



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Local Government Bill:  
Informal Clause-by-clause Scrutiny

30 January 2014

# NORTHERN IRELAND ASSEMBLY

## Committee for the Environment

Local Government Bill: Informal Clause-by-clause Scrutiny

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**Members present for all or part of the proceedings:**

Ms Anna Lo (Chairperson)  
Mr Cathal Boylan  
Mr Colum Eastwood  
Mr Tom Elliott  
Mr Alban Maginness  
Mr Barry McElduff  
Mr Ian Milne  
Lord Morrow

**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:** I welcome Linda, Julie, John and Mylene again. This will be a long but worthwhile session.

**Ms Linda MacHugh (Department of the Environment):** We are prepared.

**The Chairperson:** We are ready for you. I am sure that you are ready for us, too, Linda. Just to remind everyone, this session is being recorded by Hansard for our report. Obviously Éilis is here with us, as well.

Members, for each clause I will briefly remind you of the issues raised. This is only the initial consideration of the clauses to establish whether we have all the information we need, think that a clause may need to be amended or require further information from the Department.

Clause 1 provides for how the names are to be formed and makes provision for the name given to a council to be ordered by subordinate legislation. We have comments on this, Linda. How is provision to be made for a council seeking city or borough status?

**Ms Julie Broadway (Department of the Environment):** Well, I will just give some background to that particular clause, which is a new clause on the naming of councils. As you will be aware, the name of a council is the name of the local government district followed by the status of the council. There is provision in the Local Government (Northern Ireland) Act 1972 so that, if someone wants to change the name of the local government district, or if the council wants to change the name, it can apply for the Department to make subordinate legislation to do so.

The 1972 Act also says that, if the council changes its status — if it gets a charter or whatever — we do not need to make subordinate legislation to change the name of the council, because the name will then automatically change from whatever district council to local government district name followed by the new status. However, with the amalgamations of districts to form the new councils, there are going to be possibly some fairly incongruous names. If Lisburn and Castlereagh were to adopt Lisburn's charter, the name of that new council would be Lisburn and Castlereagh City Council. That council might have a difficulty with that name, so that provision in clause 1 enables us, through subordinate legislation, to change the name to whatever it is that the council has asked the Department to change it to. If it decides that it wants to move the "City" forward into the name, so that it is Lisburn City and Castlereagh, it can do that.

The Bill itself does not really make provision in relation to charters, so the issues that have been raised are not necessarily about the Bill, because the 1972 Act makes provision about the status of councils. However, we are aware that this is an issue that councils are concerned about because you will have amalgamations of several boroughs coming together or a district and borough coming together. We need to make sure that councils are aware of the decisions that they need to make during the shadow period to enable them to decide, for example, if they want to adopt the charter of one particular council that is amalgamating with them. If you have two councils joining together and both are boroughs, they can decide which of the charters they want to adopt, or equally they can decide that it is a brand new council and that they want a new charter.

**The Chairperson:** Would that be more likely?

**Ms Broadway:** We are working with the NIO on the guidance that will be needed for councils to explain all of the implications of this and what decisions they will need to make during the shadow period. The transitional provisions legislation will legislate for that to allow them, during the shadow period, to make decisions about their names and status. We have also been working with local government on the transitional provisions through the legislation working group, and we plan to engage with the change managers of the statutory transition committees (STCs) so that everyone is aware of the decisions that they need to make.

While in some cases it is not going to have a major effect, in the case of, for example, the cities, particularly Lisburn, it could have a major effect on their status. The boundary of Lisburn is actually the boundary of the current borough of Lisburn, so we need to explain to that transition committee the decisions that it needs to make so that it can have all of the information available to make the necessary decision on which charter it needs to bring forward.

**The Chairperson:** So, if a council expands — we will use Lisburn as an example again. If it expands the boundary with the new councils, then will it lose the city status?

**Ms Broadway:** If it does not adopt Lisburn's charter, then it could do. There is a case in England where that happened: a city council did not resolve to take forward the charter of the city, and the city lost its status. As you can understand, Lisburn City Council is very much aware of that and has been writing to the Department about when the subordinate legislation will be brought forward, so that it can start engaging and making decisions on that.

**Mr Boylan:** I have a quick question. It is important that they are aware of it and have an opportunity through the transition to do that. The other thing is that you are now saying that you need subordinate legislation to address that issue. Is that right?

**Ms Broadway:** It is one of the issues that will be taken forward in the transitional provisions legislation, which will provide for the shadow period and enable the shadow councils to make that decision.

**Ms MacHugh:** It is important to stress that all the preparation work can be done and all the options can be laid out, but that the final decision will be for the new councils.

**The Chairperson:** The new names will start in April 2015.

**Ms Broadway:** Yes, but during that shadow period, they can make all the decisions that they need to. They can approach the Department about making the order to either change the name of the council or the name of the district, should they so wish.

**The Chairperson:** There will be a lot of changes.

**Lord Morrow:** We have heard about Lisburn. How many other towns, cities and councils will be affected? What about Armagh and Newry?

**Ms Broadway:** It depends on the way the city has been established, and Lisburn seems to be the only one that there is a real issue with. The five cities were all set up and established in a different manner. The two historic cities, Belfast and Derry/Londonderry, were established in a particular way, and this will not affect their status. Lisburn seems to be the only one that it will affect, and it is because the boundary of Lisburn is the boundary of the borough of Lisburn. It does not affect Armagh and Newry.

**Lord Morrow:** It does not affect Armagh or Newry despite the fact that, I think, Newry was declared a city at the same time or thereabouts as Lisburn.

**Ms MacHugh:** I think it was because the council determined that Lisburn city, as a city, would be the boundary of the whole council. Lisburn city actually starts in the far end of Dromara, runs through down to Derriaghy and beyond, probably down into Dunmurry at this stage.

**Mr Boylan:** Half the country.

**Lord Morrow:** What about Newry?

**Ms MacHugh:** With Newry, I think it was more a definition of the urban area.

**Ms Broadway:** We have a briefing paper on all this, because we had to get our own heads round exactly how the cities were established. If it would be helpful, we can provide the Committee with that.

**The Chairperson:** Members, do you want to do that?

*Members indicated assent.*

**The Chairperson:** It will prepare us for all that.

**Ms Broadway:** This has been one of the most difficult issues to get our heads round. It is very complicated.

**The Chairperson:** Those places fought so hard to get their city status. It would be a shame to lose it.

**Mr McElduff:** The second part of that is borough status. If three councils such as Magherafelt, Dungannon and Cookstown come together and one of them — Dungannon and South Tyrone — has borough status, what are the implications there?

**Ms Broadway:** If either several boroughs or a combination of boroughs and districts are joining, the incoming council during the shadow period will have to decide whether it wants to retain one of the charters of one of the councils, whether it wants to remain a district council — they will all start off as district councils until they resolve the issue of their charters — or whether to seek a new charter. As it will be a brand new council and new district, councils might want to take a new charter, and we are working with NIO on procedural guidance that we can give to the STCs and the shadow councils to set out what they need to do and who they need to approach to take whatever decision they want to take.

**The Chairperson:** How long would it take for them to take a new charter?

**Ms Broadway:** It has been so long since that has been done. We are trying to work out the exact timescales with the NIO.

**The Chairperson:** You do not have a lot of time for the changeover.

**Ms Broadway:** I think it is about six months.

**The Chairperson:** OK. Are members content with the comments?

*Members indicated assent.*

**The Chairperson:** This clause requires a council to maintain a constitution and ensure that it is available for inspection by members of the public. There were a number of issues. The first is that no sanctions are specified for non-compliance. If people do not put up a constitution, the law does not say what sanctions they will get.

**Mr John Murphy (Department of the Environment):** If a council does not prepare and publish a constitution, it is a means of last resort, but the control powers available to the Department under subsequent clauses could be used to require a council to put it up. My understanding is that most councils will do this. It is part of the transparency arrangements, so it is a purely factual document that will set out how a council will operate and include copies of its standing orders, schemes of delegation etc. We are working with senior officers from local government to develop the framework and set out the headings of the issues that a constitution should cover, without going into the specific wording — that will be a matter for individual councils, provided that they meet that core aim.

**The Chairperson:** A template, really, for them to fill in the names and particulars.

**Mr Murphy:** Yes.

**Ms Broadway:** The clause that could be used is clause 109, which is a power of last resort. If a council fails completely to do something that it has a statutory duty to do, the Department can make an administrative order.

**Mr Milne:** Surely councils have constitutions or standing orders at present.

**Mr Murphy:** Yes, they all have their standing orders and schemes of delegation. In many ways, the constitution acts as a sort of binder. Some new material will go in about setting out how they operate, but it will then simply provide a source for members of the public and councillors for all the important documents that a council needs to operate. There will be introductory chapters on how a council operates, but then it will include standing orders, the scheme of delegation and any rules of procedure for committees etc.

**Ms Broadway:** The other thing is that it pulls together into one place all the key documents, so there is one place for a member of the public to go for all those documents.

