Northern Ireland Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government Bill: Department of the Environment

23 January 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Anna Lo (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Tom Elliott
Mr Ian McCrea
Mr Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

Ms Julie Broadway	Department of the Environment
Ms Mylene Ferguson	Department of the Environment
Ms Linda MacHugh	Department of the Environment
Mr John Murphy	Department of the Environment

The Chairperson: You are very welcome again, Linda, Julie, Mylene and John. I am sure that you have all been working overtime on this. It is a large piece of legislation, and there are so many comments and issues about it that trying to take them all on board could give you a headache.

You gave us eight papers, Linda. We were waiting for them but did not get them until 5.00 pm yesterday, which was a bit disappointing. I kept my e-mail on to see whether I could get the tabled papers. I tried to read some of them this morning, but none of us really has the time to read through them. So, I would appreciate it if you could go through them thoroughly with us. We have set aside an hour for you.

Ms Linda MacHugh (Department of the Environment): That is fine. Thanks for the opportunity to do this. I know that these are areas that have received quite a number of comments from others and that you need further clarification on. We did try to get the papers to you as soon as possible. We were told on Friday afternoon that they were needed, so we worked quite hard to try to get them to you, at least in advance of the meeting. We did not expect the Committee to have the time to read through them in advance of us coming here today, so we will go through them individually in some detail.

I am joined by members of my legislation team. Julie and John will take you through the first six papers, and then I will talk to the seventh. At various points, however, any of us may come in if there are additional questions. I will ask Julie to take the first paper, which is on removing the blanket prohibition on council officers being councillors.

Ms Julie Broadway (Department of the Environment): I think that clarification was needed about the various pieces of legal advice and legal cases on the issue.

Section 4(1)(a) of the Local Government Act (Northern Ireland) 1972 specifies that:

> *"a person shall be disqualified for being elected or being a councillor if— .*
> *(a) he holds any paid office or other place of profit ... in the gift or disposal of that or any other council".*

We first became aware in 2005 that there was a human rights issue in that when the Department received correspondence from a solicitor acting on behalf of a council employee. That alleged that that provision violated article 10 of the European Convention on Human Rights, which provides the right of freedom of expression.

We sought legal advice on the matter, and that indicated that there was a strong argument that section 4(1)(a) was disproportionate to the legitimate aim pursued. The advice went on to indicate that it could be convincingly argued that the provision posed a:

> *"general, automatic and indiscriminate restriction on a vitally important Convention right".*

The advice pointed to the possibility of a successful legal challenge to the provision on the grounds that it would violate article 10 of the European Convention on Human Rights. The case law that is quoted in support of the legal advice that we got was Hirst v the United Kingdom (No 2) [2005]. That was to do with the Representation of the People Act 1983, which barred Mr Hirst and others from voting in parliamentary and local elections. It was held to be incompatible with the European Convention on Human Rights.

The Chairperson: That is quite different, though. It is about voting, not standing for election.

Ms Broadway: It is a relevant judgement, in that it is about blanket restrictions for elections and voting. That particular case was about voting in parliamentary and local elections, whereas the section 4 case is about placing a blanket restriction on someone being a councillor.

The intention had been to bring forward the necessary amendment to section 4 as part of the legislation that is associated with the local government reform programme. The then Minister of the Environment confirmed in 2009 that the position was that we would take forward an amendment to section 4.

Let us look at the position in the jurisdictions of England, Scotland and Wales. We carried out research on what happened to see how the issues of employees as councillors was dealt with elsewhere and to assist us in identifying how we could best remove the blanket prohibition. In England and Wales, prior to 1989, an employee of a local authority was disqualified from being a member of that authority by virtue of section 80 of the Local Government Act 1972. The equivalent provision in Scotland is section 31 of the Local Government (Scotland) Act 1972. Those provisions allowed a local authority employee to become a member of another local authority. That was known as "twin tracking", whereby you could be a councillor in another authority but not in the authority by which you were employed.

In 1985, in response to adverse publicity about twin tracking, the UK Government established a committee of inquiry into the conduct of local authority business. That committee considered the issue of local authority employees also being members of a local authority. Three arguments about twin tracking were considered. First, there could be a conflict of interest; secondly, there could be an issue of excessive paid leave; and thirdly, there could be an issue with political impartiality. The committee rejected the first argument and concluded that the second could be dealt with separately with rules for remuneration and time off. The third argument, about political impartiality, led to the recommendation that senior officers of a council should not be politically active and, as a consequence, should not be councillors.

The UK Government accepted that recommendation. In 1989, they made provision on the disqualification and political restriction of certain officers and staff. The Local Government and Housing Act 1989 subsequently provided that:

"A person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of a local authority if he holds a politically restricted post under that local authority or any other local authority in Great Britain."

Section 2 of the 1989 Act sets out the persons that are to be regarded as holding "politically restricted" posts for the purposes of section 1.

Subsequently, a number of senior local authority employees in the case of Ahmed et al v the UK Government took a case to the European Court of Human Rights on the basis that regulations made under section 1 of the 1989 Act interfered with their rights under article 10 of the charter. In its judgement, the court found that:

"restrictions imposed on applicants not open to challenge on grounds of lack of proportionality – Regulations only applied to carefully defined categories of senior officers like applicants who perform duties in respect of which political impartiality vis-à-vis council members and public is paramount".

So, it is not as though there was a blanket ban; the judgement was that, as long as there was not a blanket ban or an indiscriminate ban, it is perfectly OK that those people who held politically restricted posts should not be allowed to be councillors.

In the Republic of Ireland, the Local Government Act 2001 provides that persons who are employed by a local authority are not eligible to be elected members unless they belong to a class, description or grade that may be specified in subordinate legislation. That is really linked to the maximum level of remuneration that someone will be paid. So, anyone above the grade of clerical officer is restricted. The Department's position is that we have made provision in the Bill to remove the blanket prohibition on council employees, because the advice that we got in 2005 was that that could be challenged under article 10. The enabling power in schedule 1 to the Bill allows us to specify in regulations those offices and employments to which individuals are appointed by a council that will disqualify that individual from being a councillor.

The Department recognises the concerns expressed in relation to permitting a council employee to be a councillor on his or her employing council, so we are seeking advice from the Department Solicitor's Office on whether the provision as introduced would allow the Department to specify in the regulations that we can make under schedule 1 that employment on the council to which election is sought would be included as a disqualifying employment. We are working with the local legislation working group on what should be in those regulations. We will then put recommendations to the Minister on that.

The Chairperson: How do you pick what are deemed to be politically sensitive posts? It looks like the Republic of Ireland makes it easiest — above a certain grade.

Ms Broadway: Yes.

Mr John Murphy (Department of the Environment): In England and Wales they have disqualified the head of the paid service, which is perhaps the equivalent of our chief executive or clerk; statutory officers, like, for example, the chief finance officer; or officers who regularly provide advice to the council or one of its committees — those who are actually involved, you could argue, in the decision-making process of the council. It would be staff who are working to the chief executive but not perhaps the administrative staff, so you try to define it very clearly at that high level. As Julie said, we are working with local government senior officers to refine the list for advice to the Minister. Then, subject to his views, we will go out to consultation.

The Chairperson: There needs to be consistency between councils as well. What about employees of one council standing for office in another council?

Ms Broadway: We are getting legal advice on that issue about whether the enabling power that we have would be sufficient to allow us to specify that, if the Minister wants to do that, so that we can do it in the regulations rather than needing to make an amendment to the Bill. As soon as we get that legal advice we will of course bring the outcome of that to the Committee.

