



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Local Government Bill: Informal Clause-by-  
clause Consideration

4 February 2014

# NORTHERN IRELAND ASSEMBLY

## Committee for the Environment

### Local Government Bill: Informal Clause-by-clause Consideration

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

Ms Anna Lo (Chairperson)  
Mrs Pam Cameron (Deputy Chairperson)  
Mr Cathal Boylan  
Mr Colum Eastwood  
Mr Tom Elliott  
Mr Alban Maginness  
Mr Ian McCrea  
Mr Barry McElduff  
Mr Ian Milne  
Lord Morrow  
Mr Peter Weir

**Witnesses:**

Ms Éilís Haughey	Bill Clerk
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, John, Mylene and Julie. It is good to see you all. I will briefly remind you of the issues that have been raised on each clause. At the previous meeting, Cathal suggested that, unless specific issues had been raised about the clauses, I should just jump over them and go directly to those that stakeholders raised concerns about. I reiterate that this is only the initial consideration of the clauses to establish whether we have all the information that we need, whether we think that clauses may need to be amended or whether we require any further information from the Department.

I remind members that, in the previous session, we finished at clause 45. So, we are going to start with clause 46. We did very well last time. In one session, we covered 45 clauses, so we hope to be quite speedy today, but, obviously, speed is not the main thing, and we need to answer all members' questions.

There were no concerns from stakeholders on clause 46, so we will move on to clause 47, which deals with access to agenda and connected reports. The clause makes provision for public access to meetings of councils and to the agenda and connected reports on issues that are to be discussed at a council meeting. There are some issues from stakeholders about clause 47. You can refer to Sheila's table. I will just read them out. There were trade union concerns that the provision may be used to

circumvent employment obligations; others were concerned that, for practical reasons, the joint committee should be exempt from this; and the trade union said that, under clause 47(1), minutes should be published on the website. Linda or Julie, could you respond to those concerns, please?

**Ms Linda MacHugh (Department of the Environment):** Clause 47 is trying to strike a balance between transparency, which is part of the premise of the Bill, and data protection issues, which would kick in if discussions were of a confidential matter or related to personal circumstances. It is important that those are maintained. So, we do not believe that what is proposed in clause 47 would trump the other issues that councils would use to determine whether a meeting was open or whether the report of a meeting was in the public domain. We said at the previous meeting that all the issues around transparency and openness in councils are driven by freedom of information on the one hand, and by data protection on the other. If data protection issues pertain, clearly the meeting would not be in the public domain.

**The Chairperson:** What about the suggestion, which I think I mentioned the previous time, about recording council meetings as a matter of reference? Is that going too far?

**Mr John Murphy (Department of the Environment):** I think that it is a matter for the individual councils to determine how far they want to go on that. The legislation provides a framework for what should be open to inspection by the public. If an individual council wants to go for recorded meetings or to go as far as Belfast has gone and stream meetings on the web, that is a matter for the individual council.

**The Chairperson:** If it is not in the Bill, however, councils do not have to do it.

Do members have any questions? No. Are you happy with the explanation?

*Members indicated assent.*

**The Chairperson:** We will move on to clause 48, which deals with the inspection of minutes and other documents after meetings. The clause makes provision for public access to meetings of councils and the agenda and connected reports on issues that are to be discussed at a council meeting. Issues that stakeholders raised include the logistical problems for councils in maintaining hard copies, meaning, therefore, that electronic copies may be adequate.

**Mr Murphy:** I think, Madam Chair, that we are not necessarily specifying the method of storage. We are saying that the council must have those papers available for inspection for a specified period after the meeting. If a council was to move to holding a physical record for, say, a year, but then moved to electronic means, that is a matter for the council, provided that it can then access that information if someone comes along later wanting to inspect the papers.

**The Chairperson:** That is fair enough.

**Mr Weir:** I suspect that it may be the case that, as for a number of things that have been mentioned, it is a question not of changing legislation but of getting a bit more clarification. I wonder whether the intention for some of those issues is that, at some stage, the Department will give some guidance. What you said is fair enough, but I think that the clarity of having that in writing may be helpful.

**Mr Murphy:** That is certainly something that we could consider putting out.

**Mr Eastwood:** What happens to the minutes after the six-year stipulation?

**Mr Murphy:** Again, it would be a matter for the council whether it wants to continue holding those or to destroy them. If an issue has not been raised within the six-year period, you can move on. That covers almost a term and a half of a council.

**Mr Eastwood:** I am not so concerned with issues that might be raised. I think that six years is probably adequate for that. I am thinking historically, and access to those records could be useful, rather than being —

**Ms MacHugh:** If they are seen to be a public record, I suppose that there is always the option of putting them into the Public Record Office of Northern Ireland. That is possibly the best place for them.

**Mr Weir:** I presume that the six years was chosen because that is the period in which any legal action for negligence could be taken. The statute of limitations could have some relevance in that regard.

**The Chairperson:** They will not be destroyed. If someone wants to find them, they can be found in the Public Record Office.

**Ms MacHugh:** If, after six years, the council determined that it did not wish to maintain or hold the records physically itself, there would be the option of passing them to the Public Record Office.

**The Chairperson:** Does that satisfy you?

**Mr Eastwood:** I would like to see them held somewhere. I think that it makes a lot of sense if historians looking back can see them.

**The Chairperson:** Are you happy with that, Colum?

There are no responses from stakeholders to clause 49.

We will move on to clause 50, which relates to applications to committees and subcommittees. It makes provision for public access to meetings of councils and to the agenda and connected reports on issues to be discussed at a meeting of the council. The issue raised is about concerns that were expressed at the application of public access to subcommittees as well as to committees.