**Mr Milne:** Just a bit of ignorance, but have any councils now got a constitution?

**Mr Murphy:** I think Belfast is developing a constitution. They have been looking at this for some time because they knew that this was coming. They looked at what was happening in local authorities in England and Wales to see what it could do. Some of the constitutions in England and Wales run to 250-odd pages. We will try, through the template, to pull back a bit from that, but it will be for individual councils to decide the level of detail that they want to put in, provided that they are giving that transparency in terms of their operation.

**Ms Broadway:** We are working with senior officers in local government on what a model constitution would look like so that we can get input.

**Mr Boylan:** Thanks very much for that explanation, but I am a wee bit concerned. It would be unusual if they did not. They certainly have to undertake to do that but, clearly, it is finding out and being open and transparent.

Clause 109(2) states:

*"The relevant department may make an order".*

We have had this debate about "may" and "must" for a long period. I do not know whether that would be strong enough. "Must" is a better word, and I would prefer that put in there. Even at that, I am just looking at clause 109 to see whether that is strong enough. The important thing is access to information from a public point of view, and whether that clause will be strong enough. The Chair has asked about sanctions; what would be involved in undertaking that proper sanction?

**Ms Broadway:** Under clause 109?

**Mr Boylan:** Under clause 109.

**Ms Broadway:** Under clause 109, if a council has failed to do something that it has a statutory duty to do, the Department will by order write to them to tell them to put right the default, but the Department can appoint someone else to put right the default and to make sure that the constitution is produced.

**The Chairperson:** And the Bill does not specify when that constitution should be put in place. Why not?

**Ms Broadway:** I suppose because it will be a living document. As things change, documents will —

**The Chairperson:** But at least to publish the first one?

**Ms Broadway:** Yes, and that may be something that, if it was felt that it would be better if there was a given date, we could take that to the Minister and ask about that amendment.

**Lord Morrow:** Chair, it is an important word that someone said — I do not know who said it — that this is a living document, so therefore a constitution could consist of two lines, which would put a constitution in place initially without a lot of determination or, indeed, direction. Why could that not happen very quickly? This document will be developed as it goes along, so it could simply have two lines or something of a constitution.

**The Chairperson:** Normally, you do not rewrite a constitution. You could have very little of it, but it should be the main document explaining why you are there and the purpose of your work. It needs a bit of thought in it, not two lines.

**Lord Morrow:** I just want to say this, because I want to hear your comments. It says here:

*"A council must prepare and keep up to date a document (referred to in this section as its constitution) which contains -*

*(a) a copy of the council's standing orders".*

Now, does every council have a copy of standing orders?

**Ms Broadway:** They will have.

**Lord Morrow:** Do they have?

**Mr Murphy:** At the minute, my understanding is that the majority — almost all of them — do, but under the provisions of the Bill at clause 40 or 41, there will be a requirement on all the new councils to have standing orders, so we are moving from having that sort of permissive provision to having a requirement.

**Lord Morrow:** And do they all have a code of conduct?

**Mr Murphy:** Yes.

**Ms MacHugh:** There will be a mandatory code of conduct for everybody.

**Ms Broadway:** That is actually a technical amendment that the Department needs to bring forward in relation to this Bill, because it would be more accurate, rather than to say "a copy of the council's code of conduct", "a copy of the code of conduct issued by the Department under this". That would be the correct form, so we will be making that amendment.

**Lord Morrow:** You have got the bones of your constitution in place there already. All councils have standing orders, the Department will insist on a code of conduct for all councils, and then other things will be added to as the weather gets better.

**Ms Broadway:** And the Department can then see directly what other information is to be included in the constitution. It is a matter of working up a direction of whether there will be any additional information, but as you say, there are certain documents that we already know, because of clause 2, must be included in the constitution.

**Ms MacHugh:** We are trying to get this balance right. It is endemic throughout the whole Bill that we are trying to get the balance between things that really must be there to make sure that things are consistent, but also giving local government the flexibility that it needs to get on with the job that we are giving local councils in adapting to what the local ratepayers wish of it. This is one area where, if you go too far in one direction, it will be a constitution designed and developed by the Department as opposed to by the new councils. It is about trying to get that balance right, I suppose.

**The Chairperson:** What, in general, will be in the constitution?

**Mr Murphy:** It will be about the composition of the council and whether it has gone for executive arrangements or the traditional committee system, or whether it has delegated authority to particular committees on planning or other regulatory quasi-judicial functions. So, it starts to get into those sorts of issues. If it would be helpful to the Committee, we could look and give some sort of indication of the key features that would be included in a constitution.

**The Chairperson:** That would be useful.

**Ms Broadway:** We could give you a brief summary of what is being discussed at the working group and what the thinking is about what should be in a constitution.

**The Chairperson:** OK. So it is a process; you are talking of processes and procedures being put in.

**Mr Murphy:** Yes.

**The Chairperson:** I had a meeting with the Committee on the Administration of Justice (CAJ), and its members talked to me about the need for good relations and the definition of "good relations". Apparently, during the Westminster passage of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010, your party colleague Mark Durkan tried to put in an amendment defining "good relations" in the Bill. The amendment was supported, but it was felt that it should maybe be left with devolved Administrations such as Northern Ireland's to deal with. Would it be appropriate to put into the constitution something such as having good relations as a guiding principle?

**Ms Broadway:** Of course, good relations is one of the key principles in the code of conduct.

**The Chairperson:** There is no mention in the code of conduct of what constitutes "good relations" —

**Ms Broadway:** Yes.

**The Chairperson:** — because several pieces of law mention that the council should pay regard to good relations. Section 75 and the Race Relations Act 1976 say that councils must pay regard to good relations, but there is no definition of the phrase "good relations", and CAJ said that maybe we could insert a definition in the Bill so that councils will not misinterpret or disregard what they should do.

**Ms MacHugh:** There is also a wider issue around the definition that all of government is using for "good relations". To define "good relations" in this Bill just for local government creates the potential for confusion if, say, OFMDFM decides on a separate and different definition. We need to consider that.

**The Chairperson:** CAJ quoted what was used in England, Wales and Scotland under the Equality Act 2010, which we do not yet have. We have different pieces of anti-discrimination law, but not one Act to cover all of them. The Equality Act defines "good relations".

**Ms Broadway:** I know that, in response to the pre-consultation on the code of conduct, several people raised the issue of definitions of "equality" and of "good relations". We are going through that pre-

consultation, which finished on 21 January, and doing a synopsis, but several respondents raised that issue.

**The Chairperson:** Will that come later on, in the regulations or guidance?

**Ms Broadway:** Yes.

**The Chairperson:** OK. Still on clause 2 — we are not going very fast — should copies of the constitution be displayed on the website, rather than in hard copy? I am sure that councils will put that on the website.

**Ms Broadway:** Yes. I am sure that councils can do that. There is no problem with that.

**The Chairperson:** A copy of the constitution should be free of charge to individuals. Is it the case that there would be no charge?

**Mr Murphy:** There should be no charge. It should be there for inspection, and it should hopefully be on the council's website.

**The Chairperson:** Does it say that some documents requested by commercial organisations should have a charge that is specified in legislation? It does. We will move on then.

Clause 3 deals with qualifications. It sets out the conditions to be satisfied if a person is to be qualified to be elected or to be a councillor. We do not have any particular comments on that, so are members content to move on?

*Members indicated assent.*

**The Chairperson:** Clause 4 deals with disqualifications. It gives effect to schedule 1, which sets out the conditions under which a person is disqualified for being elected or acting as a councillor. Those conditions include the introduction of a bar on MLAs, MPs and MEPs being elected or being councillors.

I think that we have a few comments on that. We are struggling with the continuing issue of the blanket bar on employees becoming councillors. Do you want to comment on that?

**Ms Broadway:** A set of regulations that will be subject to the draft affirmative procedure will make provision about those posts or employments. So, someone would continue to be disqualified from being a councillor. If you look at other jurisdictions, you will see that, for particular posts, namely politically restricted posts, it does not matter which council you belong to — you will be barred from being a councillor in any council.

However, there is also the issue of not being able to be a councillor in the council that employs you. That would apply to any officer in that council. We think that that can be done through the regulations.

**The Chairperson:** So, what will you opt for?

**Ms Broadway:** We need the Minister's consideration of that.

**Mr Eastwood:** I know what you are saying about employees, and that makes a lot of sense. However, what about people who work in posts that a council funds? They would not specifically be employees of the council, but they could be on other boards that the council has a role in or funds.

**Ms Broadway:** We have not actually looked at that, but we will do so for next week.

**Mr Eastwood:** It has been an issue in the past, I think.

**Ms MacHugh:** However, if you extend that out to considering, for example, times when councils get responsibility for urban regeneration and community development and actually end up funding quite a lot of posts in community and voluntary organisations, you see that the issue then is where you should stop.



**Mr Eastwood:** I am not suggesting that they should be barred. It just needs to be thought about, perhaps in the code of conduct. *[Inaudible.]*

**Ms MacHugh:** The potential conflict of interest should also be considered.

**Ms Broadway:** Another issue that was raised with us through the legislation working group was whether someone who is seconded to a council but is not employed by it is covered by the definition. When we make the regulations, we will have to be very clear about disqualified employments and exactly what is covered there. I think that this is a matter for the regulations.