The Chairperson: Would there be a restriction on the politically sensitive staff standing for other councils as well?

Ms Broadway: In many ways there are two elements. One is whether someone who is an employee should be allowed to be a councillor on their own council. The advice that we are getting is whether, because of the comments we have received about that and because it causes so many difficulties and conflicts, it would be advisable if that was not the case. That is one element. The other element is this issue of politically sensitive posts. What posts in a council should prevent you from being a councillor in any council, not just the one that you are employed by?

Mr Murphy: That is where the Ahmed judgement provides us with the case law that you can have that level of restriction.

The Chairperson: But we cannot have a blanket ban, as you say.

Mr Murphy: Yes.

Lord Morrow: Paragraph 8 of your paper refers to the three arguments against twin-tracking and to conflict of loyalty. Are "loyalty" and "interest" the same word here?

Mr Murphy: No, it is whether your loyalty as a councillor lies with your party and its views rather than with the council that you are there to serve as an officer.

Lord Morrow: I have a problem with it in that it would be difficult for any council employee to sit on that council wearing two hats. Surely there would be umpteen occasions when they would have to opt out of discussion and debate, perhaps leaving the room. Their whole career as a councillor could well become dysfunctional. Indeed, I suspect that their employment career would also become dysfunctional. They would find themselves having to make declarations of interest not only at their place of employment but at council meetings. Is that not right?

Ms Broadway: Is your main concern if they were an employee of the council on which they are a councillor?

Lord Morrow: More so in that instance, but I believe that it would also be prevalent even if it were another council. I am thinking, for instance, of the appointment of staff. These are emotive issues. It has got to the stage, perhaps long past it, where councillors do not participate in the appointment of staff. Take, for instance, the appointment of a chief executive. Councillors have some input into that appointment up to a certain level. Where would a person who has a dual role find themselves in that?

Ms Broadway: That is actually why we have been researching this issue. We have received comments about it. The Committee has raised issues about it, and trade union side and councils have raised issues about this — in particular, people being allowed to be councillors on the council that employs them. There seems to be so many practical issues involved with that. That is why we are carrying out research to put advice to the Minister. The legal cases seem to point to the fact that a challenge could be made if it is an indiscriminate ban. Therefore, we have to look at what level would be acceptable. As some of the people from Belfast City Council said earlier, in England and Wales, there seems to be a minimum level where people who are in politically restricted posts cannot be councillors. Equally, you cannot be a councillor if you are an employee of that council. We have been looking at this again because we recognise the issues that have been raised.

Lord Morrow: Are you in the position where you are saying that the Department would much prefer that this was not the case? I recognise the case that has been highlighted and understand that you must try to address that and deal with it. However, is it true to say that your starting point is that you would prefer the status quo in that this is not the position because, because, because, because.

Ms Broadway: It is an issue that we need to put to the Minister and get his views on.

Lord Morrow: In fairness to the Minister on this one, whatever his personal view is — and I do not know what it is, and it is a good job that we do not know at this stage — I think that, if I were the Minister, my view would be that it should not happen. I recognise that that would not be a good enough answer because of the things that you folk have cited, not least in your paper. However, is it not reasonable that the Department should say, "No; we feel that the status quo is the best, safest and most transparent way forward here"?

Ms MacHugh: It needs to be taken in the context of the legal position. If the legal position has been clearly defined and the status quo is deemed to be unlawful, illegal and challengeable, there is a role for the Department to play in making sure that the framework that we put to councils is workable and will not lead to undue challenge. Therefore, the Minister would have to weigh whether it is practically acceptable or feasible in the Northern Ireland context against the potential for legal challenge. We will have to put it to the Minister. We are doing a lot of work to develop his briefing on the basis of all of this.

Lord Morrow: I fully understand and accept what is being said. You have a dilemma because of the legal position. We can talk about these things now, because it does not exist at the moment. We are all free to talk about them because we do not have a case in the back of our minds. We are talking from a clean sheet of paper, as they say. Bearing in mind the legal and challengeable position, I think that, if we go down this road — and it may well be that we have to — it will present enormous problems.

The Chairperson: The Department's hands are tied. You have to do something. You have to find the best way to safeguard the proper working of the councils.

Ms Broadway: We have to find a balance to address the legal advice that we have received, while —

The Chairperson: The thing is we have never been challenged. However, the law will be here for another 50 or 60 years, and you never know.

Mr Elliott: Thanks for that, folks. Again, it is clarification. Let us be absolutely clear that, so far, there has been no test case locally, in the UK or in Europe that says that what we have at the moment is wrong.

Ms Broadway: Because the situation is different in England, the cases in England —

Mr Elliott: But that is what I am saying. There is no test case locally, in England or in Europe that says that our current position is wrong.

Ms Broadway: We have been pointed to other cases that say that it is wrong to have an indiscriminate rule.

Mr Elliott: Yes, but I assume that that is the judgement that was made in Europe on the English case. It might be useful to give us the exact form of words that was used.

Ms Broadway: That is fine; we can send that to you.

Mr Elliott: The second advice relates to the 2005 case on prisoners' voting rights. However, that is only advice. There has been no test of that.

Ms Broadway: That was a case.

Mr Elliott: It was a case on prisoners' voting rights, but it was not a case on the law in relation to stopping council employees being councillors.

Mr Murphy: That is right.

Mr Elliott: So we do not have any case law that currently stipulates our particular case; that is the key point here. There is advice, obviously, but no case law. I do appreciate the difficulties of trying to strike the balance. I totally accept that it is a difficult one. Obviously, we do not want to get on the wrong side of the law. However, as others have pointed out, it would be impractical to allow senior council employees or people in politically sensitive posts — or whatever way it is put — to become councillors.

The Chairperson: In reality, council employees would probably not touch it with a barge pole. It would be to their detriment to be caught in the middle, between their work and their party's policies.

Lord Morrow: Chair, you need to square that term "to their detriment". I thought that it was not to be to their detriment.

The Chairperson: If they are caught between carrying out their work duties impartially and being a member of a political party, that may create issues with whatever policies or decisions are made by committees or councils. They could be caught in the middle.

Mr I McCrea: Yes, but, if the protection is there to allow them to do it, they are protected. No matter what detriment there is, there is that element of protection for them, because they have that political protection almost immediately.

The Chairperson: Well, yes.

Mr I McCrea: Like Lord Morrow, I have major concerns about it. I understand the legal aspect, but any right-thinking party would think twice about allowing it to happen. You cannot account for independents, but hopefully that is a thing of the past.

Mrs Cameron: I agree wholeheartedly with most of my colleagues' comments on this issue. It does not seem workable, and it would be a real dilemma to have someone in this position. What is the major risk? If the legal advice comes back allowing you to obtain a blanket ban, would the biggest risk be someone taking the case to court?

Ms Broadway: Yes. In 2005, that is how we became aware of this. A solicitor for an employee wrote to us to say that they were thinking of taking a case because of the blanket ban. That is when we got the legal advice.

The Chairperson: But, in practice, other parts of the UK are doing it now and have restrictions on employees. So, it is working in the rest of the UK. Do we know what percentage of employees in other jurisdictions have this dual role?

Mrs Cameron: You might have to speak to those employees to see if it does work. The positions are there, but how effective they are as employees, I do not know. Maybe that question might be asked.

