



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Ministerial Briefing

6 February 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

Mr Durkan	Minister of the Environment
Mr Iain Greenway	Department of the Environment
Ms Linda MacHugh	Department of the Environment
Mr Paul Duffy	Driver and Vehicle Agency

The Chairperson: We begin our session with the Minister. At page 5, there is a secretariat cover note on the issues that we will be talking to the Minister about. There are also papers for your background information. I will draw attention to them as we come to the items.

We have sent to the Minister a list of the topics that we want to discuss with respect to the Local Government Bill, taxis legislation, the report on illegal waste activities in Northern Ireland and the single planning policy statement. When we sent the list to the Minister, we did not realise that he was going to make a written statement and an oral one this week. So, members, if you are content and if the Minister is content, maybe we can just skip this. It would give us a bit more time to spend on talking about other items or if the Minister wants to add anything else after the oral session. I think that nearly everyone on the Committee had an opportunity on Tuesday to ask the Minister a question following his statement. So, if members are content, we could skip that item.

Mr Boylan: Chair, I think that, if we have time, I would like to ask a few questions.

Mr Durkan (The Minister of the Environment): I am happy to skip it. I do not want to restrict members in anything they want to ask about.

The Chairperson: You want to ask the Minister questions, too?

Mr Boylan: If we have time, Chair. That is not to say that we got the answer that we wanted in the Chamber. We will say that, if there is a bit of time, then there may be an odd question.

Mr Durkan: I did not get the questions I wanted either.

The Chairperson: Fair enough.

Mr Boylan: We will stick to the clár that you have identified.

The Chairperson: OK. Fair enough. You see the interest in it, Minister? The next item after the single planning policy statement (SPPS) is climate change, and then the Minister also wants to update us on the status of Exploris. Let me see — I will lead off on the first issue. We are going to talk about, not every clause that we want to ask the Minister about, but the ones which Linda said that she needed to go back and speak to the Minister on. I know that Linda had a long session with the Minister on Wednesday, so maybe we can have an update on the issue.

I also welcome all the other officials. You have a big team with you today, Minister. You are all very welcome. Let us start with the Local Government Bill. We have been going through lots of issues from stakeholders, and Linda and her team have been working very hard with us every week now over the past month or so.

There are still some issues that we want to talk to you about, and the first is clause 4, "Disqualifications", about the politically restricted posts and whether staff should be allowed to stand for election to their own council or others. Another issue is about staff on secondment from the Department to councils, and whether they should they be restricted too. Also, there are those working in councils but funded by other bodies: will they also be restricted in standing for local councils? Over to you, Minister.

Mr Durkan: I would like to thank the Chair and the Committee for all the effort and attention that has been given to the Bill throughout, and particularly over the past number of weeks, over the Consideration Stage. I am aware of the work that you have been doing and that remains to be done, even today. I will try not to detain you too long this morning.

As regards clause 4 and the disqualification of council employees — sorry, not the disqualification, the permitting of council employees to run for council — I was keen to hear the views of the Committee and to get some feedback on the Committee's discussion the other evening. My view is that, obviously, it would be very restricting on an employee, as both an employee and a councillor, should they be a councillor on the council that employed them. There were also suggestions that it could be difficult for other councillors, as well as for other employees. We are looking at practice in other jurisdictions where this takes place. In some areas, council employees over a certain grade or position, if you like, are disqualified. In other areas, people are not allowed to be a councillor or run to be a councillor on the council that employs them. What were the views of the Committee, in conclusion?

The Chairperson: I think that we understand the difficulties with legislation. We cannot just have a blanket ban. I think that members would be happy to look at either way, whether it is grades or politically sensitive positions, when employees are working with other councillors. It is up to you, Minister, to decide which route you want to take.

Mr Weir: I do not think that I was there when the discussion on this took place. It seems a little bit like a hand grenade getting thrown from side to side with the pin out, in that regard. The big problem I think people will see will be the issue — which has been rightly highlighted — for the employee and the council, of somebody who is employed by the council then being a councillor. Where there is a distinction, and maybe something better could be done around things, is that at the moment there is a blanket ban that prevents anybody who is a council employee anywhere from being on any council. Perhaps the restriction could be reduced. Rather than being a blanket ban, it could be reduced to somebody not being allowed to be a councillor on the council for which they worked.