**Mr Murphy:** That is coming from the perspective of trying to provide transparency across the whole decision-making process. A council can arrange for a committee or a subcommittee to discharge a function, and, if a subcommittee is part of the council's decision-making process, it would be appropriate for those records to be open to inspection, because they fall under part of the record of how a council eventually arrives at the decision. Equally, the meeting should be open to the public, unless the subcommittee is discussing confidential or excepted matters.

**The Chairperson:** That could be in closed session.

**Mr Murphy:** Yes.

**The Chairperson:** Are members content with that? I know that a lot of the issues that are raised at those meetings could be fairly informal, and, if a straitjacket were put on the councils to say that the minutes will be published, there may not be such a flow of expression.

**Mr Weir:** It depends on the freedom of manoeuvre that there is in councils. At times, there is merit in not necessarily having some discussions in the public domain so that people can be very full and free in what they say. To look at this through the semantics of it, the only issue is that, if you straitjacket committees and subcommittees, I suspect that that discussion will simply happen outside those committees. So, from a practical point of view, how massively further forward would you be? All those things may be immaterial. It may be a conversation in a corridor or whatever, or it may have a slightly more formalised structure. I think that, with the best will in the world, people will always find ways to get around that. As has been seen in various councils at times, there have been issues because there was press coverage or whatever. Something stupid may have been said, not necessarily by a representative of the council —

**The Chairperson:** No, never.

**Mr Weir:** I will give an example that may not necessarily be a serious suggestion. For example, I can think of one council that was looking at public suggestions for a play park, and a member of the public suggested — facetiously, I suspect — that it should be called the 'Michael Stone Play Park'. That was a facetious comment, which, I suspect, none of the councillors took seriously, yet it was then reported that that council was seriously considering giving that park that name. You get a range of that type of thing where there can be misrepresentation. Whether it specifically excludes subcommittees or

whether it could be done by informal arrangements, I suspect that there will be ways around it, no matter what is in the legislation.

**The Chairperson:** With the new councils, we want to be seen to be transparent and accountable. If you say that you do not want to publish minutes of subcommittees, you will not get the public's confidence —

**Mr Weir:** There may be a distinction with the publication of minutes that reflect decisions that have been taken, but there may be a slightly separate emphasis on simply having them completely open. Everybody could misrepresent what was said on that occasion. That is where there is a little bit of distinction in it, to be honest.

**The Chairperson:** Do members have any other queries? Are members content?

*Members indicated assent.*

**The Chairperson:** We will move on. The next clause is clause 51. There were no adverse views, but guidance and clarification were asked for.

There is new information on clause 51. This clause concerns additional rights of access to documents for members of councils. It provides that, subject to specific exclusions, any council document relating to any business that is to be discussed at a meeting of the council, committee or subcommittee is to be open to inspection by any member of the council. The Examiner of Statutory Rules suggested that, under clause 51(5), powers should be subject to draft affirmative, not negative, resolution. We need an amendment to that. Are members content?

**Mr Elliott:** Clause 51(2) states:

*"Subsection (1) does not require the document to be open to inspection if it appears to the clerk of the council that it discloses exempt information."*

Where is the definition of the exempt information? I am sure that it is in here somewhere.

**Mr Murphy:** It is in part 1 of schedule 8.

**The Chairperson:** OK. We will move on to clause 54(2). The Examiner of Statutory Rules suggested the same and said that the power should be subject to draft affirmative, not negative, resolution. Are members content?

*Members indicated assent.*

**The Chairperson:** There were no comments from anyone about clause 55. We will move on to clause 56, which concerns the code of conduct. The clause provides for the Department to issue the Northern Ireland code of conduct for councillors. There were a number of issues. The first is the need for supplementary guidance to cover elected representatives on public bodies. In clause 56(1), there is a need for a code to address the relationship between staff and councillors, and there should be a duty on the Department to issue the code. The word "must" should be used, not just the word "may".

A suggested amendment to clause 56(3) is that the principles should be underpinned by fairness and equality, taking account of the categories listed in section 75(1) of the Northern Ireland Act 1998. I know that the Committee on the Administration of Justice (CAJ) mentioned community relations. Maybe that could also be clarified in clause 56(3).

**Mr Weir:** The only point that occurs to me about that is that I thought that all legislation had to be underpinned by compatibility with section 75. I appreciate what is being said, but, apart from anything else, if there was direct reference in the Bill to section 75, is there not a danger that it could be interpreted that section 75 did not apply elsewhere? If you make something explicit in one part, and there is no reference to it elsewhere, that can sometimes give the impression that it is relevant only to that particular part.

**Ms Julie Broadway (Department of the Environment):** The duty is already there.

**The Chairperson:** The general rule is that you do not like to make reference to other legislation.

Are members content with that explanation?

**Ms MacHugh:** On the code of conduct for staff and the code of conduct for councillors, local government reform is looking at the code of conduct for staff. Clearly there is a need for a further piece of work to bridge the two codes, because there will be cross-referencing of how staff relate to councillors and vice versa. So, we intend to bring together a joint group of representatives from local government, including elected members and representatives from the forum representing employees, to look at the protocol that will link the two codes.

**The Chairperson:** That is important, particularly, I think, with the planning function coming on board. You have the professional planners on the one side, then you have councillors who are maybe used to being lobbied by the business sector or residents. So, that is being developed.

**Ms MacHugh:** A link between the two codes will be developed.

**The Chairperson:** Is that going to go out for consultation?

**Ms MacHugh:** I would imagine so. Certainly, there is a trade union consultation for anything that is agreed through the forum. However, it will also be part of the formal consultation on the code itself.

**The Chairperson:** Are there any questions? As members are content with the officials' explanation, we will move on.

It is suggested that clause 56(1) states that there should be a duty on the Department to issue the code. It is suggested not to use the word "may" but the word "must".