The Chairperson: It is not only difficult for the employers and the councillors, it is difficult for the employees themselves. If you do not feel that people have confidence in your judgement and advice, why bother working? Ian, do you want to come in?

Mr Milne: My point was covered by Tom. I thought that there would be examples throughout Europe or the world of a system like this that has been in place for a while. If there was, they might have discovered after a period of time that they had to rejig it because of whatever it threw up with the employees. I take it that there has been research done on other systems in Europe.

Ms Broadway: We looked at systems in other jurisdictions, namely England, Wales, Scotland and Ireland. We did not look at other European countries, but we can have a look to see whether there is anything there.

Mr Milne: All I am saying is that if there was, and it had been there for 10 years or more and they had tested the system to see how it had worked out, maybe we could learn something from it. That is my thinking.

Lord Morrow: Does it happen in the Irish Republic?

Ms Broadway: It really appears that people who are paid a certain level are allowed to be councillors. There is a maximum level of remuneration above which you cannot be a councillor.

Lord Morrow: Is that challengeable?

Ms Broadway: No, because that is not a blanket prohibition.

Lord Morrow: So you can go so far in a council, but no further.

Ms Broadway: Yes. That is why it is a balance between ensuring that we do not fall foul of the European human rights legislation and ensuring that the system is practicable and workable.

Mr I McCrea: It might be allowed, but does it happen? Are you aware of it actually happening? It may be allowed to that level, but is there any —

Mr Murphy: It would be difficult to do the actual research because, whilst you could identify the individual councillors, you would not necessarily be able to find out whether they were employees of a council unless you went to all of the councils and asked for a list of their employees.

Lord Morrow: You could spend the day phoning around.

Mr Milne: When was it introduced down South?

Mr Murphy: I think it was in 2001.

Mr Milne: Maybe the question should be asked about how it is working there. What difficulties are they finding? This is the only way that you can find out these things.

Ms Broadway: We can certainly consult our counterparts to see whether they are aware of it causing a major issue.

The Chairperson: At what grade are we really talking? Can administrative —

Ms Broadway: It is clerical staff.

The Chairperson: Only clerical staff?

Ms Broadway: So really anyone of clerical officer and below can be a councillor, but anyone above that cannot. Once again, that is not a blanket prohibition.

Lord Morrow: Are there different grades of clerical officers?

Ms MacHugh: That is a complication in local government in Northern Ireland. At times, there is a lack of consistency in who does what job at what grade from council to council. That is something that councils are working at, but it is still not there. I do not know exactly, but possibly that is why a level of pay has been set, as opposed to a grade — because that was seen as the best proxy for positions of responsibility. We can certainly contact our counterparts to see whether it is an issue that has been raised with them.

The Chairperson: I do not want to dwell on this too much, with so many papers to go through. Julie, are you taking the next one?

Mr Murphy: I will take this one, Chair. I will give a very brief introduction to cover the next three papers, because they are all based on proposals that came from one of the policy development panels. I remind members that, following Arlene Foster's statement on the Executive's decisions on the future shape of local government in 2008, the Department established the strategic leadership board, chaired by the Environment Minister and with representatives from the five main political parties, to develop policy and implementation proposals for the reform programme. That board, in turn, established three policy development panels, again with elected representatives from the five main political parties, all of whom were serving councillors. One of those panels was responsible for looking at governance and relationships. To put it into context, the policies reflected in the Bill are drawn largely from the work of that panel.

The Executive were and remain committed to governance arrangements in the new councils that provide for the sharing of positions of responsibility across the political parties and independents represented on a council. In considering the issue, the policy development panel considered a research paper that was prepared by the joint secretariat comprising officials from the Department and officers from NILGA. It identified the various processes that you could use to achieve that proportionality. There were the divisor methods of d'Hondt, which everyone knows through its operation in the Assembly, and Sainte-Laguë, which is a similar process except that the divisor is

slightly different to allow for greater sharing. There are also the two quota methods — droop quota and quota greatest remainder. If you used those, you would determine that a particular party was entitled to a certain number of seats or positions, and it would be for it to select.

At that time, the Alliance Party put on the table a paper recommending and advocating the use of the single transferable vote (STV), which would have allowed members of the council to vote for those people they felt best fitted a particular position. It would have allowed parties to come together in the election of that individual. The panel, in its deliberations, felt that, in order to provide flexibility for councils in the new arrangements, they should have a list available so that they could use d'Hondt, Sainte-Laguë or the single transferable vote. However, it was very clear from the discussions of the policy development panel that, although you would provide that flexibility at a local level, for the councils that chose to use d'Hondt, we would specify how that should operate — the same with Sainte-Laguë and STV — so that you have a consistency of approach across all the councils. I would use the term "prescribed flexibility". As I say, the council could chose from d'Hondt, Sainte-Laguë or STV, but the approach to using that method is prescribed. The panel also agreed that that decision should be taken by qualified majority voting, so there would be a degree of protection there for the interests of smaller parties and minority communities. That was what was coming through. So, as I say, there is that —

The Chairperson: So, sorry, deciding on the option or method needs a majority vote?

Mr Murphy: Yes, and if you do not achieve that then the default position would be d'Hondt. That was an agreement across the political parties on the policy development panel. There is that flexibility built in by having that choice.

The Chairperson: So the default position is still d'Hondt if there is no local agreement.

Mr Murphy: Yes.

The Chairperson: OK. I heard yesterday that we had a research paper on STV that has been withdrawn.

The Committee Clerk: A few words have been changed in it.

The Chairperson: There are some mistakes in it, so a new paper will be issued on the STV. We asked research staff to produce a paper to explain STV.

Mr Weir: I suppose the other reason why there is a prescribed flexibility is that there has been — particularly in d'Hondt, although it applies to almost any of the bits — something that has been used by a lot of councils as regards the positions of responsibility. The problem is either, simply because they have seen it but they have just want to use it in a different way, sometimes through ignorance or whatever, that the actual formula has been applied differently. The concern is that, on occasions, in different bits, it has maybe been applied simply on a one-year basis. If you are looking to have a broad proportionality, then arguably the fairest from that point of view, is that if you simply use it in one year, what you actually do is sometimes perpetuate a particular inequality that will just keep coming up year after year, whereas a lot of it irons out mathematically if you do it on a four-year basis. Sometimes, for various reasons, a bigger party will be keen to use it on a one-year basis on the basis that they would get two-thirds of the places on something, perpetually and disproportionately. If d'Hondt or indeed any of the formulas are going to be used, it has got to be used in exactly the same way across every council to stop the abuse of position, either inadvertently or advertently.

The Chairperson: Is STV a better solution for councils that do not have one party that has particular dominance over the other? Would that be a fairer system?

Mr Murphy: I would say that that is a matter for the —

Mr Weir: There was a reasonable amount of discussion. When STV was debated within policy development panel A, one of the reasons it was specifically mentioned was to provide people with many options. The problem with STV is that it works quite well if you have — again, it is a wee bit mathematical — a very small number of positions over a larger electorate, in the same way as by electing this, you are electing six. If you have, for instance, 40 councillors, which will be the case in

most councils, and, for the sake of argument, the only positions being appointed are a ring-fenced group of six, then STV can work fairly well.