Realistically, with the best will in the world, I cannot imagine that you are going to get a chief executive on one council looking to be a councillor on another bit. What you might get is a council employee in Dungannon looking to be a councillor in Coleraine, or whatever it happens to be. I appreciate that my colleague to the right would not necessarily assume that anybody would want to go outside Dungannon in that regard. *[Laughter.]* Maybe it is the other way around; maybe it is an employee in

Coleraine. I do not know something could be framed around that as being the thing. That seems to be the more sensible route. I appreciate that the problem is the concern and vulnerability over simply a blanket ban rather than something more nuanced. From a court's point of view —

Mr Durkan: Without a doubt, a blanket ban will not be in existence. Where we end up is key. Even if you are talking about an employee of one council sitting on another council, should there be a restriction or limit on the level of employee? It should not be the case, but the reality is that many councils see themselves as being in competition with one another. If someone sat on a council and had access to commercially sensitive information that might be of benefit to another council, that could be an issue that might arise as well.

Mr Weir: Unless, to nuance that, the other route would be that you had a prohibition on anybody serving on the council they work for, and then a prohibition at a higher level — that two-tier prohibition type of thing. It strikes me that what has been done in the European imperative on the court side is not against a ban per se but potentially being able to show that it is not an unreasonable level of ban. Provided that you can show the rationale behind the levels of the ban and it is not a complete blanket ban, I do not see how there could be a successful case against that in those circumstances.

Lord Morrow: Most of us make decisions in life, and we then have to stand by them. Some decide on a career in local government, which is fine. Some decide on a career on the other side of it on councils, although at times it is hard to see where the career bit is in that. I have a big problem with members of a council, at perhaps all levels, ending up on a neighbouring council as a councillor and going out working for them. It is a case here of where some will be more equal than others, and it will create problems. I am acutely aware of what legislation says around equality and all that; I am quite clear on that. Did you say, Minister, that there will not be a blanket ban?

Mr Durkan: Yes.

Lord Morrow: That is where some will then be more equal than others and that, too, creates a problem.

Mr Durkan: That could be the challenge in itself.

Lord Morrow: Yes, I do see a potential challenge there. Rightly or wrongly, I am of the view that if you decide that your career is in local government, you made that decision knowing what you were doing, and that is fine. Well, then stick by that and stay by that.

Mr Durkan: I think that the issue is that the blanket ban has been challenged successfully in another jurisdiction.

Lord Morrow: You cannot be a gamekeeper and a poacher at the same time. That is a real difficulty.

Mr Durkan: Not on the same estate. *[Laughter.]*

Lord Morrow: No.

The Chairperson: I think we have to go with preventing conflict of interest. That is the primary point to go on — whether the positions are going to be difficult for employer and employee, and whether we are going to bring in that line of confusion or conflict of interest. That is all we can go on.

Mr Durkan: Of course, there is the work being done on the code of conduct as well, which will address and deal with issues around conflicts of interest, in this scenario and others that will arise. When I had a brief discussion on this with Linda and the team the other evening after the Committee had discussed it, I wondered what would qualify as a council employee. If someone is in a post funded by a council, for example, and if the council is going to be taking on the community development function from DSD, does that classify them as a council employee? I am assured that it does not but, again, this will be open to suggestions of potential conflicts of interest. It is in all our interests to ensure that the legislation that we end up with here reduces, if not eradicates, any potential for lack of transparency.

The Chairperson: What is the legal advice to the Department on this, Minister?

Ms Linda MacHugh (Department of the Environment): On the blanket ban, the legal advice is that it is against the European convention. I think it is article 10, which relates to free expression. It is around elections and the ability to stand, so it is that part of the European convention. I suppose that is what has been driving the need to put a clause in that lifts the blanket ban, albeit, as the Minister said, there is a need to think both geographically and in terms of position as to how to limit that in such a way that it will minimise the real and very clear conflicts of interest. Should any conflict of interest arise — should a council employee become a councillor in another area — that would be dealt with through the code. That is maybe where we are going to end up in trying to get a balance on it.