**The Chairperson:** Sometimes you think that people themselves should take that responsibility. If you are in a senior position that will cause a conflict of interest, you need to think about whether you want to keep the public representative role or that of an employee.

**Mr Boylan:** I am not in disagreement with this idea. The only thing that we need to be clear about is the conflict of interest issue. I was just talking to Ian about the possibility of someone having an unfair advantage if they were related to someone on the council, because they would know the system. Having said that, we clearly need to outline the conflict of interest issue *[Inaudible due to mobile phone interference.]* to get that message out there.

**The Chairperson:** Yes, even though you are not a councillor on that particular council.

**Mr Boylan:** Yes.

**The Chairperson:** If you are the employing council, there can still be a conflict of interest.

**Mr Boylan:** There can be. As Colum indicated, you do not know what would arise from working in the council system.

**The Chairperson:** OK. Are members content with the explanation?

*Members indicated assent.*

**The Chairperson:** There were no comments on clause 5, which sets out the penalties for acting as a councillor while disqualified. Are members content with this clause?

*Members indicated assent.*

**The Chairperson:** There were no comments on clause 6, which, as set out in schedule 2, requires a person who is elected as a councillor to serve a declaration on the clerk of a council before acting as a councillor. The declaration requires a person to affirm that they will observe the Northern Ireland local government code of conduct for councillors in the performance of their functions. No comments were received from stakeholders.

Does that mean the person has to sign a piece of paper or just make a verbal affirmation?

**Ms MacHugh:** They will have to sign.

**The Chairperson:** They will have to sign a piece of paper. Lord Morrow, do you want to say something?

**Lord Morrow:** You were looking for someone to say "agreed", and I was going to agree. *[Laughter.]*

**The Chairperson:** Again, there were no particular comments from others on clause 7. The clause provides for a person to resign as a councillor at any time. Are members content?

**Mr Eastwood:** I have question on a slightly different issue, Chair. Is there any consideration of issues with co-options or by-elections? Some councils have different arrangements than others. If someone resigned for whatever reason or died, would there be an automatically agreed co-option, or would there be a by-election?

**Ms Broadway:** The legislation about co-option is an excepted matter, because it is about elections. However, the legislation on co-option was changed a couple of years ago, so it means that, in most cases, it will be done by co-option. It is only if a council cannot come to an agreement that it will go to a by-election.

**Mr Eastwood:** Is that still going to be the case?

**Ms Broadway:** Yes.

**Mr Eastwood:** It used to be the case that if one councillor objected —

**Ms Broadway:** That used to be the case. I can send you a briefing or bring it next week to explain what the legislation now says on co-option. As I said, it was changed recently, but it is not something that we could deal with because it is an excepted matter. I will provide a briefing note on that.

**The Chairperson:** OK. Colum, are you OK with that?

Clause 8, which deals with the vacation of office on account of non-attendance, provides for a person to cease to be a member of a council if they fail, subject to certain conditions, to attend any meeting of the council over six consecutive months. There was one query on this asking for clarification on whether the attendance requirement related to joint committee meetings where councillors may have to prioritise attendance at main council meetings.

**Mr Murphy:** The way that the clause has been crafted means that it is up to councillors to decide how they feel that they want to conduct their representative role. There is flexibility that means that it is a matter for them if they feel that they need to be attending a council meeting because of a particular issue, as against a joint committee that may be scheduled for the same time. You have six months, and if you do not attend any meeting of the council, one of its committees or a joint committee, your position as a councillor is declared vacant. That is a re-enactment of section 9, I think it is, of the Local Government Act (Northern Ireland) 1972.

**Ms Broadway:** I think that the only difference between clause 8 and section 9 is that the new ethical standards provision is now taken account of. Obviously, if someone had been disqualified as a councillor during the six months, that period would not count in the calculation of the six months. However, that is the only difference between that provision and what is in place.

**Mr Milne:** What about exceptional circumstances? Is there anything in the clause for long-term illness, for example?

**Mr Murphy:** That would be a matter for the councils. Is somebody was ill and receiving treatment and unable to attend, they could make that exception. I think that you have to take account of an individual councillor's personal circumstances in their ability to attend meetings.

**Mr Eastwood:** You said that the council can make that exception. What do you mean? Would that be a vote in the council? I am saying that councils are political forums, and sometimes people might not act as honourably as you would like them to.

**Mr Boylan:** Would it be a department in a council or the council itself?

**Mr Murphy:** I think that it would be the council itself.

**Ms Broadway:** We can find out and clarify what happens in councils at the minute.

**Mr Eastwood:** You would hope that people would accept if someone were genuinely ill, but sometimes it is seen as an opportunity to get rid of somebody.

**The Chairperson:** It could be that another member was substituted on the committee.

**Mr Boylan:** If you won the Lotto, you would be all right.

**The Chairperson:** It would be very easy for a female councillor to go off for six months on maternity leave.

**Mr Elliott:** To be fair, the clause gives councils the flexibility to determine specific reasons. I do not see a major issue with it.

**Lord Morrow:** It is not the clause; it is the council's flexibility.

**Mr Eastwood:** I would leave it to the town clerk.

**The Chairperson:** OK. We will now move on to clause 9, which deals with the declaration of vacancy in office in certain cases. The clause sets out the circumstances for which a council must declare a vacancy. We have received no comments from stakeholders on the issue. Are members content to move on?

*Members indicated assent.*

**The Chairperson:** Clause 10 deals with positions of responsibility. It sets out the positions of responsibility to be held by an elected member of the council, which must be allocated across the political parties represented on the council. It also sets out the process that must be used for the allocation.

As you know, we had a huge numbers of responses to that clause. Perhaps if I list them all you can respond. The first comment relates to clause 10(1) and states that individual councils should decide how to apply proportionality. It is felt that clause 10(1) is too prescriptive. The second comment is also on clause 10(1) on schedule 3 and is concerned that there may be skewing towards larger parties in the locating positions. The next comment is again on clause 10(1) and states that STV rather than d'Hondt should be used to protect minorities. That is the Alliance Party's view, so I have to declare an interest on that. The next comment relates to clause 10(1)(f) and states that councils should make public a list of external representatives.

I think that you said that the Department is thinking of amending the clause or that you are going to produce guidance.

**Ms Broadway:** We need to make a technical amendment to clause 10(4). We used the words "prescribed public body", but for the purposes of the Bill, the term "prescribed" means prescribed by regulations, and that is not what we are intending. What we mean is that, if another piece of legislation or statute indicates that a councillor should be on that body, we should probably use the words "statutory public body". So, that is a technical amendment that we need to make.

**The Chairperson:** There is another comment about clause 10(4) that says that the words "other association" should be defined. The Bill states that an "external representative" is:

*"a person nominated by the council to serve as a member of any prescribed public body or other association."*

Could the term "other association" be defined in some way?

**Ms Broadway:** First, the provision is based on what came out of the policy development panel. The five main political parties agreed a position on this, and the clause reflects what was agreed in the policy development panel.

**Mr Murphy:** That was set out in the briefing paper that we provided last week. The five main political parties agreed that councils should be provided with the flexibility to select a method from either d'Hondt, Sainte-Laguë or STV for the allocation of the positions. So, there is that flexibility for a council to determine the method that it wishes to use; it is not that we are saying, "You must use a particular model."

Through schedule 3, we are ensuring that there is consistent application of a particular method. So, if three councils choose to use d'Hondt, they would all use it in exactly the same manner. We understand that different councils have applied some variations, and the political parties on the panel agreed that they needed that definition and consistency applied. So, as I said, there is that flexibility.

In the context of it potentially skewing things towards the larger parties, the process will be applied over the full four-year term of a council and to all the positions that have been identified. The political parties on the policy development panel identified and highlighted those. However, you can have a situation where, over a four-year period, there is somewhere in the region of 100 positions to fill. When you think about it, you see that you already have eight for the chair and vice chair of the council, and as you start to get into the committee, you see that the list starts to develop quite quickly.

We are saying that it would be for individual parties to determine the positions that they want to hold. So, the largest party will have first choice if a council decides to use d'Hondt or Sainte-Laguë. It may choose to have the chair in the first year, but it could select another position. When you work it through, you see that doing it over the four years provides an opportunity for political parties with lower levels of representation and independents to hold one of those positions.

**Ms Broadway:** The way that it will work is that all the positions for the four-year term will be identified at the beginning of the process. For each position, there will be four choices: year 1, year 2, year 3 and year 4. When d'Hondt or Sainte-Laguë is worked through, the party that gets first pick will decide which position it wants and which year it wants it. The next party will then decide. So, the bigger parties will have a say at the beginning, but because you have so many posts, everyone should have a chance of having a position of responsibility across the four-year term.