From a practical point of view, once you have the pool of positions and a very large number of positions, STV becomes fairly meaningless. For example, say you are filling — particularly if you apply this across the board —external appointments, councils may well have, through main chairmanships and external positions, say 40, 50 or 60 happening in a particular year, and you apply that across the four years. So, by that system, you select for 200 positions with an electorate of 40. Everyone casts one vote, so the quota is about 0·2% of one vote. The higher the number of positions to ensure equality, the less suitable STV becomes to a particular position. That is where the complication lies. The only way you could do that would be to keep on breaking it down into individual bits. However, that also presents a problem. Say you have, for example, something that works reasonably well with 40 positions, but you have only six positions to fill. You break that down to 10 groups of six and keep on repeating the exercise. You could have a situation in which a party has three councillors, but, because nobody else votes for or transfers to them, they will always be kept out of those six positions. With a one-off, very small group, it works quite well, but, beyond that, it can run into much greater difficulties.

The Chairperson: OK.

Mr Weir: I will send in a joint consultancy fee with Peter McNaney later.

The Chairperson: John has never been a councillor, and the practicalities can be difficult to grasp.

I will have to declare my hand: the Alliance Party would be keen to table an amendment to make STV rather than d'Hondt the default position.

Mr Weir: Try getting that through the Assembly with QMV. *[Laughter.]*

The Chairperson: Members do not have any further questions on positions of responsibility, so we move on to the next paper.

Mr Murphy: The next paper deals with the political governance arrangements and the decision-making structures that the new councils will be able to operate. The Bill provides for two basic forms, which were debated by the policy development panel. The panel looked at a research paper on what was happening in England, Scotland and Wales in particular. The Local Government Act 2000 required local authorities in England to adopt executive arrangements, which took three forms: an elected mayor and cabinet; an appointed mayor and cabinet; or a leader and cabinet appointed by the council. The smaller local authorities could operate alternative arrangements, which are basically streamlined committees, but still in executive form.

Scotland had also moved along the road of developing executive arrangements to improve and speed up the decision-making process. Some local authorities in Scotland had a strict cabinet-style executive, some adopted a streamlined committee and others retained the normal committee system, doing so on a voluntary basis within the provisions of the Local Government (Scotland) Act 1973.

The policy development panel felt that executive arrangements in the full cabinet or streamlined committee model would provide for improved decision-making in the new councils, which will have more functions and cover a larger area. However, it also recognised that the committee system worked well in Northern Ireland for many years so should be included in the available options. It is interesting to note that the Localism Act 2011, recognising that there were difficulties in some cases, restored the ability of local authorities in England to use the committee system. Sometimes, there is confusion over the streamlined committee system in particular because of the fact that —

The Chairperson: They are executive committees, really.

Mr Murphy: — it mentions committee, but it is a form of executive. Therefore, streamlined committees would take decisions. In the cabinet-style model, all the power or decision-making is vested in one group of a maximum of 10 councillors, whereas the streamlined executive allows you to split the same responsibilities across a number of committees, so it begins to allocate the responsibility across other members. The key aspect is that both have within them an overview and scrutiny committee arrangement, so there is that level of protection in the decision-making.

In both executive arrangements, a council still has the ability to arrange for the discharge of its functions by a normal committee that would either make decisions itself or make recommendations to the council. In England and Wales, planning and other regulatory and quasi-judicial functions are not devolved in executive arrangements. They remain the responsibility of the full council to determine how it wishes them to be discharged. The council can then decide whether it wants to have a committee that will look at an issue and refer it back to the council for a full decision, or it can allow that committee to make decisions because, within that decision-making process, there are rights of appeal outside of the overview and scrutiny arrangements.

Ms Broadway: Licensing and planning committees, for example, fall into that category.

The Chairperson: PAC, too, is outside of the councils.

Mr Murphy: Yes.

The Chairperson: Any questions on the governance structures? I recall some members querying the mayor not being allowed to be in the executive.

Mr Murphy: That comes down to the fact that the mayor and deputy mayor, or the chair and vice-chair of the council —

The Chairperson: Are they one and the same?

Mr Murphy: Yes. The mayor and deputy mayor head a borough or city council. The view is that they are there as the civic representatives and represent the whole council, so they should, in some respects, be seen as separate from decision-making. In the normal council structure, they would chair meetings and have a casting vote, but that would not be the case in the executive.

Mr Weir: May I make a suggestion? I appreciate that you are trying to separate the two functions, but I am not sure that it is quite as neat as that. With the greatest respect, the mayor, or the council chairman, would be seen as the council representative and completely detached on the executive side of things. On the other hand, I can see how that could be the case in an executive situation — I suspect, to be honest, that we will probably have executive situations in the future. Surely the important thing is that the mayor or council chairman is fully aware of what is happening and, perhaps, even able to express a view. I do not know whether this is part of the legislation or part of the recommendations. Surely the thing is to provide for the mayor, council chairman, deputy mayor or whoever to be an ex officio member of the executive committee but as a non-voting member. In that way, they have access to the meetings and are able to hear what is going on. They would not affect the mathematics of whatever was in place and would not have a particular portfolio under those circumstances.

As I said, much of that might be slightly moot in the short term because I cannot see any of the councils going immediately for an executive-type position. Many councils will have a situation in which, for instance, the mayor and the deputy mayor will be ex officio members of every committee. I suspect that whether they have a vote might vary from place to place, but, from a practical point of view, they would have a right to be at any meeting. That may be the way to square the circle and ease some of the concerns.

The Chairperson: I find it very odd that someone could be the head of a council and yet not in the executive. Boris Johnson would never agree to something like that.

Mr Murphy: Madam Chair, as far as attendance at meetings is concerned, the other provisions on access to meetings and documents would provide for other members of the council to be at an executive meeting, but certainly —

Ms Broadway: We can consider that and bring it back to the Minister.

The Chairperson: There are no further questions on this paper. We will move on to the next one. John, is it you again?

Mr Murphy: Yes. The final paper in this group considers the issue of call-in and qualified majority voting. I know that there has been quite a bit of interest in that. It was also the subject of quite intense and interesting debate by the policy development panel when it discussed how protections for the interests of minorities in the decision-making process could be developed. Initially, the panel started looking at those in the context of executive arrangements, whereby decisions were being taken outside of the full council framework. It was then expanded, and elected representatives felt that it should also apply if a council opted for a traditional committee system. As I said, it is a means of protecting interests.

The panel looked at the operation in the context of an executive. In England and Wales, such a mechanism is used largely for procedural matters: for example, after an executive has made and published a decision, members of the authority decide that it had not taken certain factors into account or taken into account factors that it should not have. It is known as the Wednesbury rule. The panel took the view that that was fine as far as basic procedures were concerned, but it felt that it also needed to build in a system for call-in when a decision or recommendation that came from a committee for ratification by a council could have an adverse impact on a particular section of the community. We are working with senior officers from local government through the legislation working group to try to refine and work through the criteria for both call-in processes and also the process that would apply. As the Minister stated in answer to an Assembly question, those would be covered and included in standing orders as a mandatory element so that there was consistency in the operation of the process across all new councils.

On the other side of that, the panel looked at what other protections could be created and came to the view that qualified majority voting was one option. There was a discussion about the level at which that should be set, both for QMV and the trigger for call-in. It was recognised that councils, because of their potential make-up, would need different levels. However, the panel's view was that you could not get into that and that you can never predict what an election result might do to a council's make-up.
Therefore, the panel agreed that QMV had to be standard across all councils, and it felt that 15% as the trigger for call-in represented a suitable balance between providing that protection and trying to ensure that we would not allow one or two people to block decision-making. That is because a number of councils in England, although they do not have the call-in for adverse impact, have a situation in which three members of, say, a 50-member local authority can call in a decision for scrutiny by their overview and scrutiny committee. So the panel looked at how to strike that balance.