The Chairperson: If you are an employee of that council, you cannot stand for that council, but you can stand for a neighbouring one where you live.

Ms MacHugh: The point is also well made about people who are contracted to the council or are working on secondment to the council. We will have to look at that, because, for all intents and purposes, if you are seconded to a council you are working for the council. When you look at funded posts, you see that that is where it might get a bit more difficult. We still have a bit of work to do to find the spread of who may or may not be impacted by it.

The Chairperson: Would that need to come in through amendments or guidance?

Ms MacHugh: It is likely, at this stage, that it would be through subordinate legislation, because the Bill states that the Department will determine those people who will be prevented from standing as councillors. The ban will be lifted, but restrictions will be put in. It is likely to be something that is brought through in subordinate legislation.

Mr Weir: The only point on that is —

The Chairperson: Sorry, Ian, would you like to come in?

Mr I McCrea: I tend to agree with Lord Morrow. I have major concerns about this. I have spoken to chief executives of councils who have major concerns about it, regardless of whether it is their council or their councillors on another council, because of, to some extent, the political cover that that individual might have if the majority of members of the council were of that same councillor's party. Even though he is on another council, there is an element of cover there if any conflict comes up.

I suppose we need to know what grade of person we are referring to. You are saying that it is not going to be a blanket disqualification, so we need to get to whatever that point is. I think I raised this in a previous meeting: if you have two members of staff who are basically doing a similar job and working in the same room, one is a councillor and one is not, and one is of one religion and the other is not, there is the potential for sickness absence of one because they have put a complaint in because of something that the other councillor has said in respect of something that he has been doing as a political representative on another council. There are so many difficulties. You have the whole complaints process, and Tom Frawley will be all over it. It is a whole lot of money.

I just think it leaves it so open for challenge and leaves that individual open to complaints being made without foundation. That is one of many issues that I have. Political parties have to think about who they are selecting, but it is something that I know senior officers in councils are very concerned about. There is also the fact that councillors are currently given certain rights to attend meetings and stuff throughout their time of employment. That allows the other councillor to have rights to get out of his council employment to go to another council. It causes more problems than it does any good. I see where you are coming from on the legal side of things, but I think parties have to be mindful of all of that.

Mr Durkan: I take your concerns on board and some of the potential pitfalls that you have highlighted, but, unfortunately, quite a lot, if not all, of those pitfalls will exist anyway. If a blanket ban remains, should that go further? Should there be a ban on local government employees being party members, for example? Would that not provide them with cover, as you put it, from political representatives on that council? Unfortunately, the potential already exists for people of different backgrounds or with different political views to fall out over such things.

It is not just differences of political opinion that lead to people going off sick and what have you; far from it. People in public life have a right to time off to perform their duties as an elected

representative, regardless of who their employer is. It is something that causes some employers, as well as some councillors, quite a lot of headaches and stress.

One of the arguments or questions that was raised in the Assembly when this issue came up was that a blanket ban on council employees being on the council was seen as an infringement of their human rights. I think that it was Lord Morrow who asked, then, how MLAs were prohibited from being councillors as well. Does that mean that we do not have human rights as MLAs?

Lord Morrow: We are getting into a some-are-more-equal-than-others syndrome.

Mr Weir: Can I get some clarification from Linda? You talked about the subordinate legislation being the vehicle for the detail to be sketched in. The only potential complication with that is that, if it is not clear in the Bill what is independent, does that potentially leave us, as we are about to head into elections — I appreciate that a lot of the stuff may not be fully through by election day, but does that not create a slight degree of danger that individuals or parties with a grey area or uncertainty about their selections, if the position is not sketched out very clearly ahead of that process?

Ms MacHugh: I can see the issue with that, because, clearly, this Bill will not be in place in time for selections, and I know that some parties are looking at selecting already.

Lord Morrow: Some have already done so.