**The Chairperson:** That will still favour the bigger party, however, because it will have the first pick.

**Lord Morrow:** That is called democracy.

**Mr Eastwood:** I want to ask about a technical issue. There is no mention of the mayor or deputy mayor. It will probably be different in different councils. Sorry, I am not looking at the Bill.

**Mr Murphy:** The interpretation —

**Mr Eastwood:** That would just be chair.

**Mr Murphy:** — would provide that the chair is a chair in a borough.

**Mr Eastwood:** I understand that.

**Mr A Maginness:** To clarify, Julie is saying that, whatever system you are using, that will be done collectively at the beginning of a council term for the whole period of that term and that it will stand.

**Ms Broadway:** That is right.

**Mr A Maginness:** There is no deviation from what is permitted under the legislation.

**Ms Broadway:** If, for example, another position of responsibility is identified during that period, you would just continue running the system where you left off.

**Mr A Maginness:** Yes, that clarifies things.

**Mr Murphy:** The Department will issue the practical guidance to support the operation of the three mechanisms across the councils, which will go into those details. The policy development panel originally considered some of that guidance, but we are now refining that to make sure that it is clear how the process should operate.

**Mr Eastwood:** If there is a situation where d'Hondt or whatever has to run on, in case somebody goes independent, will that be done on the basis of party strengths at the election?

**Mr Murphy:** Yes. The whole process is based on the result at the local government election. The political parties on the policy development panel held that view. That was at a point in time when the public had expressed a view about who they wanted to represent them. That view was that they did not want continual reallocations simply because of the personal choices of individuals who had decided to either become independent or to move to a different political party. So, the local government election is the base point.

**The Chairperson:** Does that mean that the positions of responsibility will be established shortly after the elections this year?

**Mr Murphy:** Yes.

**The Chairperson:** So, that means that it will not happen in 2015?

**Mr Murphy:** There is an issue with that, and we will make provisions for it in the transition arrangements. It is unlikely that, in the shadow period, a council will have a clear idea of the number of committees that it wants to form. If you then applied d'Hondt after the election this year, it could skew the sharing of the positions across the various parties. We will be going out to consultation on that.

**Ms Broadway:** We will be going out to consultation, and, of course, we have to put the draft regulations to the Minister for his agreement. We have been talking about this at the legislation working group, and the discussion is that this process should start from April 2015. Governance arrangements will apply during the shadow period but only for that period. For example, if during that shadow period, the incoming councils decide to set up convergence committees or whatever committees they think that they need to set up during the interim period to enable them to converge, the new governance arrangements will apply during that period but for that period. We are working through this, and it has to be presented to the Minister for his consideration.

**Mr Eastwood:** I apologise if the answer to this question is somewhere else in the document, but will there be extra remuneration for positions of responsibility?

**Ms Broadway:** Yes.

**Ms MacHugh:** For some of them.

**Mr Eastwood:** Will that be set out?

**Lord Morrow:** For the ones who behave.

**Ms MacHugh:** Not for some councillors; for some positions of responsibility. That is all being worked through with the outworkings of the remuneration panel's report. The Minister is going out to a targeted consultation on the proposals in that report, and he will respond to that. That is happening in the next few weeks.

**The Chairperson:** Are members content with clause 10?

**Lord Morrow:** I am not objecting, but I am reserving my position on this one. I suspect that this one has a wee bit further to go. That is what I mean when I talk about saying one thing in here and saying something else in the House. We all have experience of that, where we wonder sometimes whether we were at the same meeting. I am just saying that.

**The Chairperson:** Members are at liberty to say whatever they want to say in the Chamber.

**Mr A Maginness:** For the sake of clarification, Chair, the broad consensus — I put it as broadly as that — is the position that you have presented to the Committee today. That is the broad political consensus across the political parties.

**The Chairperson:** It will be to share positions at the very beginning over the four years by d'Hondt, Sainte-Laguë or STV. It is up to the councils to decide which they want.

**Ms Broadway:** Councils will have the flexibility to decide, but once they decide, a schedule will set out exactly how the process will work, and we will issue procedural guidance to help councils.

**The Chairperson:** Are members content with the explanation?

*Members indicated assent.*

We will move on to clause 11, which is on arrangements for discharge of functions of councils. Clause 11 provides that a council may arrange for any of its functions to be discharged by a committee, subcommittee or an officer of the council, or by another council.

There are a number of issues with the clause. The first one is that the term "borrowing money" may be a bit vague and should be amended to "affordable borrowing limit". There is a suggestion to amend clause 11(3)(c) to allow the acquisition or disposal of minor or technical correction of land and way leaves.

**Ms Broadway:** We need to look at the issue of borrowing money, because we need to know how that reflects against the Local Government Finance Act 2011, under which a council has a duty to determine an affordable borrowing limit. We will perhaps need to make an amendment to that, but we will have a look at it.

**Ms MacHugh:** It may not be a case of having either term but both, because an argument could be made that all of council would want to know — for example, before deciding on whether to proceed with a development project — where the money will come from and whether it should be borrowed. Therefore, there is not only the potential for individual decisions on what to borrow for but on what to put the limit at. That limit is set through the prudential code, and councils will need to determine, based on their assets and their borrowing ability, what they determine to be an appropriate level. They set their borrowing limit. The Department's current guidance suggests that that should be somewhere between 5% and 7.5% of the councils' total operations. Councils should not be in the red by more than that and should have enough cash to keep them going. That is looked at by the auditor. However, a council needs to make that determination for itself. We may need to look at amending the clause to include both, but we will consider that and put advice to the Minister.

**The Chairperson:** Are members content with that explanation?

**Mr Boylan:** I am trying to find out what NILGA said. If I remember correctly, it said that councils will be looking for a wee bit of flexibility. Linda outlined the percentages. I will need to come back on that, but I am content at the minute.

**The Chairperson:** I am trying quickly to find out for you what it said.

**The Committee Clerk:** It is at the very beginning of the comments on clause 11.

**The Chairperson:** We do not have the page number. It is under Part 4, which is on discharge of functions.

**Mr Boylan:** It is grand, Chair. I will leave it at this point.

**The Chairperson:** The view of the Northern Ireland Local Government Association (NILGA) is that it:

*"has no objections to this clause , but would suggest that the list of functions reserved for the council is more clearly defined, for example, to exclude minor technical land disposals, way leaves, small loans etc."*

**Lord Morrow:** The Bill states that a council may arrange for the discharge of any of its functions:

*"by a committee, a sub-committee or an officer of the council".*

Is that an officer of any rank?

**Mr Murphy:** That would be a matter for determination by individual councils within a scheme of delegation.

**Ms MacHugh:** For example, if there were minor planning applications, and the council felt that those could be determined at officer level, it could make provision for that. Alternatively, the planning committee could decide that all planning decisions need to go through the committee. Again, the council would need to determine that for itself.

**Mr Eastwood:** You now have the streamlined system in most cases.

**Ms MacHugh:** Yes, and my planning colleagues are now talking very closely with local government to see how it would like to adopt the planning process. The Department intends to provide a framework, but, within that framework, there will be decisions that councils need to make for themselves.

**The Chairperson:** You do not want to be criticised for being over-prescriptive.

Members, we will move on to clause 12, which is on arrangements by one council for discharge of functions by another council. The clause places limitations on making arrangements for the discharge of functions under executive arrangements. One comment is that the clause seems unnecessarily complicated. What is your view?

**Mr Murphy:** I think, Madam Chair, that the clause is in there to address the scenario in which, because we are providing options for the governance structures, council may be operating a traditional committee system where, by and large, decisions will be taken by a council but a neighbouring council may have opted to take executive arrangements for a range of functions, where the decision will be taken by that executive without further reference to the council. Its purpose is to ensure that arrangements are in place. We are not preventing the two councils from arranging for one of them to discharge the function of the other, but the clause sets out the processes for who makes those decisions if there are differing overarching governance arrangements. It is not the role of the Department or the intent of the clause to prevent that from happening. It is merely to set out the framework.

**The Chairperson:** Are members content with that explanation?

*Members indicated assent.*

**The Chairperson:** No comments were received on clause 13. It is on arrangements for discharge of functions by councils jointly. The clause provides for the establishment of a joint committee —

**Mr Boylan:** Chair, on the previous clause, I am trying to think of an example of a council discharging the functions of another. Can you perhaps come back to us on that? I know that it is a difficult one. I am just trying to get an example of exactly what that would entail.

**Ms MacHugh:** It could be, for example, to do with shared services. If a decision were to be made in local government that involved a specialised element of planning — for example, mineral planning permissions — on which there was not enough of a quantum of work for minerals specialists to be embedded in each of the 11 councils, you might find that councils end up sharing that expertise. That is one working example that comes to my mind, but I am sure that there are plenty of others.

**Mr Murphy:** I think, and I may be wrong on this because my information may be out of date, but my understanding was that, in certain areas of Castlereagh Borough Council, refuse collection was undertaken by Belfast City Council.

**Ms MacHugh:** It could simply be because of the geography of —

**Mr Boylan:** But especially for shared services.

**Lord Morrow:** Cookstown never did that for Dungannon.

**The Chairperson:** Councils differ quite a lot in the things that they can and cannot recycle, for example.

OK. We will return to clause 13. The clause provides for the establishment of a joint committee between two or more councils to discharge a function of the participating councils. Are we happy with the clause, members?