It was the same when it came to consider the threshold for qualified majority voting. If that is set too high, all business will come to a standstill. Equally, if you to set it too low, there may be circumstances in which an individual party or number of parties could put things through, so a balance had to be struck.

The panel then discussed the list of issues that would be subject to qualified majority voting. At that stage, there was clearly an issue with the method to be used to ensure proportionality in the governance arrangements. It was clear that some of the other statutory functions of a council — the likes of setting the rate — would be outside the scope of call-in and QMV because a council has to strike a rate by a certain date. We understand that there are such difficulties, so we are working with senior officers from a number of councils to try to refine the list. It is about trying to get the right balance of providing protections but not blocking every aspect of a council's work.

The Chairperson: As I said to you earlier, a list can never be a catch-all.

Mr Murphy: Yes.

The Chairperson: That is your difficulty. Peter said that you could include parks, leisure centres and so on. Setting the criteria will be quite difficult if you try to cover everything.

Mr Murphy: Yes. It is a case of trying to establish a list that covers the issues that could have an impact and require the support of the majority of the council. Acting in response to a valid call-in on the grounds of adverse impact also needs to be there. However, we are working on refining that.

The Chairperson: A number of councils have spoken of their worry that, if there is a low call-in percentage and such a high QMV, councils' decisions could grind to a halt or be delayed

Mr Murphy: Yes.

Mr Weir: There are a couple of separate issues. The 15% and 20% figures were agreed by all five major parties collectively and unanimously. There is clearly an issue about defining what qualifies for call-in. I am extremely worried and wary about what might be on the list for call-in. I appreciate that certain issues, such as those concerning positions of responsibility, will require QMV and need to be put in that category.

If, beyond that, there was a list of issues that — outside of a call-in — required QMV, that would create a major minefield. In that situation, it could be argued that almost anything should be on the list, and the whole thing could grind to a halt. The principal protection of QMV should be the call-in, and, outside of maybe one or two examples, that, rather than a long list of potential circumstances, should be the trigger point for QMV. That point was made by the chief executive of Belfast City Council, who raised the issue of anything impacting on a range of DEAs being subject to QMV. He said that the vast bulk of his council's decisions impact on a range of DEAs, as I suspect, is the case, increasingly, for many other councils, which means that almost anything could be subject to QMV, creating a major problem. You have quite good protections for call-in to lead to QMV. However, I am very wary about the case for going much beyond the likes of positions of responsibility, which clearly will be part of the legislation.

The Chairperson: Others have mentioned the timescale. Will you include a timescale for call-in and decision-making?

Mr Murphy: Certainly. The work that we are doing with the senior officers looks at the whole process for call-in, so we are looking to have manageable time frames that allow for people to look at the decision or recommendation and decide whether they want to call it in. Then, however, it should be turned around as quickly as possible because the whole —

The Chairperson: If not, people could use it as a tool to delay.

Mr Murphy: Yes, so we are seeking to ensure that we do not have that. Another issue is how many times the same decision could be called in. We are looking at the whole process. As we keep saying, we must strike a balance between providing the protections that the Executive and politicians want and allowing the business of councils to proceed as effectively as possible and ensuring that services are delivered to the ratepayers.

The Chairperson: Yes. As Peter said, if things grind to a halt, you lose the confidence of the public and are not doing the job.

Ms Broadway: That is why we included a provision that allows the percentages to be amended. That would be achieved by legislation approved by draft affirmative process, so it would need to be debated in a plenary meeting of the Assembly before we could change them. If it becomes clear that there is a problem, particularly with QMV — maybe it is too high a percentage — we can revisit that.

The Chairperson: That might be particularly difficult for the likes of Belfast City Council, which has a fairly even distribution of power. Both sides have more or less equal votes.

As there are no further questions, we will move on to the next paper on ethical standards.

Ms Broadway: A number of issues have been raised about the proposed new ethical standards and, in particular, the issue of how you would challenge a decision of the Commissioner for Complaints. So we thought it might be helpful to provide you with some background on what happens in other jurisdictions. Ethical standards frameworks in other jurisdictions differ significantly from one another, with different arrangements for investigating and adjudicating on cases. The procedures for challenging decisions of the adjudication body also differ across the various jurisdictions.

In England, the ethical standards framework changed as a result of the Localism Act 2011, and each authority must now adopt its own code and put in place arrangements for investigating allegations and making decisions on them. Those arrangements must include the appointment of an independent person whose views must be sought and taken into account before a decision can be taken. Ethical complaints would be made to a councillor's monitoring officer, who would make initial findings on whether to proceed and, if so, an investigation could be undertaken by an officer of the council or an independent investigator. They then produce a written report to the monitoring officer, which goes to a committee of the local authority, usually the standards committee or the audit and governance

committee, which is responsible for setting up a subcommittee to hold a hearing on the matter to determine the complaint.

On hearing all the evidence, the committee considers its decision, determines whether a breach has taken place and decides on the appropriate action to take. The action to be taken is not prescribed, and the question of sanctions is open to the lawful discretion of local authorities. The legislation makes no provision to put in place an appeals mechanism against such decisions, but the decision would be challengeable by judicial review.

In Wales, the ethical standards procedure is the responsibility of the Public Services Ombudsman for Wales. Cases are either investigated by the ombudsman or referred to a council standards committee for action or consideration. The standards committee will consider case investigation reports by the ombudsman where the ombudsman has referred the case to a standards committee for determination. It will also consider cases that the ombudsman has referred to the council for investigation by the council monitoring officer and adjudication by the standards committee; and cases referred to the council for local resolution. In assessing any report of an alleged breach, the committee must decide whether the code has been broken and, if so, what penalty would be suitable.

In cases retained for investigation by the ombudsman, following investigation, the ombudsman will prepare a report for the Adjudication Panel for Wales. The panel's role is to form case and interim case tribunals to consider whether members of county, county borough and community councils, police, fire and national park authorities in Wales have breached the authority's statutory code of conduct.

In cases where the adjudication panel has adjudicated, the person who is the subject of the complaint may seek the permission of the High Court to appeal the decision. In cases where an authority's standards committee has adjudicated, a member may appeal against a decision of the committee to the Adjudication Panel for Wales. In those appeal cases, a tribunal of the panel will decide whether to uphold or overturn the determination of a standards committee. Where it upholds the decision of a standards committee, it will either endorse the sanction imposed or refer it back to the committee with a recommendation that a different sanction, up to a maximum suspension of six months, be imposed. There is no right of appeal against a decision of a tribunal formed to hear an appeal against the decision of a standards committee.

The Chairperson: I am sure that they can go for a judicial review, ultimately.

Ms Broadway: It is always open to judicial review.

In Scotland, the Commissioner for Ethical Standards in Public Life in Scotland, a post established in July 2013, is an independent office holder with responsibility for investigating complaints about councillors, Members of the Scottish Parliament (MSPs) and members of devolved public bodies. If appropriate, the commissioner will report on the outcome of the investigation to the Standards Commission for Scotland, which is an independent body that works with councils to promote high standards of conduct, issues guidance to councils and makes determinations on a commissioner's report. The commission may decide to hold a hearing and direct the commissioner to carry out further investigations or take no action. Should the Standards Commission decide to hold a hearing, a panel consisting of members of the commission will determine whether a breach has occurred and, if so, what sanction to apply. Sanctions include censure; suspension or partial suspension not exceeding one year; and disqualification not exceeding five years. An appeal against the decision of the commission is made to the sheriff principal.