The Chairperson: Some have done.

Mr Weir: I think that the bulk of parties probably have done.

Ms MacHugh: At the moment, because the law is that there is a blanket ban, there is an assumption that the blanket ban is in place for this forthcoming election. That will not change until there is a new law in place, and we have not got the law through yet.

The Chairperson: Oh, right. OK.

Ms MacHugh: That is the current state of play.

The Chairperson: OK. But the law is going to be through by April, hopefully, ahead of the election in May.

Ms MacHugh: Yes, but I think by that —

The Chairperson: People can still change their selection.

Lord Morrow: A lot of horses will have bolted. *[Laughter.]*

Mrs Cameron: I tend to agree with my party colleagues down the line of it being more sensible to actually keep the blanket ban in place. It leaves you more open to challenge, actually, than bringing anything acceptable in in any way. Where do you stop? Where do you draw the line and say to this level or that level that you can be a councillor and then after that you cannot? That will lead to more issues in the workplace.

Mr Durkan: I suppose that if someone was a councillor, they could not be considered for promotion in their other job.

Mrs Cameron: Yes. I think that it would open a can of worms that might actually be —

Mr Durkan: I have no doubt that it would be simpler to retain the blanket ban. However, the legal advice is pretty explicit. It is not explicit enough, maybe, but it is pretty clear, I should say, that the blanket ban is untenable.

The Chairperson: And if you know it is illegal, you cannot put it into the Bill.

Mr Durkan: Yes. That is out there now, and you would just be asking for challenge.

Ms MacHugh: There are other instances. For example, civil servants at certain levels can be councillors.

A Member: Oh, dear. *[Laughter.]*

Mr Boylan: You do not have to respond to that. *[Laughter.]*

Ms MacHugh: I accept that it is a different level of government, but you can imagine that, if you are a civil servant in one Department and your council has an argument with that Department, that is where, as the Minister said, the code of conduct and the potential for conflict of interest would need to be carefully monitored and managed, because of potential conflict in their dual role as an employee of one council and a member of another council.

The Chairperson: We need to decide on that fairly soon. What is your decision, Minister?

Lord Morrow: Before you respond, Minister, how did you square the circle for MLAs? I suspect that it was not you but your predecessor who did so. The legislation is there so that MLAs cannot stand for council. Will you adopt the same inequality?

Mr Boylan: Surrender the seat and be done with it.

Lord Morrow: It is easier to ask the question now that you are not double-jobbing.

Mr Durkan: The blanket ban has to go and will go. The way I view it now, although this could change, is that employees up to a certain level will be able to run for election in another council area but not in their own. I do not know how likely or how regular an occurrence that will be, but it covers us legally and, I think, poses the least possible risk.

The Chairperson: A reasonable compromise.

Mr Durkan: Yes.

The Chairperson: Will we move on to the next clause? Are there any questions?

Mrs Cameron: I understand wanting to remove the blanket ban because of the legal opinion, but I think that it will make the situation worse and much more complicated. People will feel more aggrieved that person x in their council is allowed to run for council but, because they earn another £1,000 or are a grade higher, they are not allowed to. I think that it will leave you open to more challenge. At the same time, I understand where the Department is coming from.

The Chairperson: Look at the positive side. Previously, there was a ban on any employees standing, but now at least some people can stand. In reality, staff understand. You do not want the hassle.

Mr Durkan: The disqualification will be for those in politically sensitive positions. However, again, the phrase "politically sensitive" is very wide.

The Chairperson: You will find that very few people want to take it on and stand. Others would be looking over their shoulder.

We move to clause 10 — a hot potato — which deals with positions of responsibility. Minister, the Committee was unable to reach broad agreement on the clause and expressed concerns about the allocation of positions of responsibility in councils, whatever the method, be it d'Hondt or single transferable vote (STV). My party would certainly like STV to be the default position rather than d'Hondt, which we see as more favourable to the larger parties.

Mr Durkan: Our view is that there is no need for a change. The policy on positions of responsibility was agreed by the five main political parties through the work of the policy development panel (PDP) and the strategic leadership board. We do not see the need to deviate from that.