*Members indicated assent.*

**The Chairperson:** OK. No comments were received on clause 14, which is on the exercise of functions not prevented by arrangements under Part 4. The clause provides that the council or a committee is not prevented from exercising a function if it has arranged for that function to be discharged by a committee or subcommittee. Are members content?

*Members indicated assent.*

**The Chairperson:** Clause 15 is on the appointment of committees, etc, for the purpose of discharging functions. The clause provides that a council may appoint a committee, and two or more councils may appoint a joint committee, to discharge functions.

I think that there was an issue with clause 15(3). A suggestion was made that clarification is needed on why external representatives may not be appointed to finance or audit committees. It is perhaps to do with outside influence. Are members content?

*Members indicated assent.*

**The Chairperson:** Clause 16 is on the appointment of a committee to advise on the discharge of functions. Again, no comments were received. The clause enables a council, and two or more councils, to appoint a committee, which may include persons who are not members of the appointing council or councils, to advise on the discharge of functions. Are members content?

*Members indicated assent.*

**The Chairperson:** Next is clause 17, which is on appointment of councillors to committees, etc. The clause gives effect to schedule 5, which provides for the sharing of membership of a committee between the political parties represented on the council. There were a couple of comments made. One was that it is too prescriptive as it relates to schedule 4. The other, again on schedule 4, is that precision of methodology will ensure consistency across councils.

**Mr Murphy:** Again, Madam Chair, this comes from the discussions and outworking of the policy development panel. The representatives of the political parties agreed that there should be a formalised mechanism to ensure that the membership of a council committee reflects, as far as is practicable, the political balance on the council, so you are bringing that down to the different levels. The members agreed that two methods should be available for the council to choose from. One is droop quota and the other is quota greatest remainder.

**The Chairperson:** Sorry, what is the second one?

**Mr Murphy:** Quota greatest remainder. They are both quota mechanisms, but they have slightly different mathematical formulation. The formulas are set out in the schedule. As with the positions of responsibility, we will work with senior officers from local government to develop guidance on how it will operate in practice.

**The Chairperson:** OK. Are members content with the explanation?

*Members indicated assent.*

**The Chairperson:** Next is clause 18, which is on further provisions for joint committees. We received no comments on the clause, which provides that the expenses of a joint committee must be met by the appointing councils. Are members content?

*Members indicated assent.*

**The Chairperson:** Clause 19 concerns disqualification for membership of committees. Again, we did not receive any comments. The clause provides that a person disqualified from being elected to or being a member of a council cannot be a member of a committee or subcommittee of that council, or of a joint committee on which the council is represented or one of its subcommittees. Are members content?

*Members indicated assent.*



**The Chairperson:** We move to clause 20. There were no comments on the clause, which is on the declaration required of persons who are not members of a council. Clause 20 provides that a person who is not a member of a council may not act as a member of a committee until the person has signed a declaration agreeing to observe the Northern Ireland local government code of conduct for councillors. Are members content?

*Members indicated assent.*

**The Chairperson:** We move to clause 21. There were no comments on this clause from stakeholders either. It is on voting rights of persons who are not members of a council. The clause provides that a person appointed to a committee who is not a member of the appointing council has no voting rights at meetings of that committee. Are members content?

*Members indicated assent.*

**The Chairperson:** The next one is clause 22. Again, no comments were received. It concerns the termination of membership on ceasing to be a member of a council. The clause specifies that a person who is no longer a member of a council is also no longer a member of a committee of that council. Are members content?

*Members indicated assent.*

**The Chairperson:** We move on to clause 23, which concerns permitted forms of governance. The clause sets out the forms of political governance that a council may operate for its decision-making. Those are executive arrangements, a committee system or prescribed arrangements. As you know, officials, there is a major issue with clause 23. It is unclear whether committees outside the executive, particularly quasi-judicial committees such as licensing or planning, would be subject to call-in or qualified majority vote (QMV).

**Mr Murphy:** We are currently working with senior officers from local government to look at the issues, which will then go to the Minister for consideration of how the clause will operate. In England, Scotland and Wales, planning, other regulatory functions and quasi-judicial decisions are not subject to call-in, because each will have its own inbuilt mechanism for appeal that relates to specific issues. Call-in could apply where there is a systemic failure or issue, but that is a matter that we are working through and will put to the Minister for his consideration.

**The Chairperson:** OK, so there is no call-in on those committees? Is that right?

**Ms Broadway:** On the quasi-judicial committees, such as planning. That is simply because they have their own means of appealing or calling in a decision.

**The Chairperson:** I know that call-in is such a big headache now. It would certainly delay things no end if each committee could call in decisions. Are members content with the explanation?

*Members indicated assent.*

**The Chairperson:** We move on to clause 24, which concerns the power to prescribe additional permitted governance arrangements. The clause gives the power to the Department to make regulations prescribing alternative forms of governance that may be adopted by a council. It provides that the Department must have regard to any proposals received from a council when it considers whether or how to make regulations under the clause.

There are two issues with clause 24. One is whether the wording "must have regard to" is strong enough and should be changed to "must give effect to". The other is to do with clause 24(6)(c), which states that additional governance arrangements must "be appropriate for all councils". It is claimed that that may be a barrier to local government on governance.

**Mr Murphy:** I will take the second issue first. That is there because we are prescribing in the legislation a choice for councils between executive arrangements or a committee structure. We are not closing the door on other forms of political governance of councils. However, to ensure consistency, if a council comes forward with a form of governance that it feels would work for it, we

need to assess whether it will fit in with the framework for the protection of the interests of minorities that are being built into those executive arrangements and the committee system.

The Department has to ensure that any proposal that comes forward could be applied in any council so that you have consistency in the operation of the various factors. That is why the Bill states "have regard to". A council may come forward with a proposed form of governance that the Department feels does not provide the protections and would not be applicable to the other councils in Northern Ireland. There needs to be flexibility for the Department to make that call. Any proposal coming forward would be considered by the Minister subsequent to officials having looked at it. It would then be specified in regulations that would be subject to the scrutiny of the Assembly.

**The Chairperson:** Can you give me an example? What would the additional governance arrangements look like?

**Ms Broadway:** At this stage, we do not really know what a council might come up with. The point is that, if a council comes up with another form of governance arrangement that is acceptable, we need to have a means to legislate for that. In considering that, we need to make sure that whatever form of governance they have come up with complies with the other provisions in the Bill on protection of minorities.

**Ms MacHugh:** The spirit of power sharing is endemic in a number of areas of the Bill. That is something that the Minister certainly feels is required. The statutory transition committee regulations specify d'Hondt. Even having specified d'Hondt, so many different versions of d'Hondt were used. It is an area in which we would like to see flexibility be applied for local government. However, for the purpose of consistency, in being flexible, we also need to make sure that the spirit and principles enshrined in the whole of the legislation are followed in whatever the alternative might be.

**Mr Elliott:** Is that for all aspects of governance? In other words, could it apply to call-in and qualified majority vote, as well as to the form of governance, such as the executive or committee means of governance? Does it apply to all of that?

**Mr Murphy:** It applies specifically to the permitted form. It is for if a council says, "Executive arrangements do not suit us. We do not want to use the traditional committee system; we want to come up with another form". However, as has been said, we would then need to look to see whether the form of political governance that it is proposing provides for and meets all the other requirements.

**Mr Elliott:** Therefore, it is just to do with the form of governance.

**Mr Murphy:** Yes.

**The Chairperson:** OK, members. Lunch is outside. We will take a 10-minute break to get some lunch.

**Mr Elliott:** We have only got to clause 24.

**The Chairperson:** Tom, you came in late. I explained earlier that we would have a quick break and then go on until about 1.15 pm to try to get through as many clauses as we can. We have done very well, members. You have been excellent.

*The Committee suspended at 12.00 noon and resumed at 12.20 pm.*

*On resuming —*

**The Chairperson:** Clause 25 relates to council executives. It provides that an executive of a council must take the form of a committee of the council, to be known as a cabinet-style executive, or more than one committee of the council, to be known as a streamlined committee executive. There are a number of issues. With regard to clause 25(2)(b), it has been commented that the Bill does not specify which committees can be streamlined. With regard to clause 25(3), the chair and vice-chair are currently part of the decision-making process, with the chair often having a casting vote. That is not in the Bill. With regard to clause 25(5)(a), the minimum number should be more than four. Those are the three comments on clause 25.

**Mr Murphy:** Clause 25 specifically deals with the executive arrangements. When this was being discussed by the panel, rather than going down the full route of saying, "A council will have a cabinet-style executive, the same as they have in England", we wanted to make provision for the transition from the traditional committee system to the full executive. So, there was the view that you would have the intermediate step of a streamlined committee executive, so that all the functions that would be the interspersibility of an executive could be shared across a number of committees. It would still be an executive, but, rather than all the responsibility and power being invested in a single group of councillors, it could be spread across a number, and it would be for the council to decide whether that is two, three or four committees. That is a matter for each council to determine, if they go down that executive route.