In Ireland, if the ethics register of a local authority becomes aware of a possible breach, it will refer it to the manager and mayor of the local authority, who will consider what action should be taken; whether they should carry out an investigation; whether there should be disciplinary procedures; whether the matter should be referred to the Director of Public Prosecutions; or whether they should take any other action that they consider appropriate. In cases where there is a perceived conflict of interest, the matter may be referred to the Standards in Public Office Commission, in which case an inquiry officer of the commission will conduct a preliminary inquiry and report to the commission with the recommendation. The legislation setting out the ethical framework deals mainly with declarations of interests, and there is no mandatory code. To date, there appears to be no evidence of any investigative breaches that have warranted further action and no information on provision of appeals.

That was a quick run-through of what happens in other jurisdictions. There is a variety of processes. In England, it is judicial review. Where the challenge goes depends on the adjudication body involved.

If it is a standards committee in Wales, the challenge goes to the Adjudication Panel for Wales. If the Adjudication Panel for Wales makes the decision, the challenge goes on appeal to the High Court. In Scotland, where there is a different court system, the appeal can go to the Sheriffs Principal. So, that is the issue of who appeals and what challenges there can be in other jurisdictions.

We are aware of a couple of other issues that have been raised on ethical standards. One deals with minor complaints. Many people raised the issue that there seems to be no way of dealing with minor complaints of breaches of the code. Under the ethical standards framework provided in the Bill, all complaints, which are in writing, are referred to the Commissioner for Complaints for consideration. Concerns have been raised that that is a far too stringent way of dealing with minor complaints.

The ethical framework would not preclude a council from dealing with minor complaints that have arisen in the council by seeking local resolution or mediation on the issue before it reaches the stage of a written complaint being sent to the commissioner. If, for example, an issue arises between two councillors, or between a councillor and a council officer, the council could try to deal with the issue in-house before it got to the stage of a written complaint being sent to the commissioner. We recognise that there are concerns that there is no formal way of dealing with minor complaints, and we have researched how they are dealt with in other jurisdictions. We are about to put a paper to the Minister on possibly providing means of local resolution.

The Chairperson: I am sure that all councils have officers who deal with disciplinary procedures. Something similar could step in and look at issues relating to complaints against councillors, with, maybe, councillors sitting on it as well.

Mr Weir: I will wait to see what comes forward on that; but we do not want to put some council officers in a slightly invidious position. There may be a mechanism involving a council officer coming from a different area, or something of that nature. One reason why the idea of having a standards committee in the council was moved away from was that you would leave an officer in the situation where they were doing this work occasionally as part of their job. It would be very difficult if that officer was dealing with a complaint against a councillor one day while dealing with the same councillor on other issues during the rest of the week. Alternatively, if the officer's job were ring-fenced to deal with complaints, it might almost be the case that someone would be trying to generate work for themselves. There is an issue with that.

The Chairperson: You could have a small complaints committee made up of councillors.

Mr Weir: I know that some concerns have been raised, at times, that with a complaints committee you could have someone being accused of bias or enmity in ruling against a particular councillor either from their party or outside their party? It is questionable as to how satisfactory that would be. Obviously, there is further work to be done on that.

An appeals mechanism is needed, and if it does not come from the Department, I suspect that the Committee or some of the parties may need to introduce it. Judging from the reaction of different parties and councils, there seems to be broad consensus on the fact that the only real appeal mechanism, ultimately by way of judicial review, is not regarded as satisfactory and that a formal appeals mechanism needs to be built in on the merits of the case.

You can have the situation where you do something that is correct procedurally but that, even with the best will in the world, gives the wrong result. Councillors may find themselves barred from council for five years. They might take, and even win, a judicial review; but, in the meantime, they may also find that somebody else has taken their seat, elections have taken place, and their reputation has been dragged through the mud. Even if they win, they might end up with a very large legal big.

I am detecting from people that there seems to be broad consensus that there needs to be an appeal mechanism built into the legislation at a level below that of judicial review. What that mechanism is, and where the appeal goes to, I do not know, but I think that something has to be found now. I certainly urge the Department to come back with something of that nature, because if it does not do so, I suspect that the rest of us will have to put something in the legislation.

The Chairperson: Tom Frawley said in his presentation to us that, either way, it would be very expensive for anybody to bring an appeal after he has made his decision, because you still need legal representation.

Mr Weir: It depends on the way it is put. If you have, in any situation, a broad appeal mechanism that is going to be used by a public figure, say, a local government auditor or whoever it happens to be, that should be preferable to a judicial review, at least from the point of view of time. Leaving aside the fact that a judicial review is longer and more expensive, the problem with it is that the grounds for review are limited. You have to show not that the decision was wrong but that it was either procedurally wrong or so unreasonable that no right-thinking person could come to that conclusion. The problem with that is that a councillor who could well be in the right has been wrongly convicted via the process, but that the decision is not so absurd that nobody in their right mind could have come to that verdict. You are putting up a bar, by way of judicial review, that is so high, so long and so cumbersome for people that you will need some sort of mechanism in between.

The Chairperson: I think that Tom also said that that is the way in which we are dealing with complaints.

Mr Weir: With respect, although I appreciate that I was not here for all of what Tom Frawley said, I do not take his position on this as gospel.

Looking at it, I suppose that most of us round the table have experience of local government, having been councillors. From a councillor's point of view, Tom Frawley's assurances will not, to be honest, give people a great deal of comfort. I think that they want the situation where they can have some level of justice. It is one thing if somebody is investigated and told, "You said something that you should not have said. We ask you to issue an apology". However, we are essentially talking about people's careers and their names being dragged through the mud. Not everybody who is making —

The Chairperson: It is the same system here though, is it not?

Mr Weir: As?

The Chairperson: For complaints about MLAs. We have an Assembly Ombudsman who makes a judgement —

Mr Weir: I might be wrong on this, but I am not sure whether, in respect of the powers of the Assembly Ombudsman —. You can make a complaint against a Department or individuals.

The Chairperson: He makes a judgement, and that is the end of it.

Mr Weir: With respect, I am not sure that the ombudsman has, for example, the power to bar, suspend or remove somebody as an MLA. That is where there is a qualitative difference. Ultimately, the ombudsman's report goes to the Standards and Privileges Committee, which will or will not accept the ruling.

If people are barred from council, particularly because a serious allegation is been made against them, I think they have the right, beyond simply judicial review, to some level of appeal. Their life and certainly their political career could be, effectively, ruined. That is not really the situation regarding an MLA. MLAs might get a slap on the wrists, but they will not be disqualified from the Assembly. That has never happened. There needs to be something more robust. It is all very well for Tom Frawley or anybody else to say, "We are reasonably happy with the system", but, to be fair, Tom Frawley is not going to be on the receiving end of this. Sometimes, again from my experience of people, complaints are very genuine.

The Chairperson: Well, he has been in the job for a long time.

Mr Weir: Yes. But with the greatest respect, he is the one holding the gun rather than the one facing the gun, if I can use that analogy. Sometimes there are complaints that are very justifiable and genuine, and there are also times when people take a very bull-headed attitude and are completely irrational. That is not to say that somebody will not then suffer an injustice because of that. I detect from virtually all the submissions that we have got from anybody involved in the local government sphere that they want to see an appeal mechanism built in and something that is not simply a judicial review.

The Chairperson: How can that be managed, Julie?