**Ms Broadway:** The thing is that we are going to issue a code.

**The Chairperson:** You are going to issue it.

**Mr Murphy:** That is right.

**Ms Broadway:** It definitely will be issued.

**Mr Weir:** Chair, it is a very minor drafting point, but possibly the appropriate word is "shall" rather than "must".

**The Chairperson:** "Shall" is the same level as "must", is that right? Perhaps the Bill Clerk could help us with that.

**Ms Éilis Haughey (Bill Clerk):** Chair, as you will remember from other Bills, the "may", "shall" or "must" issue comes up frequently. Our advice is that the words "shall" and "must" have the same effect. Changing "may" to "must" does not necessarily always achieve the intended effect. It can, in certain circumstances, create a situation where, once the action is taken for the first time, the duty is thereby achieved and the Department has met the requirement. Therefore, changing it to "must" would not have the ongoing effect that members might wish it to. So, whether such a change would have the desired effect depends on the particular circumstances.

**The Chairperson:** So, which is better if we are saying that they really should do it? Is "shall" the better word?

**Ms Haughey:** It depends on the circumstances. If the Committee wants to look into that or is not satisfied with the Department's explanation, I can certainly look into a Committee amendment. However, I am alerting the Committee to the fact that it does not always achieve the effect that you may wish.

**The Chairperson:** When you use the word "must".

**Mr Weir:** No. I think that she is saying that, whether it is "shall" or "must", it does not necessarily have the effect that is implied, because it requires it as a one-off gesture and does not necessarily mean that it is an ongoing issue. I think that that is what Éilis is saying.

**Ms Haughey:** It may be that *[Inaudible.]*

**Mr Eastwood:** What if they promise to do it? *[Laughter.]*

**The Chairperson:** It is in the Hansard report now, so you have to do it.

**Ms Broadway:** Can we give an undertaking that we will do it?

**The Chairperson:** You shall, you will and you can. *[Laughter.]*

**Mr Boylan:** We will take Julie's word for it. *[Laughter.]*

**The Chairperson:** We will move on. Are there no more questions? OK.

Next is clause 57 on guidance. The clause states that the Northern Ireland Commissioner for Complaints may issue and publish any guidance on matters relating to the conduct of councillors. An issue was raised that the guidance should be issued for consultation, particularly the elements relating to the planning function. I think that the commissioner has said that he will publish guidance that will go out for consultation. Are members content?

*Members indicated assent.*

**The Chairperson:** Next is clause 58 on investigations. The clause provides that the purpose of any investigation is to determine whether there is evidence of any failure to comply with the code, whether action needs to be taken in respect of the matters under investigation and whether an adjudication should be made by the commissioner on the matter under investigation.

A number of issues have been raised. The first comment is that it is inappropriate for the commissioner to deal with a complaint from or about a councillor in respect of a staff member. The second comment is that a provision should be inserted to include a review of the role of the commissioner. There is another comment that there should be a preliminary internal investigation of a complaint, and a further comment states that there should be a mechanism to deal with minor complaints and that, under clause 58(1), the word "may" should be replaced with "must". Will the officials comment, please?

**Ms Broadway:** The first point is about staff: the commissioner will have the power only to investigate alleged breaches under the code of conduct, so the issue would not arise.

**The Chairperson:** It is for anyone, whether a member of staff or a member of the public.

**Ms MacHugh:** If it is a staffing matter, it would be dealt with through the normal employment regulations —

**The Chairperson:** Grievance procedures?

**Ms MacHugh:** Grievance procedures and complaints procedures from staff.

**Ms Broadway:** At the Second Stage debate, the Minister said that he was going to review the ethical standards framework in three or four years' time, so he has given an undertaking that a review will be carried out. As for dealing with minor complaints, we have been looking at what is happening in other jurisdictions, and we need to discuss an amendment with the Minister. We will, in fact, discuss these issues with the Minister this afternoon. We could bring forward an amendment to address dealing with minor complaints, but we may be able to say more after this afternoon's meeting.

In Wales, the commissioner is able to refer matters back for local resolution so that they do not have to reach the stage of an investigation. If the commissioner thinks that an issue should be dealt with in-house in a council, he or she can refer it back to a council to be dealt with or can try to mediate before

reaching the stage of an investigation. We have been looking at that and want to take the Minister's view on it.

**The Chairperson:** I think that that makes sense. If everyone had to have a formal investigation, it would be a waste of time.

Are members content?

*Members indicated assent.*

**The Chairperson:** What about "may" and "must"? Will we just leave that alone?

**Mr Boylan:** We may do. *[Laughter.]*

**The Chairperson:** I may. We will move on to clause 59, which deals with investigations and further provisions. The clause provides that the person who is the subject of an investigation should be given the opportunity to comment on the allegation put to the commissioner. Only one comment was made by stakeholders on the clause, which is that the guidance issued should incorporate the full details of the investigation procedure. I am sure that that will be done.

**Ms Broadway:** Yes.

**The Chairperson:** Are members content?

*Members indicated assent.*

**The Chairperson:** We now move on to clause 60 on reports, etc. The clause provides for the commissioner to produce a report on the findings of an investigation and, when the commissioner considers it necessary in the public interest, to produce an interim report prior to the completion of an investigation.

Two issues were raised by stakeholders. The first is about clause 60(1)(a) and it is that the commissioner should be compelled to issue a report. The next comment relates to clause 60(5) and what sanctions will be introduced for bogus allegations.

**Ms Broadway:** If a councillor makes a bogus allegation against another councillor, it would be a breach of the code. The Bill does not deal with situations in which a member of the public or someone else makes a bogus allegation. I am not sure —

**Lord Morrow:** Councillors make allegations about their colleagues every day of the week. *[Laughter.]*

**The Chairperson:** We are talking about formal bogus complaints.

**Ms Broadway:** On the issue of whether the commissioner should be compelled to issue a report in all cases, it may be that the commissioner, having carried out an initial review of a case, thinks that there is no need to carry out an investigation. If you were to report on that, it would mean that it would all be in the public domain, even if there was no evidence of a breach.