The Chairperson: Are members content with the Minister's answer?

Members indicated assent.

The Chairperson: The next clause that we want to talk to you about, Minister, is clause 23. Departmental officials agreed to report back to the Committee after discussions with you on proposals for regulations on the operation of executive arrangement; the allocation of functions between the councils and its executive; and the minimum number for an executive streamlined committee. There is some concern that the minimum number is too low and might need to be more than four. Is there any movement on that, Minister?

Mr Durkan: These issues will be specified in subordinate legislation. I am not sure that the need exists to change it here. The Bill specifies a minimum of four.

The Chairperson: This is wrong on my screen. I am sorry, I was talking about a different clause.

Clause 23 concerns permitted forms of governance. We need clarification on 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 Durkan: This is not my method of escape or evasion, but that will be sorted out in subordinate legislation. There is no need for a change in the Bill.

The Chairperson: Sorry, will the outside committees also be subject to call-in and QMV?

Mr Durkan: That does not need to be clarified in this legislation.

Mr Weir: I did not express an opinion on this when it came up, but is there not a neater way? If it were accepted that a quasi-judicial decision, whether a licensing or planning decision, should not be subject to a call-in, would the easiest way not be for the Bill to make that clear? Would that not be done relatively easily rather than simply leaving it to QMV? I cannot remember off the top of my head which clauses they are but some set up QMV and others the call-in mechanism. Is it not relatively straightforward simply to add a line saying that a decision of a quasi-judicial nature, such as licensing or planning, would be "excluded", or words to that effect?

Ms MacHugh: You are right: there would be other mechanisms to safeguard any quasi-judicial licensing or planning issues. So those would not be subject to QMV. Our intention was to make that clear in the subordinate legislation as opposed to in the Bill.

Mr Weir: Put it this way: unless there is some great technical reason why it cannot be done, why could that simply not be in the Bill? I think that everyone would accept that that is relatively uncontroversial.

Lord Morrow: It could be very controversial.

Mr Weir: No, what I meant was that I think that such issues not being subject to QMV would, broadly speaking, be agreed across the parties, because it would leave councils very vulnerable. A simple line or two in the legislation may abrogate the need for chunkier references in subordinate legislation.

Ms MacHugh: If you are in agreement, we can look at trying to put that into the —

Mr Durkan: I cannot think of any reason why not.

The Chairperson: It would make the position clearer.

Clause 25 concerns council executives. We need further information on which committees can be streamlined; on the role and voting rights of the mayor and deputy mayor; and on the minimum number of an executive committee. Minister, we really want to know which committees are to be streamlined. We are told that the mayor and lord mayor would have the right to sit in on the executive committee but that they would have no voting rights.

Mr Durkan: Yes, ex officio.

Mr Weir: Asking what can and cannot be streamlined strikes me as a little odd. I suspect that that will depend on where you are on the spectrum. Sometimes, people have mistakenly viewed the current committee system or cabinet system as either/or, whereas it is more of a spectrum, particularly in the way it develops. I am not sure that there can be a definitive answer to what can or cannot be streamlined.

I understand the concern about the mayor and deputy mayor — in other councils, the chair and vice-chair — who, in many councils, sit ex officio on every committee. I appreciate, particularly in the cabinet style, the argument that, if you had the same mayor and deputy mayor sitting as of right in that cabinet and having a full role, that would potentially imbalance the cabinet. A possible way round that would be for the legislation to provide for the mayor and deputy mayor to have a right to be in the cabinet but as non-voting members. They would not have a vote as of right from being a mayor or deputy mayor.

Mr Durkan: Maybe some concern then arises about the scrutiny of the executive and who would lead it from the wider council if the mayor and deputy mayor were sitting on it.

Mr Weir: I understand that, although would it not look a little strange to have a cabinet-style situation with the cabinet taking decisions on behalf of the overall council —

Mr Durkan: The mayor has to defend —

Mr Weir: — and the person leading the charge against the council is the mayor of the council? That could be confusing for the public.

Mr Eastwood: We would all have to go out and defend it in the media.