Ms Broadway: We have heard all the evidence that people have given to the Committee, and we need to go back to the Minister about that.

The Chairperson: Tom Frawley's point is that we have been dealing with complaints to public bodies and public representatives in that way. If we make an exception with local councillors, it may turn the system — and I am paraphrasing — upside down, and we may then need to provide further appeal mechanisms for other complainants.

Mr Weir: Chair, maybe the system needs to be turned on its head, because there is the situation where people are potentially getting complained about and do not realistically have any proper right of appeal. That is wrong. If we are making changes, it might mean that, in other cases, you have to look at appeal mechanisms of some description. That may show that the whole thing is a bit out of step.

The Chairperson: I am not against equality and fairness. If we need to build in an appeal system, we will look at it. I am just reminding members what Tom Frawley said in his presentation. Members, we will move on. The next one is community planning.

Mr Murphy: It is community planning with particular reference to the duty on the statutory bodies and the Department. I will look at the duty on the statutory bodies first. As an overview, I can say that the Department fully recognises that the statutory bodies and Departments need to be tied in to the community planning framework because statutory bodies are responsible for delivering a range of services in the council district, and Departments are either delivering services or setting the policies for the delivery of certain services.

When we looked at the duty on the statutory bodies, we included a provision in the Bill that is comparable with the provision in Wales:

> *"Every community planning partner of a local authority must participate in community planning for the authority's area to the extent that such planning is connected with the partner's functions; and must assist the authority in the discharge of its duties."*

The legislation in Wales states:

> *"For the purposes of this section, a reference to an action to be performed or a function to be exercised by a local authority or one of its community planning partners is a reference to an action or function which is within the powers of the authority or partner."*

In other words, it ties the statutory bodies in. They must participate and take actions but can act on only the areas that they have legal responsibility to act on.

The Chairperson: The voluntary sector said that the language in the Bill is not strong enough in that it says "seek to promote" rather than "must do".

Mr Murphy: Yes. We can investigate that. The wording is also stronger than the provision in Scotland, which simply specifies:

> *"It is the duty of the bodies, office-holders and other persons specified ... to assist the local authority in the discharge of its duties under section 15".*

So, as you can see, it is weaker. In England, absolutely no duty is placed on statutory bodies. In England, community planning, or community strategies as it is in the Local Government Act 2000, simply requires a local authority to prepare a community strategy:

> *"for promoting or improving the economic, social and environmental well-being of their area and contributing to the achievement of sustainable development in the United Kingdom."*

It does not go beyond that.

The view is that the legislative framework will be supported by statutory guidance that the Department will develop in collaboration with local government, other Departments and statutory bodies so that we can ensure that it is supported adequately. There is a point that I want to come on to after I have talked about this, because it covers the statutory bodies and Departments. We have gone further than

any of the other jurisdictions on the duty on the Departments. In the other jurisdictions, the duty is simply on relevant Ministers to, as far as is reasonably practicable in exercising their functions, aim to promote and encourage community planning. That is where it goes in Scotland. We have gone one step further by saying that Departments have to have regard to any implications of a community plan in the exercising of their functions. I caught a bit of the evidence from the researcher earlier. The Bill places the duty on Departments because, in Northern Ireland, the responsibilities are vested in them rather than in Ministers, whereas, in Scotland and Wales, the authority is vested in the relevant Minister. That is the difference.

Underpinning both duties is the attempt to tie them in while recognising the different accountability arrangements. The statutory bodies are accountable to their boards of directors and, ultimately, to the Department and the Minister who established them. Equally, the Departments are accountable to their Ministers and, through their Ministers, to the Assembly. It is about trying to strike a balance between ensuring that you have that framework to have those bodies involved and recognising that they have separate accountability mechanisms. They will not always be able to do what a council wants them to do. There is tension in that regard.

The Chairperson: I think that that is the major concern expressed by NILGA, councils and Community Places. Community planning is a great idea if it works, but you need people to buy in, particularly Departments and statutory agencies. As Peter McNaney said this morning, it is about aligning departmental policies with community plans and putting in the resources from the plans to make it work. If not, it is going to be a talking shop. As I said before, I was on the south Belfast neighbourhood partnership. You get only DSD's staff to say yes, and then very junior level staff come from the Health Department and the Department of Education, sit through the meetings and do not say a word and do not commit to anything.

Mr Murphy: I appreciate that issue. As I said, community planning is about building relationships between the various partners, and about the various partners recognising how community planning can assist them all in delivering their desired outcomes and benefits.

The Chairperson: How can the Bill strengthen this to try to make the Departments more committed to the community plan? Are you minded to do that?

Ms MacHugh: Again, this is something that the Minister and the wider Executive will have to look at. As has been pointed out already, there is clearly a need to align local need with regional policy and service provision. Departments also need to align what they are doing with the Programme for Government, which is the accountability framework set for Departments. I think that, at times, local government believes that community planning is a vehicle through which it can call central government to account. That is going too far. Central government is accountable through its Minister to the Executive and the Assembly. That is the accountability mechanism. However, as John pointed out, community planning will work when it is clearly articulated how actions at local level can contribute to and help Departments or agencies to meet their Programme for Government targets.

That is a process that will take some time to bed in. In 2015, when councils get their full community planning responsibilities, a lot of work will be required to identify what local need means, and then to work together with that top-down and bottom-up approach so that everything starts to align. That is a key piece of work that the partnership panel will have to get its head around in the early days, namely to get agreement between central and local government on who is responsible for what and how that joint relationship will develop and deliver in a way that is better for the citizen and maximises the use of public sector money, which is what this all about.

It is an exciting but challenging area, and it will take a bit of time to bed in and get right, as we saw in Scotland, where it took time to bed in and start to produce results.

The Chairperson: They are now reviewing their whole community planning system and putting in a statement of ambition and all the single agreements.

Ms MacHugh: It is easier to do that in Scotland, where local government has responsibility for a much wider range of key services. Although councils will be getting more powers and more services to deliver under this reform programme, they will still not have the full range of powers that councils have in Scotland, for example. That is all the more reason to make sure that this partnership gels.

The Chairperson: That is why NILGA is concerned that you may be raising false hopes and expectations of what community planning can and will do. Any more questions? OK, we will move to the next item.

Ms MacHugh: Performance improvement flows quite neatly from community planning because, as the chief executive of Belfast City Council so eloquently put it, there is a clear alignment between the outworkings of community planning and performance improvement in local government. We are aware of comments that were made about the performance framework and the view that it is top-down, top-heavy and that central government is dictating to local government about how it looks at its performance improvement.

The rationale for the framework proposed in the Bill was worked through the policy development panel and agreed by the strategic leadership board. At that time, the agreement was that the new framework would comprise various elements. There would be an updated statement of a council's duty to secure continuous improvement in the delivery of its services, the establishment of a regime of performance indicators and standards, and regional indicators agreed through the partnership panel.

Councils would prepare and publish a corporate plan that included an improvement plan. Appropriate monitoring and support mechanisms should be in place to provide accountability, and a facility for external assurance of the council's improvement plan should be provided. Following endorsement by the strategic leadership board, the Department looked at ways in which that external assurance could be provided, and a number of models were considered.

The outworkings of all that are in Part 12 of the Bill, which looks at performance improvement and the framework on two levels: local government level and central government level. There is a provision for a clear role for councillors and councils to set their own performance targets and indicators against which they want to assess themselves. So, there is a level of self-determination with regard to the improvement matters that local government wants to set for itself.