**Mr Elliott:** I think that NILGA raised that point. Its concern was that, if a bogus claim were made against a councillor close to election time, it could have a detrimental effect on a councillor's ability to get re-elected, and the report or response may not come out until after the election, by which time it would be too late.

**Ms MacHugh:** A lot will depend on whether the initial allegation was already in the public domain. If it was not, and it was published, that would be the way that the public would know that an allegation was made even though it was bogus. However, if a very public allegation is made, and the commissioner found that it was bogus, that should also be published.

**Mr Weir:** If an allegation is completely bogus, it may have been made either because the person who made it is mad or because the complaint is malicious in nature. If it is malicious, it is more likely to be



in the public domain, as perhaps its purpose is to try and get a pound of flesh out of the councillor and to damage his or her reputation, as Tom said, ahead of an election or that sort of thing.

**Ms Mylene Ferguson (Department of the Environment):** We are trying to address that issue by giving the commissioner the flexibility to instigate investigations. That would mean that it would not just be by written complaint and, if something was put into the public domain, the commissioner could take action. That in itself could be a deterrent, and if another councillor made the complaint, he or she would be drawn in under the code of conduct and could be dealt with. It would provide that flexibility so that the commissioner could take action if there was something in the public domain, even though there may not have been a written complaint about it. We have to discuss that with the Minister, but that would address that issue to some extent.

**Ms Broadway:** On Mr Elliott's point, the evidence in Wales is that, coming up to an election, the number of cases almost doubles.

**The Chairperson:** How do they deal with it? You would need to deal with it very quickly.

**Ms Broadway:** Yes, but if someone makes an allegation, it has to be considered. The number almost doubles.

**The Chairperson:** There needs to be a list of admissible criteria to decide whether a complaint can be dealt with.

**Mr Eastwood:** What happens here is that someone makes a complaint, and whether or not it is admissible is not decided until there is a preliminary investigation by the commissioner. Someone makes a complaint and then goes to Radio Ulster or whatever and says that they have made a complaint. If that happens a couple of weeks from an election, there is no way that the person who has been complained against will get his or her name cleared before the election. That could have an adverse effect on the person's electoral chances. I brought that up when Tom Frawley was here. Maybe there should be a moratorium for some time before any election, so that people would not be allowed to complain during that period, but, of course, the complaint could stand after that. However, something is needed to protect people because it happens all the time. We will see it again before the next election, and we will probably see it after this summer because we saw a lot of complaints after last summer. The process is being used as a political football. The vast majority of complaints are thrown out or are not even admissible. Something needs to be done to protect people. It is so easy to throw mud.

**Mr Weir:** Colum's point is quite sensible. It is almost like a transfer window in reverse. If there was a moratorium for three or six months prior to elections, so that no complaint could be lodged during that period, however —

**The Chairperson:** Six months is a long time.

**Mr Weir:** I am just talking about timescales —

**The Chairperson:** Four weeks, perhaps, before an election?

**Mr Weir:** To be perfectly honest, if I were looking to make a malicious complaint to damage a candidate, I would not be put off by a period of only four weeks. You need some time — two or three months or whatever. Four weeks is too short, and six months may be right. Complaints could not be lodged during that period, but there is then a provision that, after an election, a complaint may be lodged relating to that period. A couple of amendments could probably cover that relatively easily. Colum is right. The problem is that people get on a radio programme, go to the local papers or whatever, and by the time the issue is properly investigated, the election is out of the way. It may be that that is the nature of the thing.

**The Chairperson:** Yes, and mud sticks. Are members content for the departmental officials to go away and look at an amendment?

**Ms Broadway:** Let us go and talk to the commissioner first and then come back to you.

**The Chairperson:** OK.

**Ms MacHugh:** I absolutely understand the concerns. However, I do not think that a moratorium on lodging complaints with the commissioner would necessarily stop a complaint being made in the public domain or directly to the press. It would just prevent —

**Mr Eastwood:** No, but there is a difference. In the public mind, once you make a complaint to the commissioner or some public body, it seems to add a bit more weight in people's minds. You can complain about your colleagues all the time; that is grand and is part of the cut and thrust of public life. However, if you do it —

**Mr Weir:** That is right. It gives newspapers a certain leeway in the way in which they can cover the matter. They could write: "Colum Eastwood" or "Peter Weir, who is currently under investigation" —

**Mr Eastwood:** Exactly.

**Mr Weir:** — irrespective of the fact that there is no merit at all in the allegation. I think that, with the best will in the world, some media organisations are much more likely to cover something that is an official complaint. If a newspaper simply gets a phone call from a member of the public saying, "I want to give off about Councillor So-and-so", there will be more reticence about jumping in to cover the story. This issue needs to be worked through.

**Mr Eastwood:** As long as there is a protection for complainants that their complaint will be considered after an election. However, the clock should not start until after an election.

**Ms Ferguson:** There are two issues here. The commissioner is aware that this sort of thing will happen coming up to an election. Obviously, the code will not be in place in time for this election, so nothing can be done for it. However, investigations will be done in private, so people should not know that a complaint has been made.

**Mr Weir:** Except —

**Mr Eastwood:** From the experience of everybody in this room, we know that that is exactly what happens. The BBC knows that it is reporting the facts, so it is difficult to argue with it.

**The Chairperson:** The other side of the coin is that you can be criticised for having a gagging order. There may be really pertinent issues, but when you complain and are told that you are not allowed to bring it up before an election, people will say that this issue is so serious that it will influence voters' minds. Where do you draw the line?