The chair and vice-chair of a council — or the mayor and deputy mayor, if that is the case — are excluded because they are holding almost a civic role and should be representing the whole district, and they should not be part of the decision-making arm. It also provides them with an independence, and if issues are called in and brought to the full council, they are looking at it without having the need to recuse themselves from the process. In saying that, there is nothing within the other provisions in the Bill on access to meetings etc that would prevent the mayor and deputy mayor or chair and vice-chair attending meetings of the executive so that they are aware of what is happening in the overall business of the council.

**The Chairperson:** They can attend but not vote.

**Mr Murphy:** That is correct. The chairs and vice-chairs of a lot of councils attend meetings of committees but do not have the right to vote. That facility would be available for them.

The minimum number tried to strike a balance. If you look at other jurisdictions, you see that an executive can comprise a leader of the council and two others. It was felt that three was too few, whereas four started to provide the opportunity for a cross-party executive to be formed, if the parties wanted to take up those positions. That is why it was struck at four. The maximum was set at 10 on the basis that this was all around improving and delivering efficient and effective decision-making. If you start to get into a larger number, that starts to change, but there is the provision that we can change the maximum number if we find that it is not appropriate.

**Ms Broadway:** There is no provision at the minute to change the minimum number. If it was thought that the minimum of four was too small, we can take that back to the Minister to get his view on whether we change that number to another number, such as five, or whether we provide a means by regulation to modify that once we have specified a number in the legislation.

**The Chairperson:** Was the number four recommended by the policy panel? How did it come about?

**Mr Murphy:** I cannot recall, Madam Chair, whether the policy development panel dug down into that fine level of detail. I know that there was a discussion around whether it should be enforced cross-party in terms of the positions of responsibility or whether it would be left as a matter for individual parties to decide whether they wanted to take positions on the executive or whether they wanted to reserve their position and take positions on the overview and scrutiny.

**The Chairperson:** You run the risk of parties excluding others if they adopt a minimum number of four.

**Ms Broadway:** As I said, we can take the issue of amending that number back to the Minister.

**The Chairperson:** Members, what do you think?

**Mr Eastwood:** On the first issue in respect of the mayor and deputy mayor and the chair and vice-chair, I have no fixed view on it yet, but, from my experience, it was always useful to have the mayor in there when decisions are being made, whatever the issues are, because they are the person who usually has to go out and defend it. It is not just a civic role; it is not just cutting ribbons. It is a lot more than that if you want it to be. It is almost a political role in that they have to defend the position of the council when something goes wrong. I always had to do that anyway. Nobody else was there to do it. I think that there is good practice in having them in there as part of the decision-making process.

**Ms Broadway:** What about voting rights? I ask so that we can take it back to the Minister.

**Mr Eastwood:** It is different now because every major decision was made by council eventually. In subcommittees that were created, you tried to get agreement, but the mayor always had a vote.

**Ms Broadway:** An issue that was raised last week was the possibility of having mayors and chairs as ex officio members of the executive. That is something that we can take back to the Minister. As John said, if it is an issue about access to information, a mayor would, through the other provisions in the Bill, have access to information, but, as you said, it may be more about the debate or being aware of the debate.

**Mr Eastwood:** If you are going to have to defend something, you want to be part of the decision. I can see the drawbacks in that it can skew d'Hondt. I understand all that, but I think that it is worth considering.

**Ms MacHugh:** There is an issue around overview and scrutiny as well.

**Mr Murphy:** It is not so much the skewing of d'Hondt; it is the fact that once you become part of the decision-making process in the executive, you are then excluded from the overview and scrutiny of that decision if it is called in. If it is called in and goes to the council, you have been part of that decision. You cannot be part of the overview and scrutiny arrangements under executive arrangements because it is different.

**Mr Eastwood:** You could just be chairing the meeting of the council. As I have said, I am just asking the question. I have no fixed view, and I will consider it further.

**The Chairperson:** We are at clause 25.

**Mr Boylan:** I do not want to prolong the meeting. I understand where Colum is coming from. From my experience of executive operations in Armagh, we send a party colleague in there and they take the party view, and it normally goes as a recommendation to corporate council. I understand what you say about the mayors. In one case, there would be no point in forming the committees and electing chairs and sending party members in as a subcommittee to make a decision or perform a scrutiny role, and then turn round and have to have the mayor. Sometimes, the chair of that committee will speak on behalf of the committee. I see merits in both. It is a question of going back to the minutes, perhaps. I can see both arguments.

**Mr Eastwood:** I will think a bit more about it.

**Mr Elliott:** Just for clarification on those points — it is an interesting debate — I assume that the body has executive powers, though, so that it does not have to be taken to full council? I think that that is the issue. That is the issue that I would have concern with, if the chair and vice-chair were to be excluded from it. Obviously, they are pivotal to the council, especially in the system that we have here, in that they are just elected representatives who happen to be the chair and vice-chair by nomination, appointment or election of the council. They are not separately elected in the way that the Mayor of London or mayors of other bodies are. That just gives me some concern. I have to be convinced that it is the right way of doing it, and I am not convinced yet. I do not take on your reasoning at this stage, but I am here to be convinced, simply because I have not seen it in operation.

**Ms MacHugh:** I suppose that the driver for barring them at this stage is that, as you say, if a decision is made by an executive, it does not go to full council; however, if it is challenged and called in to the full council to consider, what role would the mayor or chair play in that process if he or she had been an intrinsic part of making the original decision? They would have to excuse themselves at that point, and somebody else would have to take on that wider scrutiny role for the whole of the council.

**Mr Eastwood:** The way it works normally is that councillors take on the scrutiny role. The mayor will chair the meeting, but it would not be the case that the mayor is scrutinising on behalf of the council, because all the councillors have that role.

**Mr Murphy:** However, as was said, if they had been involved in the decision-making under executive arrangements, they cannot be involved in the scrutiny of the decision that they have actually made.

**Mr Elliott:** Just for clarity, because this is an important point, does that mean that none of those executive members could be involved in the voting, within full council, during a call-in decision?

**The Chairperson:** Yes. I see your point. They would have to excuse themselves because they were involved in the decision-making process.

**Mr Murphy:** Yes.

**Mr Elliott:** Yes.

**Ms Broadway:** I think that we need to give that further thought. However —

**Mr Eastwood:** Look at the parliamentary system. Ministers get votes on issues that they have decided upon. It seems a bit strange. Surely, we are trying to foster a joined-up thing, whereby everybody is involved in the process.

**Ms MacHugh:** That is a very valid point. I absolutely accept that the whole of the council would be involved in the scrutiny process, but somebody would need to lead that process. If it is not the mayor or the chair, or the deputy mayor or vice-chair, who is it going to be? That leads to further —

**Mr Eastwood:** I do not quite understand what you mean by "lead the process". What they would be doing is chairing the meetings. Party leaders or whoever would be coming in then. It seems strange to me, but anyway.

**Ms Broadway:** You do not think, then, that there is an issue where someone has taken part in the decision-making and, when it comes to the overview and scrutiny of the decision, is also scrutinising it? I ask so that we can be clear what we need to take back to the Minister and look at again.

**Mr Eastwood:** Any Minister here votes in the Executive and then goes into the Chamber and votes on that decision.

**Mr Elliott:** I do not see that as being an issue because under the current committee system — I can speak only from my experience — the chair and vice-chair are ex officio and have votes on all committees. So, they have a vote at the committee. It then goes to full council where they chair the meeting. They may not agree with the decision; they may have actually voted against it at committee, but they still chair the meeting, and they still have their vote in full council. So, I do not see the difficulty there. If there is one, obviously we need to tease it out here now or some time before the legislation goes through. It is an important issue, particularly given that it is reasonably new, apart from the likes of Armagh having a type of executive process, and I think that Castlereagh does it with some committee. There are small examples but nothing significant, and it may be a new concept that we need to get right because other councils may want to implement it.

**Mr Murphy:** That is key because, under executive arrangements, unless decisions by an executive are called in, they will be implemented within a specified time. They will not be routinely referred back to the full council.

**Mr Elliott:** I accept that.

**Mr Murphy:** My understanding is that Armagh has an executive with four members — one from each of the main parties — then the full council acts as the overview and scrutiny. However, the chair of the council is not a formal member of that executive. It is just —

**The Chairperson:** It seems so odd to think that the two supposedly most important positions of chair and vice-chair or mayor and deputy mayor are not included in that decision-making —

**Mr Eastwood:** In the public eye, the mayor or chair is the face of the council and has to answer —

**The Chairperson:** Yes, and it just seems so odd that they are not included in the decision-making process. Why should they be outsiders?

**Ms Broadway:** I think that we are saying that we need to go away, tease out all of these issues, take them to the Minister and bring them back to you.

**Mr Boylan:** We do not mean that you need to go away, away. *[Laughter.]*

**Mr Elliott:** At this stage, I do not think that there is a huge argument over it. It is just that we want to get it right. I have heard from some councils that they are quite attracted to the idea of having an executive process. So, it might be used in a number of areas, and we need to make sure that it is right. That is all.