The Bill also would not preclude the sector, if it so wished, from setting regional targets for itself. That may be something that local government might wish to consider, for example, as a further outworking of the improvement, collaboration and efficiency (ICE) programme, by which it seeks to drive improvement at a regional level. So that is an interesting area, which local government could explore for itself.

There is also provision for the Department, acting on behalf of other Executive Departments and particularly those which are transferring functions to councils or which have placed duties on councils to perform specific services, to specify performance indicators and standards of a regional nature. That is required because, whilst functions and services are being transferred or powers conferred to local government, clearly the policy responsibility remains with the Departments. Departments and their Ministers will need — as, indeed, the Assembly will need — some assurance that policies set at a regional level are being effectively delivered at local level. That is the case particularly where policies have Programme for Government targets attached, because there needs to be a mechanism that determines that local government is delivering against those targets. That is why there is provision in the Bill for targets to be set centrally.

I turn to the role of the local government auditor. I want to make a statement at the beginning to set —

The Chairperson: Can I just go back to the improvement framework? Councillors are concerned about the proposal that different Departments can inspect and set targets. How do you alleviate the concern that there is going to be micromanagement of local government by Departments?

Ms MacHugh: I think that the targets, the framework and the measures set by central government need to be coordinated. We have seen the experience of Scotland, where, in the early days, through a mixture of targets set by central government and those set by the local government itself, councils had over 600 targets to meet. We certainly would not want to see that sort of situation develop. That is something that the partnership panel will have to get to grips with quite quickly when it is set up. How do we coordinate the sets of targets and make them manageable? They will be very high-level and focused on the key issues that Departments feel that they need delivered to meet their obligations, especially if it is the Department responsible for setting policy for those issues. So there will have to be a lot of work done in consultation and by agreement with local government. And that is a role for the partnership panel.

I turn to the role of the local government auditor. This Bill is not intended to provide a root-and-branch review of the local government audit arrangements in general. However, it provides for some amendments that are required in relation to local government reform and the new responsibilities that councils are going to have.

It may be helpful for me to explain the current relationship between the Department, the local government auditor and local government itself. It is not same relationship that, for example, the Northern Ireland Audit Office and the Comptroller and Auditor General (C&AG) has with Departments, where it is responsible and answerable to the Assembly through the Public Accounts Committee. The duties placed on the local government auditor are in the context of the Department — the DOE — having statutory responsibilities for the provision and oversight of local government functions, including the provision of the local government audit function. In 1972, the Local Government Act made provision for the Department of the Environment to appoint local government auditors to audit the accounts of local government bodies. In those days, the people appointed were employees of the Department.

That process evolved, however, and further legislation, the Audit and Accountability (Northern Ireland) Order 2003, put in place the present arrangements, whereby the services for local government audit are provided by staff employed by the Northern Ireland Audit Office and designated to perform local government audit functions by the Department. That was further amended by the Local Government (Northern Ireland) Order 2005, but that did not alter the Department's statutory responsibility for designating local government auditors. So, although the transfer to the Comptroller and Auditor General resulted in the Comptroller and Auditor General having more direct responsibility for the provision of staff to deliver local government audit services, the Department of the Environment, on behalf of the Executive, remains legally responsible for designating members of the C&AG staff to support the Department in its responsibility for ensuring that local government's financial responsibilities are exercised properly.

The local government auditor function is distinct and separate from those of the C&AG and the Northern Ireland Audit Office. While the Northern Ireland Audit Office reports to the Assembly for its role in auditing central government, the same relationship does not apply for its role in supporting and providing the audit provision for local government.

The Department's power of direction in relation to requiring a local government auditor to undertake an audit investigation or inspection in respect of bodies for which it has a legitimate and statutory interest does not compromise the independence of the local government auditor in conducting individual audit investigations and inspections, because, clearly, those remain at all times under the control of the local government auditor and her staff, in line with standards set out in the Financial Reporting Council. The conduct of the requested audit or inspection and the results and conclusions are a matter for the local government auditor.

Finally, on clause 97, which I know has been discussed today, there is the issue of the local government auditor having to assess in advance whether the council has arrangements in place to meet the statutory requirements. It is about whether they have the arrangements in place; it is not designed to ask the local government auditor to directly determine at that stage whether they are going to meet their performance improvement targets. It is not the intention to have some sort crystal ball gazing. Maybe there is a bit of wording that we need to look at to clarify that, but it is to make sure that the appropriate arrangements are in place, not to determine whether the performance plan is going to be met.

The Chairperson: What about resourcing? That is an issue that has been repeated over and over again, because they now have the additional role of monitoring improvement. Is there going to be extra resourcing for the auditors?

Ms MacHugh: At present, the local government auditor invoices local government for the services it provides, so, clearly, if there was additional service provision, that would need to be paid for. I suppose the issue about cost is that cheaper is not always better. You have to balance the additional costs against the improvements and the cost-effectiveness of those improvements. The costs would need to be looked at in the round, both what it cost to do the audit and the outcomes of the improvement plans and the potential for cost savings as a result.

The Chairperson: Another issue, which Louise Mason mentioned, is that the auditing of councils should be targeted, rather than doing all councils every year. Is it going to be allowed?

Ms MacHugh: In terms of performance improvement, we have heard the comments from the local government auditor and the proposal that a risk-based approach might be taken. I suppose that some baselining will need to be done if a risk-based approach is taken. The proposal is based on the principle that performance improvement audits will be done every year, at least in the beginning until things settle down. Perhaps at a future date there may be a way of amending that, but, at least in the initial stages, the proposal is that each of the audits would be done each year. An amendment to change that arrangement would be a policy change that we would need to take back to the Minister and the Executive.

The Chairperson: To allow that to be reviewed.

Ms MacHugh: Yes, or for an amendment to be made to the Bill. That would be a distinct policy change.

The Chairperson: It makes sense. All 11 new councils probably will not need to be checked all the time. It will probably only be one, two or three. If we have an arrangement that will create the same report every year, it will be a waste of resources. However, you will need to benchmark it.

Ms MacHugh: Yes, benchmarking and baselining will need to be done in the initial stages.

The Chairperson: There are no questions from members on the last paper. I have a question on this new term that we had never heard of, the "super affirmative procedure". That came from the Statutory Examiner of Rules.

Ms MacHugh: Yes.

The Chairperson: Will it be difficult?

Ms Broadway: Of course, we have to get the Minister's view on it, but we have discovered legislation in which a similar sort of procedure was used. That was the Local Government (Best Value) Act (Northern Ireland) 2002. We will send that to you. In that Bill, there is a form of procedure that looks like super affirmative procedure. We are looking into that at the minute.

The Chairperson: Will you need to propose an amendment to the Bill to introduce that? At the minute, the Bill uses negative procedure.

Ms Broadway: Yes, we would.

The Chairperson: It would not only be affirmative procedure but super affirmative procedure.

Ms Broadway: I think that, at the minute, it is affirmative procedure. However, they are suggesting that there needs to be an additional level of —

The Chairperson: An extra layer or level really.

Ms Broadway: I think that it is an additional consultation level.

The Chairperson: Yes. You will have the draft order and then the final draft order.

Ms Broadway: We are looking at that.

The Chairperson: OK. There are no further questions. Thanks very much indeed. Are you coming back next week?

Ms Broadway: Yes. *[Laughter.]*

The Chairperson: Lovely. We will have permanent seats for you.

Ms Broadway: Thank you very much.