undermine the auditor's independence. In a recent development in Wales, there has been an amendment to the legislation to remove that power. I suggest a change to the Bill, in that the word "direct" should be changed to "request", which would be much more appropriate and would strengthen the independence of the local government auditor. That applies equally to extant legislation, and I have raised that directly with the Department.

I am sure that you would agree that, when introducing a new regime, it is essential that the old one is revised. In other words, a new regime should not be superimposed over the old arrangements. The Bill aims to address that in Part 15 by making amendments to the Local Government (Northern Ireland) Order 2005. On review of that Part, we identified some further amendments that the Committee may wish to consider. Those are set out in detail in the annex to my letter of 2 December. One matter included in the annex relates to the local government auditor's value-for-money powers; currently, there is a requirement for statutory consultation when carrying out value-for-money work. There is an opportunity for the Committee to strengthen the independence of the auditor by removing that requirement and bringing it in line with the powers that exist for the Comptroller and Auditor General in the Audit (Northern Ireland) Order 1987. In addition, the Bill contains, in clause 111, the power to repeal existing provisions relating to surcharge. However, in light of the new ethics

framework and the mandatory code of conduct for councillors, I have raised with the Department my preference for the Bill to remove altogether the power of surcharge. Its removal would allow consistency with the other UK regions.

Members will appreciate that the Bill's proposals for performance improvement planning will have resource and cost implications for the Audit Office. At this stage, we have been incorporating those into our corporate planning process on the assumption that audit fees will be charged to the councils in the same way that we charge for our financial audit work. However, an alternative arrangement could be that the performance improvement audits are funded from central government. There are advantages and disadvantages to each of those approaches, but funding directly from the Consolidated Fund would have the advantage of further strengthening the auditor's independence.

In my correspondence to the Committee, I note concerns raised from some stakeholders regarding the audit capacity and resources to undertake the new responsibilities set out in the Bill. Those are not unreasonable concerns, given our new proposed role, and I have already indicated that we plan some research and development prior to the legislation being effective in order to ensure that we are best placed to take forward that work. That will also help us to finesse the cost implications. However, at this stage, it is likely that the cost of applying the proposed new audit work will require a significant, dedicated staffing resource.

An advantage that I have, with the local government audit function being under the umbrella of the Audit Office, is that I can have access to other skills that exist across the office, such as those of my value-for-money (VFM) colleagues, who already undertake similar work in auditing the Policing Board's continuous improvement arrangements. So, we do have some skills within the office.

In summary, we see an opportunity for the Committee to update existing audit legislation through this Bill, which will result in modernising audit requirements, strengthening auditing powers and independence, and removing some duplication in audit requirements. I hope that these comments are helpful by way of setting the scene, and I am more than happy to discuss my observations and address any concerns or questions that members may have.

The Chairperson: Thank you very much. That is certainly a very comprehensive run through of the issues that you brought up, and there are certainly a lot of issues. You just wonder whether the Department has ever talked to you to try to sort it out. You talked about unrealistic dates, and that really sounds strange.

Ms Mason: There was consultation with us away back. Before I took over the role, there was quite a bit of consultation with us, but things have moved on since then. We have had some recent consultation on limited elements, but I would have liked earlier sight and some more consultation. That is my honest answer.

The Chairperson: Louise, I have never been in a council, unlike many of my colleagues. I do not quite understand the bit about the surcharge. Can you explain that to me? It is in clause 111.

Ms Mason: You have asked me the wrong question. I feel a bit of a draught with Rodney not being here, because Rodney has all the detailed knowledge of this. I have never used the surcharge power since I came. I will put this in layman's terms as opposed to legal terms, because it is a very legalistic process — an extremely legalistic process. My understanding is that if councillors take forward some action deliberately — that is not the legal term — that turns out to be illegal, they can be surcharged, and the cost of it may then have to be paid out of the councillor's pocket.

Mr Boylan: That is the gist of it.

Ms Mason: That is the gist of it. Some people here probably have more understanding of it than I have.

Mr Weir: Chair, linked in with that, if there is a direct penalty on the councillor, it can also lead to a period of disqualification as well as the other related issue.

The Chairperson: It is a bit like a fine.

Ms Mason: Yes. It comes out of the councillor's own pocket. It has not been used that much over the years, although it has been used on a number of occasions.

The Chairperson: I understand that now.