**Ms Broadway:** We will raise that with the Minister this afternoon.

**The Chairperson:** Are Members content?

*Members indicated assent.*

**The Chairperson:** Colum, you have the Minister's ear, and you can complain. *[Laughter.]*

**Mr Weir:** Just do not listen to him for three months.

**The Chairperson:** Clause 61 is next. No comments were received, so we will go on to clause 62 on a decision following a report. The clause allows for the commissioner to adjudicate on any matter by deciding whether a person has failed to comply with the code, and it sets out to whom this information must be sent. Only one issue was raised, which is that there is no right of appeal against the commissioner's adjudication, other than judicial review. We have thrashed this out on a number of occasions. Over to you, Julie.

**Ms Broadway:** As I said, we will meet the Minister this afternoon. We have put the cases for and against having a right of appeal and what the commissioner said about judicial reviews, so, hopefully this afternoon, we will have an idea of the way forward.

**The Chairperson:** Are you also looking at other jurisdictions?

**Ms Broadway:** Yes.

**Mr Weir:** That is fair enough, Chair. A number of people raised that issue with us in their submissions, but the summary of responses refers only to Belfast City Council and the statutory transition committee in mid-Ulster. It may be that it was raised at the informal meeting with NILGA, but I know that other councils, including the one that I used to belong to, raised the issue. I will strongly indicate to the Department that the right of appeal needs to be looked at seriously. I suspect that the preferred route would be for the Department to come up with an appeal mechanism other than judicial review. If it does not, I suspect that some of us may put down an amendment to that provision. It is similar to the issue that Colum raised earlier: you could have a situation in which, if the only right is some form of appeal by judicial review, someone could be unfairly accused and convicted. They may be able to overturn a judicial review, although the grounds are quite narrow. However, that could be two or three years down the line, in which case they will have lost their seat and their reputation is mud. Some mechanism for a right of appeal seems to afford a reasonable level of justice. That needs to be given a bit of thought, and there seems to be a feeling in the sector that that should be the case. I suppose that the only issue is what route that takes, and nobody has a particularly clear-cut idea of what that would be.

**The Chairperson:** Other jurisdictions seem to divide up investigation and adjudication, slightly removing the sanctions from the sanctions-giving body.

**Ms Broadway:** All the other jurisdictions deal with the matter in completely different ways. In some, there is a right of appeal, and in others, it is judicial review. In England, it is by judicial review. In Wales, if it is a decision against the standards committee of a council, it goes to the Adjudication Panel for Wales. However, if it is a decision against the adjudication panel, it goes to an appeal in the High Court. In Scotland, it is an appeal to the Sheriff Court. They all deal with the issue in a slightly different way, and we have put all that to the Minister.

**The Chairperson:** That is similar to judicial review, and it is sent to a court.

**Ms Broadway:** In England, it is judicial review, and in others, it is an appeal.

**Mr Weir:** That could be an appeal either on merits or levels of sanction. If it is restricted to judicial review, it is, broadly speaking, on the basis of the procedural side of things. Even if something is ruled against you, it may be that, procedurally, every step has been followed but that they have come to the wrong verdict. There is also the issue of reasonableness, and rarely are you able to show that an appeal verdict is so unreasonable that essentially no right-thinking person would have come to that verdict. There may even be circumstances in which additional information makes it very clear that somebody is innocent.

**The Chairperson:** The commissioner said that it is not only about procedure. It can be to do with the reasonableness of the sanction or its severity.

**Mr Weir:** Reasonableness is a pretty high hurdle, because it is on the basis that no reasonable person could have come to that verdict. That is an extremely high threshold to overcome, which is different from an appeal on the basis of the merits of the level of sanction.

**The Chairperson:** You are going to talk to the Minister about that. Peter is right, and there have been quite a lot of comments on the same issue. It is a kind of natural justice. You want a mechanism whereby there can be possibilities and opportunities for appeal.

Next is clause 63 on decisions on interim reports. The only comment is on the need for guidance. Will there be guidance on the procedure?

**Ms Ferguson:** The commissioner has the power to issue guidance on all aspects of the procedure, and, when he sees fit, he will do so for any clarification that is required to provide transparency for members.

**The Chairperson:** There will be a whole package of consultation on the guidance.

**Ms MacHugh:** The Commissioner for Complaints has also been proactive in offering his support and that of his office for capacity building. That will cover the code and will also make councillors absolutely aware of the procedures that fall out of the code.

**Ms Broadway:** NILGA is holding an event about the code of conduct in early March. I think that the commissioner is going to participate in that.

**The Chairperson:** Obviously, councillors will also need to be trained on that.

Stakeholders made no comments on clause 64. There was just one comment on clause 65. The clause provides for the clerk of the council to establish and maintain a register of the interests of the councillors, and for the council to ensure that the register is available for public inspection. One comment, under clause 65(1), is that a declaration of interest should be incorporated into the code of conduct.

**Ms Broadway:** The pre-consultation on the code of conduct finished on 21 January, and we are now going through it to produce a fresh draft to go out to full consultation. Those issues have been raised, and we are looking at them.

**The Chairperson:** Sorry, there is one more comment under clause 65(4)(a), which is that it is a waste of money to advertise in newspapers and that the website should be sufficient. Some people do not use websites, so it is the kind of thing that needs to be issued in newspapers as well. Are members content?

**Mr Weir:** Maybe this sounds hostile to newspapers, but I am not sure that that is an unreasonable point. To be honest, not many people trawl through the small print of public notices in newspapers. It strikes me, from the point of view of registration, that, as I understand it, in the Assembly, the publication is essentially on the Assembly website. Clearly, because there is a degree of public interest, it will be republished from time to time because journalists might pick up on it and run a story, and that is perfectly grand, but I do not think that the Assembly has a requirement, for example. Does it?

**The Chairperson:** When we send out requests for consultations, we advertise in three newspapers.

**Mr Weir:** I understand that. Consultation is different to the registration of Members' interests. Basically, although I would not die in a ditch over the issue, it seems to me that the principle of the publication should be on the council's website in the same way that, if somebody is genuinely looking up an MLA, they will go to the Assembly website; they will not go trawling through newspapers to get that, with the best will in the world.