**The Chairperson:** OK.

**Lord Morrow:** When we try it out for 10 years, we will see how it works. *[Laughter.]*

**Mr Elliott:** Then, we will review it for five.

**The Chairperson:** What about the minimum number? Do we want the officials to go away and think about a higher number than four? Would six act as a safeguard? Would there be any problem with increasing it to, say, six?

**Mr Boylan:** It is up to the council to decide whether it wants more.

**Ms Broadway:** It is just a minimum of four, but they can choose.

**Mr Murphy:** A council could choose to have five —

**Ms Broadway:** Up to 10.

**Mr Murphy:** — or whatever.

**The Chairperson:** But the minimum number is five. So, it could be that some councils say that they will go for the minimum —

**Mr Boylan:** The minimum number is four, Chair, but the whole idea is that it is up to the council. We have been asking all along in this process for flexibility. A council can select five or whatever it wants.

**Lord Morrow:** Tell them to look out three wise men and three wise women from among them.

**The Chairperson:** Your party colleague suggested five, Lord Morrow. I think that Peter suggested five.

**Mr Boylan:** Give him a ring there, will you? *[Laughter.]*

**The Chairperson:** Will we let it go and leave it at a minimum number of five and —

**Mr Boylan:** Four.

**The Chairperson:** Yes, and will we discuss further the positions of the chair and the vice-chair?

*Members indicated assent.*

**The Chairperson:** There were no adverse views on clauses 26 to 30. Are members content that we move on to clause 31?

*Members indicated assent.*

**The Chairperson:** Clause 31 relates to overview and scrutiny committees' functions. The clause outlines that executive arrangements must ensure that these committees have power to make reports and recommendations, either to the executive or the council, on any aspect of council business. Stakeholders commented that clause 31(2) needed to clarify at which point an overview and scrutiny

committee should review a decision and whether call-in or the overview and scrutiny committee should take precedence.

**Mr Murphy:** An overview and scrutiny committee is being given flexibility to look at the system that the executive is operating. The idea is not necessarily to drill down into individual decisions each time. It is looking at the policies and processes that the executive has in place. The call-in procedure provides a formal mechanism for decisions of an executive to be called in for scrutiny. We are working with senior officers from local government to develop the guidance on how overview and scrutiny will operate. As I said, the thrust of the policy- and procedures-oriented scrutiny should be around looking at and supporting the operation of the executive and the delivery of the council's functions. The specific decisions are really then dealt with through the formal call-in process that we are providing later in the Bill.

**The Chairperson:** Sure. I understand.

**Mr Eastwood:** If a council did go for an executive system, what is it envisaged that the full council would do outside of calling in those decisions now and again?

**Mr Murphy:** It would be setting overarching policies for the direction of the council and undertaking its civic representation. Not every function would be devolved to an executive.

**Mr Boylan:** Scrutiny.

**Mr Murphy:** You have scrutiny committees. It is likely, as I said earlier, that regulatory quasi-judicial functions will not be matters for an executive, so the council will be able to set up committees on those. There is a range of issues that will not be the responsibility of the executive. That provides that role for councillors who are not on the executive.

**Ms Broadway:** We have been working with local government on the regulations on executive arrangements. There will be regulations on the executive arrangements, and there will also be guidance in relation to executives, which will include the overview and scrutiny arrangements. There will also be procedural guidance to explain how things should be done. We have also written to Departments on executive arrangements. If Departments are transferring functions or, indeed, the legislation is already in place and they have a policy role in relation to functions that councils carry out, we have been seeking their view on whether there is anything that should not be for an executive but needs to be for the full council to decide on. We have just completed a consultation with Departments on that. That will all feed into the regulations on the executive arrangements.

**Mr Murphy:** One of the more significant issues that will need to be thought about as councils move forward is the whole issue of community planning. Should that be an issue for the executive, or is that clearly a matter that should be taken forward by the council as a whole? There are those sorts of issues. It is not that you are stripping all of the decision-making away from the council as a corporate body.

**Ms Broadway:** The council can decide what will go to the executive. The legislation will set out that certain decisions cannot be devolved to an executive, but there is a range of decisions on which it is up to the council. It could devolve it to an executive, but it may decide that it does not wish to.

**The Chairperson:** Are members content?

*Members indicated assent.*

**The Chairperson:** There are no adverse views on clause 32. We just need guidance, so we will move on. Clause 33 is the same. There are no adverse views, but we want guidance, and you are providing it anyway. No comments were received from stakeholders on clauses 34 to 36. Are members content to move on?

*Members indicated assent.*

**The Chairperson:** There are no adverse views on clause 37. Again, we call for guidance, and you are providing it.

The trade unions fear that clause 38(2) may lead to a lack of transparency in the employment process. Do members want the officials to explain this? It relates to meetings and access to information. The clause provides the Department with powers to specify in regulations the circumstances in which meetings of the executive or its committees must be open to the public and the circumstances in which they must be held in private.

**Ms Broadway:** There may be HR and staffing issues where it would not be appropriate for the information to be open.

**Mr Eastwood:** I agree. There are lots of issues that you would want to be worked out in private before they are made public. People understand that. However, it might be useful if there were an outline as to how that should be done. It just says that the executive would decide. Maybe some criteria could be used to decide whether a meeting should be held in private.

**Mr Murphy:** That will be set out in the executive arrangements regulations, and we are working with senior officers from local government to develop those. As with council meetings, the presumption is that meetings of the executive will be open, but there will need to be clearly defined circumstances when they could exclude the public. That would be around confidential information —

**Ms Broadway:** It could be commercial-in-confidence information or HR matters. As you said, there may be a whole range of issues.

**Mr Eastwood:** It makes a lot of sense; but you want to have a framework for how that would be done.

**Ms MacHugh:** There are two pieces of legislation that local government is bound by, as is every part of government. You have freedom of information on one side, where the presumption is that there is absolute transparency and availability of every single piece of information, and, on the converse side, you have data protection law, which may also include personal information. There is also the commercial-in-confidence issue. In framing the guidance, we will look at the exemptions in freedom of information and the obligations in data protection in order to determine what types of information should be excluded from the public domain.

**The Chairperson:** That would be set out in the guidelines.

**Mr McElduff:** Is there something stronger than a presumption in favour of open meetings? Is there anything stronger than presumption in favour, so that open meetings do not just take place in very exceptional circumstances or whatever?

**Mr Murphy:** Looking at the provisions for council meetings that are already in the Bill, the regulations for meetings of the executive would be a tailored version of those because of the nature of its decision-making. However, council meetings "must" be open, except in specified circumstances; it would always be the position to provide for that. You are trying to make sure, as much as possible, that meetings are open while setting out the very clear circumstances when the public would be excluded.

**Ms MacHugh:** The phrase, "presumption in favour" is not in our Bill. It is related to freedom of information, where you must start from the viewpoint that you would be releasing the information unless there was reason not to.

**The Chairperson:** As Barry said, the presumption is in favour of public access with a few exemptions. However, they will be listed and put in the guidelines. What about the suggestion to record council meetings, if people want to go into the details? If members do not attend meetings, they can look at the minutes, which, obviously, are not verbatim. Is it possible to add something to say that all council meetings should be recorded?

**Mr Eastwood:** There would be very long meetings. Everyone would have to speak.

**Mr Murphy:** Is that not a matter for individual councils? Belfast has a live stream, but we are trying to put that framework in place for councils in later clauses and the executive in having openness and transparency in how they transact their business. It is a case of striking a balance between being prescriptive to cover that transparency but then requiring councils to record or broadcast, which places



the requirement on them for additional technical matters rather than simply ensuring that, say, the papers for a meeting and the minutes of that meeting are available for inspection at the council offices or on its website.

**Ms Broadway:** The Bill specifies the minimum in relation to access. If a council then decided that it wanted to live-stream or record, that would be a matter for the council, but it would not be appropriate for us to be placing that possible financial burden on all councils.

**The Chairperson:** OK. There have been incidents in some councils when a member said something and then denied ever having said it. It was not minuted because you cannot minute every sentence.

**Mr Boylan:** I agree. I have been a councillor and there are occasions when you need to discuss things. HR is one issue; for example if you are talking about jobs in a council. Scrutiny is another example of when a council needs to discuss things. It is just about allowing that flexibility and giving the opportunity, otherwise you would get nothing done because every question would be asked. That is not to deny the public access to any documents or anything else, because they do find out at the end of the process in most cases. So, I am supportive of it.

**Mr Eastwood:** Will all decisions be made in public?

**Mr Boylan:** Generally, most of the time.

**The Chairperson:** Cathal, you are supportive of making exemptions.

**Mr Boylan:** I am supportive of giving councils that wee bit of latitude on some discussions that have to take place. However, the majority of decisions, if not all decisions, go into the public domain anyway.