Mr Weir: With regard to the surcharge, I listened carefully to what you said, and I pretty much agree with everything. I appreciate what you said about the surcharge side of it not being your bailiwick. However, the concern with the surcharge is twofold. First, as part of this process, councillors said that there would be a new regime. Arguably, from their point of view, one of the potential benefits being brought in was that things would be brought into line with the removal of the surcharge. Therefore, there appears to be a rolling back on that if the surcharge is mentioned. I can think of two or three occasions over the past 25 years when it has been used. Although the potential threat of surcharge may create admirable caution, it can also mean that the desire for councils to do anything innovative or new can be a major problem. All it takes is one officer, particularly if he or she does not want something to go through, to say, "Members are perfectly entitled to do that, but I would be a bit worried that the local government auditor might have something to say on that and that there might be a surcharge or whatever". That can have a high detriment.

There are two aspects to the main point about protecting independence. The first is the actual direct independence. As you indicated, some of the elements have shown that they may not be 100% fit for purpose as is. Concern has been expressed to us, and you have echoed it, that what we are left with in this section, as with a couple of other sections, is essentially a cut-and-paste job from Wales. There is a feeling that that does not reflect local circumstances and does not reflect the situation. In Wales, as in England, the expenditure and the areas of activity of a local council are massively more than they are here. From that point of view, do you feel that, along with the issue of independence, there is an issue that it is over the top and that what is directly required of you, as opposed to your having the ability to do things, is excessive?

Ms Mason: Yes. I go back to what I said. The word change from "must" to "may" gives that flexibility. I totally understand and agree with the performance improvement work. However, in the first few years, it is very likely that we will go into every council and make sure that the whole system is being embedded properly. In Wales, as it has developed, they have found that they do not feel the need to go into every council every year. If there are specific risks, they will go in. They do others on a cyclical basis. They would like to be able to do an overall report as it beds down, rather than doing a report on every council, but they cannot because their legislation does not provide for that. We have less spend going through. Wales has education and lots of other big areas going through, but we do not. With the "must do" for everybody, 33 outputs from us every year is very significant.

Mr Weir: You may not be in a position to tell me this now, and you may not be keen to give a ballpark figure. So, it may be a question of you getting this information back to us. It seems that, even with "may", there would be some level of increased requirements on you. Obviously, with "must", those requirements increase significantly. I can understand the argument, from your point of view, about the location of the money. However — this is perhaps teaching my granny to suck eggs — if you look at it from an audit point of view, the problem is that, regardless of whether it comes by way of a form of charge to the council or from central government expenditure, additional money is still being paid one way or another.

Ms Mason: The Audit Office will need more resource; that is the bottom line.

Mr Weir: Will you be in a position to give us indications of what you believe would happen with what might be described as the two models; i.e. a model with "may" and a model with "must"? I am not asking for that snapshot today, but perhaps you will be able to get back to us with projected costs: what you believe the cost implications will be if you get what you believe are the necessary changes, and what the cost would be if this goes through unamended and you have a layer of requirements that may be excessive? It would be useful to get that information.

Ms Mason: We can certainly look at that and see what we can come back to you with.

Mr Weir: To be fair, Chair, without prejudice, I hope that the Public Accounts Committee (PAC) will not come back in five years' time and say, "The Audit Office response was that it would cost £2 million, and it actually ended up costing £5 million. Let us audit the auditors." However, perhaps we can get an indication from you, because there is a significant issue. Common sense dictates a lot of what you

have said about what should be there, but it would also be good if we could get ideas and ballpark figures from you — not necessarily today — on the difference between what is necessary for reform and the gold-plated quality that seems to come from the Department.

Ms Mason: In such a note, it might be worth giving you some figures for how much they charge in somewhere like Wales. You have to remember that Wales has a wider remit, because it includes education; it is bigger. However, we could give you some of the levels of fees in Wales, because that is really where we will be looking to. At this stage, we have not totally worked through all the details of what this will mean for us, but that is where we will be looking to.

Mr Weir: I appreciate our complication in respect of amendments, but presumably that could be done within the next month or so. We are taking evidence on this, and a number of things that you suggest will clearly require changes to the wording of the legislation. Some are relatively small changes that would have a very significant impact, but we obviously have a particular time frame.

Ms Mason: We will get you that for the new year.

The Chairperson: If additional duties are placed on you, you need additional resources. There is no doubt about that.

Mr McElduff: Louise and Laura, do you understand some councillors' view that, if you extend the role of the auditor to include improvement or corporate plans, that undermines the democratic process? They see it as more proper that elected members set the priorities of the organisation and then oversee delivery against those priorities.