**Mr Eastwood:** It is a bigger argument than just this, though, because there are so many things that councils put in local papers, and the same argument could be made that maybe they should not.

**Lord Morrow:** By the same token, there are probably a whole lot of things they put in newspapers that they should not be put in.

**Mr Eastwood:** That is what I am saying.

**Mr Weir:** Increasingly, as people look to cut costs on things that are not seen to be 100% relevant —

**Mr Eastwood:** All I am suggesting is that it is much bigger than this particular point.

**Mr Weir:** I understand.

**The Chairperson:** I wonder whether they are only required to put a couple of lines in the local papers to say that the declaration of interest is on their website so that people can go and refer to it, rather than have a whole page listing members' interests.

**Ms MacHugh:** One of the drivers for that is to take account of the fact that there is a minority of the community who are still not connected to the internet, do not own a computer and are not computer literate.

**The Chairperson:** Yes. You have to account for everyone in the public.

**Mr Boylan:** It is all about rural broadband.

**Mr Weir:** There is a pigeon going to west Tyrone as we speak.

**The Chairperson:** OK, we will move on. Are members content?

*Members indicated assent.*

**The Chairperson:** The next clause is 66, and there is no comment on that, so we will move on to clause 67, which is on the expenditure of the commissioner under this Act. This clause provides for the commissioner to apportion the estimated amount of the expenses of the commissioner's office in relation to the ethical standards framework between all the councils in Northern Ireland. Councils must pay the apportioned amount to the commissioner at such time and in such manner as the commissioner directs. A comment regarding subsection 3 is that there is a need to consider what method should be used to apportion the commissioner's fees. I think that that was answered by the commissioner, but can you refresh members on this, please?

**Ms MacHugh:** The commissioner has an issue with billing councils directly and has asked the Department whether there is a way that we can look at top-slicing from a grant that we would normally give to councils. This happens already for certain specified bodies. There are a couple of issues here. First, if we determine a methodology for doing this, it will still be local government that is paying. It will not be central government, because this is local government's money anyway.

**The Chairperson:** It is a service for local government.

**Ms MacHugh:** Yes. We are deducting that before we send it out, and I think that it is important to stress that. The policy that was agreed was that this is a new service, it is for local government, and local government should pay for it. No matter how the money gets to the commissioner, it will be local government that is paying for it. We are looking at various options around doing this, and we need to put a proposal to the Minister, to the local government sector and to the commissioner, because they need to be in agreement with this. We will work through the methodologies and the technical issues around how we get the money to the commissioner and agree how we apportion the costs.

**The Chairperson:** Administratively, it is probably more efficient to top-slice it and deduct it from the grant.

**Ms MacHugh:** We may need to put forward an amendment to the Bill to make sure that that is doable and that we can accommodate that.

**The Chairperson:** You are consulting with NILGA and others on this.

**Ms Broadway:** The finance working group is working through the issues of how this should be apportioned.

**The Chairperson:** There is still a lot of work to be done on various issues, isn't there?

**Ms Broadway:** Yes.

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

*Members indicated assent.*

**The Chairperson:** We will obviously follow that up when you report back to us on progress.

The next clause is clause 68, which deals with interpretation. This provides an interpretation of Part 9. One comment: clarification is required on the position of a councillor who is disqualified from the council and its committees and subcommittees, but who represents that council on outside bodies. Am I right? What is your response to that?

**Ms Ferguson:** A councillor cannot act if they are disqualified. If a councillor is a representative of their council on an outside body, that councillor cannot represent their council, by the very fact that they are disqualified. Suspension is a different issue. If that councillor was suspended, the council that appointed the councillor to the outside body must consider whether that appointment should still stand, taking into account the details of the suspension and any effect that that decision may have on public confidence.

**The Chairperson:** It would be very odd if someone was suspended or disqualified but continued to sit on a public body as a councillor.

**Mr Weir:** Just to clarify, I can understand that there is a clear argument if you are appointed to a body by, say, Belfast City Council, in your role as a councillor, and subsequently removed as a councillor, you are automatically out of it. Does the same apply if someone had obtained that role, not by being appointed by a council, but through their capacity of being a councillor? I will give an example. I am not sure about the exact technical bit, but when the library authority was set up, it was on the basis that the Minister would appoint a certain number of councillors. Whoever is appointed to those positions is the Minister's choice. Those people are not representing their councils, but the only reason they are put on to that body is because they are councillors. Does this cover that situation, or does there need to be some tweaking to ensure that that is clarified?

**Ms Ferguson:** If a councillor is covered by the councillor's code, then any sanction that has been warranted out — if he is on an outside body, he still must comply with the code. That is a distinction.

**Mr Weir:** No, it is a separate point. It is whether that person can continue to serve if the reason why they are on a particular body is because they are a councillor. What is the impact on their membership? If you take the likes of the library authority — there are a few other examples as well —

**Ms MacHugh:** The Local Government Staff Commission for example.

**Mr Weir:** Yes; those types of things. The person is specifically appointed because they are a councillor, but they may not be appointed as a representative of their council.

**Ms Broadway:** Even if they are not representing their council, they are still councillors. If they are disqualified from being a councillor —

**Mr Weir:** I understand that. I just wonder whether it may be worth adding something to ensure that what is implicit is clear-cut. I can see a situation where, at some point in the future when something happens, you then get into some legal row — particularly as a number of those outside body posts are things that are remunerated, and consequently —

**Mr Eastwood:** You would be dragging them off.

**Mr Weir:** Yes, on that side of things.

**Ms Broadway:** We will have a look at that.

**The Chairperson:** Can that be clarified by guidance, or do you need to table an amendment?

**Ms Broadway:** We will look at that to see whether we need to table an amendment or whether guidance would be —

**Mr Weir:** There are four subsections in the clause now, and it might be that a fifth subsection could simply add that. An extra line could cover it.