**Lord Morrow:** But not a verbatim recording.

**Mr Boylan:** No, not verbatim. That is a different matter.

**The Chairperson:** OK, are members happy? No amendments to this clause?

*Members indicated assent.*

**The Chairperson:** Clause 39 makes provision for written records of prescribed decisions to be kept for meetings of the executive held in private, including reasons for the decisions. There is the same comment from the trade unions as for clause 38 about fears that this may lead to a lack of transparency. Another comment states that a provision should be inserted that the public can attend joint committee meetings only on written request. That is overly prescriptive.

**Mr Murphy:** That goes against the concept of providing openness and transparency. Having to ask whether you can attend meetings suggests that a council or joint committee could refuse admittance. The only reason that you would maybe want to look at this is for health and safety reasons in terms of access to a council chamber and the number that it may be able to hold. Senior officers in the subgroup have been looking at that issue. We take the view that you should not have to ask whether you can go to a meeting.

**The Chairperson:** OK, are members content with the explanation?

*Members indicated assent.*

**The Chairperson:** There were no comments on clauses 40 and 41.

**The Chairperson:** Clause 42 makes provision for the timing and general arrangements for council meetings and requires councils to make standing orders for the regulation of proceedings and the business of councils and their committees. The comment on clause 42(2)(b) is:

*"Clarification of which decisions of a committee must be referred to, and reviewed by, the full council."*

Is that too prescriptive?

**Mr Murphy:** This relates to the call-in procedure. Although the facility to reconsider a decision is provided for by clause 45, it is saying that standing orders should make provision for it. So, we are working with senior officers from local government to develop the rules for the operation of the call-in, which are likely to specify the decisions that would not be open to call-in and those that would, and the circumstances around them. So, you will have that procedure.

We will then be using the power, subject to the Minister's agreement, provided in clause 42 to specify those particular rules as a mandatory element of a council's standing orders. Those will be specified in regulations and approved by draft affirmative procedure in the Assembly. Having gone through that process, a council will not be able to change or suspend that standing order.

This clause is designed to allow us to specify the mandatory elements, of which there are a number. The call-in process and qualified majority votes are the two key aspects that are mandatory. But, it is that provision to enable us to ensure that the arrangements that are being put in place to protect the interests of minorities in the decision-making are firmly embedded in the council's procedures.

**Ms Broadway:** We are also working with local government on model standing orders.

**The Chairperson:** Are member content?

*Members indicated assent.*

**The Chairperson:** Clause 43 provides for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority. There was one comment on clause 43(4) which states:

*"Clarification required of the term 'simple majority' in the case of a joint committee."*

**Mr Murphy:** It is 50% plus one.

**The Chairperson:** Whether it is a joint committee or not.

**Mr Murphy:** Yes.

**The Chairperson:** Fair enough. Are members happy with that?

*Members indicated assent.*

**The Chairperson:** Clause 44 provides for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority. A number of comments were made on clause 44(1). The first was:

*"No need for QMV — simple majority has been tried and tested."*

The second comment was:

*"Use of QMV may lead to a lack of decision-making."*

The final comment was:

*"This could result in QMV being applied to a series of decisions at committee level then full council."*

On clause 44(2), there was one comment:

*"A very high percentage — 80% — has been stipulated."*

What is your view?

**Mr Murphy:** The 80% was agreed by the political parties on the panel. It is not envisaged that it will apply to committees because the decisions that are likely to be specified would clearly be matters for council. From our discussions last week, a number of decisions would clearly be included in that; for example, the form of governance that would be adopted. As provided for in the legislation, there are methods that would be used to allocate positions of responsibility and in response to a valid adverse impact call-in. We are working with local government to refine the list and will put it to the Minister for consideration. As I said, it is more likely that strategic matters will be matters for the councils rather than the committees.

**Ms Broadway:** We also have a mechanism to amend the percentage by draft affirmative resolution should it prove problematic in the next few years. There are means of dealing with it.

**The Chairperson:** Are members content?

*Members indicated assent.*

**The Chairperson:** We move on to clause 45, which deals with the power to require decisions to be reconsidered. The clause provides for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority. This is the call-in.

A number of comments have been made. The first is how the call-in procedure will relate to the overview and scrutiny committees (OSCs). The next comment relates to clause 45(1)(b) and is that the reason for call-in has not been properly defined. The next comment relates to clause 45(2) and is that there is a need for definition of "practising barrister or solicitor". Those points have been well rehearsed.

**Mr Murphy:** The call-in would take the decision to the overview and scrutiny committee for review. The committee would determine whether to refer it back to the decision-makers for reconsideration or whether it was content to support it. We are working with senior officers to develop the process, tie it down and ensure that we strike the balance between ensuring the protections that it is designed to give and that it takes account of the practical arrangements in councils so that it does not impact on the transaction of business. It is about trying to strike that balance and looking at the whole procedure for the operation of the call-in.

**The Chairperson:** What about different solicitors or barristers having different opinions? How would we address that? Maybe we should ask Alban about that.

**Mr A Maginness:** I will sit this one out.

**Mr Boylan:** We would get only one opinion. *[Laughter.]* We would get only one view, Chair.

**The Chairperson:** How would we address that?

**Ms MacHugh:** We have given some consideration to the practical outworkings of how a designated solicitor or barrister might be appointed —

**The Chairperson:** The same person right through.

**Ms MacHugh:** — or whether to have a panel, a list or a call-in and how that would overlay with the normal provisions in councils for legal advice. We can certainly see where some of the arguments are coming from, but it is unclear what the practical solution might be. Again, it is something —

**The Chairperson:** It is also about the cost of appointing someone to be there to adjudicate all the time.

**Ms MacHugh:** Yes. Is there a proposal that a panel be appointed through public appointments mechanisms? If so, in calling off, could that decision also be challenged as it is a certain solicitor? We will have to raise that with the Minister as clear concerns have been raised. However, at this stage, it is hard to see a practical outworking for it as an alternative to just allowing a council to determine where it seeks its legal advice.

**The Chairperson:** Wherever you go, if someone wants to challenge it, it will be challenged. Shall we move on from this clause, members?

**Mr Elliott:** Chair, NILGA made a suggestion that I thought was quite good. It was that there would be a panel that could give advice. I am not sure how a panel would be challengeable if it was appointed through the Judicial Appointments Commission or whoever. Anything is challengeable, I accept that, but I am not sure how that would leave you more open to challenge.

**Ms MacHugh:** It may not leave you more open to challenge, but it would certainly be an additional layer and an additional cost. Also, where would that panel sit? Would it be part of the legal process or a separate body set up to provide dedicated legal advice to local government? That leads into the wider debate on shared services and whether this is something that local government would like to consider setting up for itself. All of those issues would need to be worked through, particularly the policy intent and the practical outworking.

**Mr Murphy:** I think that it also needs to be considered in the context that the role envisaged for the solicitor or barrister is to confirm whether the councillors who are requesting the reconsideration of a decision have articulated their case about the section of the community impacted on and the adverse impact. It is simply providing validation. The final decision will be for the council to take. The role of the solicitor or barrister is not to provide a legal opinion on the recommendation or decision; it is simply to confirm that the call-in is valid. The matter then goes back to the council for a decision by qualified majority vote.

**Ms MacHugh:** It is not a legal judgement; it is a legal opinion or advice that is being sought.

**The Chairperson:** So it is about whether it satisfies the criterion of having the potential for adverse impact.

**Mr Boylan:** On that point, if it was found that the number of council call-ins featured over a number of years, a panel could sit over the 11-council model. There might be two or 20 call-ins over a given period, and a single panel would certainly save on cost. It is a consideration.

**The Chairperson:** We will have to stop soon, so I will summarise where we are. Will you come back to us on whether you will put to the Minister the option of a panel of solicitors or simply discuss that with him?

**Ms Broadway:** We need to get the Minister's views on that.

**Lord Morrow:** Put the Minister on the panel.

**The Chairperson:** We will not change the call-in percentage, but you will provide guidance, a list of criteria, under which a call-in could be justified.

**Ms Broadway:** If it becomes clear that the percentage is unworkable, the means are available by which it can be amended by subordinate legislation subject to draft affirmative procedure.

**Mr Boylan:** I want to clarify that I am not saying that we should set up a panel but that there needs to be a mechanism in the legislation should we need to do so in the future.

**Ms Broadway:** So it is not about setting one up now but considering an enabling power.

**Mr Elliott:** Chair, I have an important general point that may clarify some of the issues. Some time ago, it was confirmed that we would have sight of regulations or further legislation before approving this. Some of the questions that we have asked today may be answered in those regulations. I just wonder when we will get sight of them.

**Ms Broadway:** We can do one of two things: send you a copy of the latest draft of all of the legislation and guidance, which is quite a lengthy body of work; or, if it would be of benefit, provide you with a summary of each piece.

**Mr Elliott:** Chair, it might be useful to get a summary, particularly on the issues that we have detailed.

**Ms MacHugh:** We can do that, with the caveat that the drafts to date are premised on what is in the draft Bill. Should that change, we will have to amend.

**The Chairperson:** OK. Thank you very much indeed. We will see you again next Tuesday.