Ms Mason: I hear what they are saying. An alternative view is that we are actually supporting the councillors because we are coming in independently and saying, "Here are the improvement plans, but we see weaknesses. Here is a smarter performance indicator for you to use." It could actually be seen as our giving councillors more independent information.

Mr Weir: Louise, as long as it is not the old line of supporting somebody like a rope supports a hanging man. *[Laughter.]*

Ms Mason: The point of this is to drive forward improvement of the councils, and we have experience. One of my VFM colleagues looked at performance indicators in central government. We would be quite happy to use his experience and bring it across to councils, so that they can learn from it in setting good performance indicators. The whole point is to drive forward improvements in the councils.

Mr McElduff: OK. I want to express the same concern that Peter expressed about it appearing to be a cut-and-paste job from Wales. Local government here is largely self-funding and self-financing as opposed to administering large scale funding from —

Ms Mason: Certainly, they do not have the large central government work here.

Mr McElduff: Would you not be tempted then to look across to Scotland as opposed to Wales? In Scotland, the system was developed by local government itself; is that right?

Ms Laura Murphy (Northern Ireland Audit Office): The system in Scotland comes from the 2003 best value legislation. Since 2004, performance improvement work has fallen under value for money, best value, proper arrangements for securing efficiency and effectiveness, which is already in the 2005 order. You are right that Scotland is much less prescriptive. The Accounts Commission has the duty to perform the work, and it directs the auditors. There is no defined framework in legislation about how they go about that, so it is much more flexible in Scotland. We have spoken to our colleagues in Scotland, and they took the same approach. In the first instance, they went round all 32 councils and did a belt-and-braces audit. That was their baseline for going forward and looking at the areas in which there were weaknesses, so that they could target their future audits.

Mr Boylan: Thank you very much for your presentation. Following on from my colleague, I have heard some soundings about the Welsh model. There are some good elements of it, but it seems to me that this is a cut-and-paste.

I want to go back to three issues. It is funny that you mentioned best value. There is now an order that gives councils a facility to look at the likes of procurement practice and best value practices. We are fighting over the issue of "must" and "may". When we went through the Bill originally, we were saying that "must" was much stronger language for us in the legislative process. I understand what you are saying about creating a wee bit of flexibility. However, surely it is best that we have a process of working with councils to look at assessments, priorities, performance standards and everything else and getting all that right as opposed to the other way. It is only a question. That is another way of going about it. We could bring forward good practices with councils, work with councillors and say, "Here are the standards that we want to meet." Clearly, you are saying that the "must" element of the Bill would put undue pressure on you, so is that not an alternative?

Ms Mason: Every new council that is starting up should be setting out to adhere to good practice. I have indicated that we have some expertise in the office. We will be happy to share that and to work with councils. However, the whole point of this cycle is continuous improvement for councillors. They can then look at what they have achieved, and we can come in and give some independent view on that so that it is improved for the next year. "Must" is probably right for the first year or two until, as Laura said, we get the baseline and see where all the risks lie. However, if we leave it as "must" in the legislation, in five years' or 10 years' time, we still must do every council and three outputs every year. There is the potential that we would be going through a motion for the sake of it.

The Chairperson: There is no point.

Mr Boylan: It is OK. It is up for discussion, and that is why they are here making a case. I am only asking the question.

On another point, you asked for the date to be changed from 31 October to 31 August.

Ms Mason: As it stands, the councils will have to produce their assessment on 31 October, and we then have to produce our report on 30 November. We have said that it is not doable in a month. In Wales, they have changed the date that the auditor's report is due to 31 January. They have kept it that the councils have to report by 31 October, but the auditor's report is then due on 31 January, which is fine. I am just putting the other option into the mix that could be looked at. You may need to talk to some of the councils about whether it is achievable for them to deliver theirs by 31 August, so that we could then deliver by 30 November.

Mr Boylan: That is why I ask the question. Is the end of the summer period the best time of the year to have full accounts and to be properly abreast?

Ms Mason: That is the difficulty. We are just saying that, if it stays as the councils producing theirs by 31 October, we would want the legislation to be changed — in line with Wales — so that we would have ours done by 31 January at the latest.

The Chairperson: Giving you one month to do it is just unworkable.

Ms Mason: Wales found that, and that is why they have changed the legislation.

The Chairperson: As Peter said, it is common sense. These are all the questions for you. We would appreciate it if you would give us that assessment.

Ms Mason: Yes, I am happy to do that.

The Chairperson: Lovely. Thanks very much indeed.