**The Chairperson:** OK. Clause 69 deals with community planning. This clause places a duty on councils to initiate, maintain, facilitate and participate in community planning for their area. It also places a duty on community planning partners to participate in community planning and assist the council in the discharge of its duty. Quite a lot of issues were raised. I will read them all out, and John is going to answer them. Is that right, John?

**Mr Murphy:** Yes, Madam Chair.

**The Chairperson:** OK. The first one is about the importance of guidance and the establishment of a regional support structure. The next one is that the clause should include references throughout to community and voluntary organisations' participation, and specify categories, names and, perhaps, section 75 groups. Specifically on subsection (2)(a), which is the need to link objectives with PFG targets, there is a need for a definition of "well-being". At 69(2)(a)(iii), "environmental" should include the creation of green spaces and wild spaces. At clause 69(2)(b), there is a need for a definition of "sustainable development", and that used by the Brundtland commission is suggested. We have all of this again from the Marine Bill. Clause 69(2)(c) should include a reference to children and young people's strategic partnership, and an amendment is needed to emphasise improvement in service provision, for example, with wording like:

*"Identify actions to be performed and functions to be exercised including those related to the planning, provision and improvement of public services by the council and its community planning partners for the purpose of meeting the objectives identified under paragraphs (a) and (b)".*

I think that was put forward by Community Places. At clause 69(2)(c), insert "and agree" after "identify". The insertion of a new clause is suggested at clause 69(2)(d). The suggested wording is:

*"Positively plan for renewable and low carbon energy generation in order to improve the environmental, economic and social well-being of the district".*

Under clause 69(2)(d), a new clause is suggested:

*"and in co-operation" —*

**Lord Morrow:** Who suggested this?

**The Chairperson:** I think that it was Community Places. It is the umbrella organisation for the voluntary and community sector, particularly on community planning. Its suggested new clause at clause 69(2)(d) is:

*"and in co-operation and conjunction with community and voluntary bodies from the outset of the process".*

There is quite a lot, so I will stop there and let you respond to those.

**Mr Murphy:** I will do my best, Madam Chair. here is the intent and provision in the Bill for the Department to issue guidance. In developing that, we will be looking at experience in the other regions — Scotland and Wales — but also using the foundation programme that was launched at the end of last year, which councils are working their way through, to make sure that the guidance on those issues is specific to Northern Ireland.

**The Chairperson:** Are there many lessons that we can learn from Scotland and Wales?

**Mr Murphy:** That is what we are doing. Scotland has been doing this since before 2003. Wales has been doing it for a number of years, but under a slightly different guise. It has been doing it since 2009, when it tried to change the direction, as it were, and improve what it was doing. We need to be looking at that.

A lot of the issues that people are raising in terms of community planning and what the duty on councillors should cover are issues where we need to provide flexibility for councils to address if the issues are relevant within their district. That is why the Bill is crafted as it is. It provides that high-level framework. A lot of those issues around sustainability, green spaces, etc are matters that can be taken forward in guidance, which is maybe the more appropriate place, rather than putting them into the Bill. It takes community planning away from being a flexible tool for a council and its partners to deliver on the economic, environmental and social well-being of the district. Well-being is always regarded as the quality of life, because it is beyond the health issue. It is the whole panoply.

Another key one coming forward is community and voluntary sector involvement. The voluntary sector is mentioned later in this Part in respect of the council's engagement with the community. We have taken the view that it should be the community at large, rather than specific groups. It will be a matter for individual councils to decide how they want to engage with the community sector.

In the early stages of developing a plan, the council needs to work with its partners who are actually providing services or delivering functions in that council area, to work up what they consider to be the targets and objectives that they want to deliver, link that to their own plans in the early stages, and then take that out to the public. The guidance will point to engagement with the community at large and representative bodies as being an ongoing process. In developing the vision that will underpin a lot of this work, the council needs to be talking to the community. In many ways, this is recognising the role of elected representatives and councils in taking that forward.

**The Chairperson:** I take your point that you want flexibility and that you cannot have primary legislation naming every area or aspect. However, Community Places was quite strong in recommending that, at clause 69(2)(d), it should say on the face of the Bill that it has to be done in cooperative working with community and voluntary bodies, and without it they will be excluded.

**Mr Murphy:** I am not saying that they council would be excluded, necessarily, because —

**The Chairperson:** They might be.

**Mr Murphy:** They would be named in the statutory guidance, and a council would have to have very good reasons not to engage. As I say, in the early stages of the process to develop the plan, it is really about the public sector organisations that deliver the services and functions in the council area sitting down and working out what they can do to meet the vision for the council area. That can provide the link to the Programme for Government. In the initial stages, there may not be the degree of connectivity that people want. However, I think that you will start to see that over time. It is a case of making sure that the right people, namely the people who are really delivering public services, are at the table in the early days.

**The Chairperson:** The voluntary sector does provide services; that is the argument.

**Ms MacHugh:** Absolutely. However, take it back to the reason why local government reform is happening. It is happening to create strong local government that is flexible to local need. If, in the Bill, we end up with a long list of people who have to be around the table, and then you ask local councils to determine who else they want around the table, you could end up with 50 or 60 people trying to come up with a community plan. They would get nowhere fast because, by the time everybody has introduced themselves, the meeting is over.

**The Chairperson:** I have been there before. *[Laughter.]*

**Ms MacHugh:** It is about trying to make sure that the people who really have to be at the table are brought there through statute. In that case, it can be only statutory bodies that we name in a statutory Bill. The people who will be in the statutory legislation will be service providers — the Housing Executive, for example, is a likely candidate. We will also need to consult on the list of people who are named in subordinate legislation, but it is those sort of people who we envisage there. There is a feeling that it should be for local government to determine what other partners they need around their table to produce a community plan that will suit their individual local needs. I can understand the concerns of the voluntary and community sector, and there is undoubtedly a clear and strong role, but we start to get into difficulties when specific groups want to be named and enjoined in the actual legislation because, first, it is not technically possible and, secondly, you then might exclude others that other councils might want round the table, because it is those others that are more appropriate to their local circumstance. Again, it is trying to strike a balance between providing an effective framework and giving enough flexibility. We are trying to drive more decision-making down to a local level.

**Mr Eastwood:** Maybe I am missing it here, but I take your point; you do not want to be listening to everybody and trying to have a one size fits all. However, we went through a process with this in Derry where we had the One Plan; it took 18 months, and we had everybody involved. It is not easy, but it is important, because you need people in the room for them to be bought into a process. Maybe I have missed something else, but the suggested amendment is :

*"Insert new clause at 69 (2) (d) and in co-operation and conjunction with community and voluntary bodies from the outset of the process."*



That is hardly listing a lot of different bodies or groups. That is just saying community and voluntary bodies should be there. That is as broad as it is. That leaves it up to the individual council to decide which community and voluntary bodies suit their needs. I take your point that we do not want to be writing a long list, but I do not think that that is what this particular new clause would do. It just mentions the broad sectors.

**Mr Murphy:** That is an issue that we certainly anticipate addressing in the guidance: who, beyond the clear statutory partners who are delivering services, a council should consider in terms of engagement in developing that. One could anticipate that there would be different layers with regard to community planning. There may be thematic plans within the main community plan, so you will be involving different groups, and there may be area aspects to it. We totally value and recognise the need for the community and voluntary sector to be involved in the process. However, our intention is to cover that in the legislation to provide that flexibility for the councils.

**Mr Eastwood:** I still do not quite get what the problem would be. It is only saying "community and voluntary". It is not picking out names. I think that it would leave sufficient flexibility for councils to decide. It would write into the legislation that the community plan is not just going to be about statutory bodies, but that it is going to have a connection with the community organisations out there. There is something important about that.

**Ms MacHugh:** One concern that has been expressed several times to the Minister and to us is that, at times, the voluntary and community sector can be seen as a proxy for the community. I am not saying that the voluntary and community sector does not represent community interests, but, at times, it does not represent all community interests. I think that there is a need for councils to think about how they engage with the full community and also to think about how their elected members, as representatives of the community, feed into the community planning process alongside the voluntary and community sector.

**Mr Eastwood:** I agree with that. The representatives of the community are the councillors. That is my view. However, there are people who are working outside that who should be involved in some way. I do not really see the problem with saying that there should be a broad spectrum of community and voluntary.

**Mr Weir:** I take on board what Linda said. There is a reasonable level of flexibility for councils to determine the way that they want to do things. To some extent, I suppose that the structure of the community as a whole will vary from town to town and from area to area. If you are in the centre of Belfast, it will be a different kettle of fish to that in a rural small village somewhere. Again, on the broader level, how you define community and voluntary in that sense is an argument. For example, there are major issues in a lot of areas around town centres, where the focus would be on retailers. Now, do they represent a community interest or a business interest? It is certainly not a voluntary interest in that sense. In some areas, you will maybe get a community group that is very representative of the people on the ground. Others can act as a gatekeeper. What about the member of the public who goes out to work in the morning, does their work, comes home to their family, sits in front of the television and all the rest of it, and is not involved in any other organisations? To what extent are they represented?

I have no doubt that different councils and bodies may look at some of those issues in different ways. Arguably there is not an entirely right or wrong answer in connection with it. There has to be a degree of flexibility. Once you put particular things into legislation, you create certain levels of expectation, which may or may not be met in certain areas. I have a degree of faith in the general good common sense of people to provide their own solutions across different bits. What might work in Omagh will not necessarily work in Ballymena.

**The Chairperson:** OK, Peter. I have to cut you short. Cathal wants to come in. I am just mindful of the time.

**Mr Boylan:** I agree with Colum. The issue is that those groups are obviously concerned about *[Inaudible.]* They want to be part of the process. If you are saying that it does not need to go on the face of the Bill — that it goes in guidelines — to ensure that they are there, that is a different matter. We need certain clarification and a commitment to them being part of the process. That is how I see it.

**Ms Broadway:** The guidance will be statutory guidance. They will be named in the statutory guidance.

**The Chairperson:** That is just guidance, so it is voluntary.

**Ms MacHugh:** We are providing support at the moment, through Community Places, to work with councils and with clusters to identify how they are going to look at proper community engagement, either directly with the community or through voluntary and community sector organisations. There is no intent to exclude the voluntary and community sector — far from it. It is just trying to provide something that does not straitjacket councils. Some of the comments are very specific; groups want to be named in the Bill. We have to look at drawing a line there.

Mr Weir's comment about the business community is also valid. It is as much a part of the community planning process as the voluntary and community sector is.

**The Chairperson:** There are two other issues with clause 69. I am going to be very quick. Clause 69(3)(b) should include a reference to making adequate resources available within partners' financial plans. Clarification is required and guidance is needed in clause 69(5) as to how councils are to develop a link between land use plans and community plans. What is the timescale for that?

**Mr Murphy:** We are working with our colleagues in planning to develop how the two processes can be taken forward to ensure that there is the necessary alignment between land use planning and community planning. We have gone further than any other jurisdiction by providing a statutory link between community planning and land use planning. We are conscious of the need to ensure that there is connectivity.

It is difficult for the Bill to place a duty on the statutory bodies in terms of the resources and the commitment that they give. Those statutory bodies have their own accountability mechanisms to boards of directors and Ministers. The duty on them to commit will deliver what is necessary.

**The Chairperson:** OK. I think that we can understand that. I am afraid that we have to stop there to allow members to go to Question Time. Thank you very much.