Mr Weir: If there was a dispute in a council and the cabinet chair gave one view but was then wheeled out to give an opposite view, it would be a slightly odd situation. That would look very strange. However, I appreciate the argument that, because the mayor and deputy mayor roles will rotate and be taken up by members of different parties, having them as full members could threaten the balance of the cabinet. Permitting them to sit on the cabinet but without a vote could be a way round that.

Ms MacHugh: In that scenario, who do you envisage chairing the council's scrutiny committee? Would that be —

Mr Weir: The decision on who would chair a scrutiny committee would probably be taken when the selection was being made. If you divide up positions of responsibility at the start and have adopted a cabinet style, presumably the decision on who serves on the cabinet would be taken at that stage. Even with a cabinet style, there is some level of committee underneath that. Presumably, you would also choose, by whatever regulations pertained, the chair of the scrutiny committee at that stage. That may change from year to year in the same way as a chair of planning, policy or whatever would change.

Ms MacHugh: So rather than the mayor automatically being the chair —

Mr Weir: I have to say, to be honest —

Mr Eastwood: The mayor would be the chair of the council rather than the —

Mr Weir: The mayor would, effectively, be the civic face of the council. It is difficult for the mayor because the chair of the scrutiny committee could be the person who is in direct conflict or the one holding the greatest council accountability. That could put the mayor in an awkward position: on the one hand publicly defending the council; on the other being, potentially, its main internal critic. It would be very difficult for someone to ride those two horses.

The Chairperson: What is the current practice, Peter?

Mr Weir: We do not have cabinets. It varies from council to council, but most councils have in their standing orders that whoever is that year's chair may be an ex officio member of all committees and has at least the right to turn up to all of them. Some will extend that to the deputy. It varies a little from area to area, but, generally speaking, there is some sort of —

The Chairperson: That is what is proposed.

Mr Boylan: When assigning positions, Peter, that is what happens. Armagh is an executive-style council, but the mayor does not sit on the executive. The mayor and deputy mayor chair some of the meetings but do not sit on the executive.

Mr Weir: Cathal, how can somebody chair executive meetings when not sitting on it?

Mr Boylan: They chair the full meeting, but the executive council is made up of a member of each party. The mayor is not on the executive council.

Mr Durkan: He cannot attend those meetings.

Mr Boylan: They do not attend — that is the executive style. If assigning positions on a four-year basis —

Mr Weir: I understand that, but I can see a situation —

Mr Boylan: I am only trying to tease it out.

Mr Weir: I understand that. However, I am not sure that it is an ideal situation for a mayor, the official face of the council, not even to be present when the most significant decisions are taken about the council.

Mr Boylan: The recommendations come back to the full council, but that is the style used. You make a fair point, but we are talking about the scenarios that can arise, and that is what happens. I do see some problems given that the mayor is the civic face of the area. I am telling you what happens in the Armagh executive now, and the positions are assigned on a four-year basis.

Mr A Maginness: Under the new dispensation, I see three discrete roles. One is the civic role of the mayor and deputy mayor, which is a very public role and involves chairing the plenary sessions of council. The second is the role of the cabinet, or executive, which is an executive function for the cabinet members and a collective one. The rest of the council involve themselves in scrutinising the decision-making process of the executive.

I do not think that you can mix the three discrete roles, except when they come together in plenary. In the current situation, all councils have a general purposes committee or a policy and resources committee. There is a separate chair of the policy and resources committee, who has a very significant role on the council, but who is not the mayor or deputy mayor. That makes plain the differentiation between the discrete roles that councillors will have in a future arrangement of this type.

Mr Durkan: Yes, but the mayor and deputy mayor can attend those meetings ex officio, as any councillor can.

Mr Weir: Again, this is probably one of the myriad swings and roundabouts of flexibility, but different councils will take different views. I am not sure whether the mayor is excluded, but I know from my previous council that pretty much any councillor could go along to any meeting. I am aware of another council, relatively close to where I live, that took a view that the only people to be in attendance at any committee meeting were the councillors on that committee: if you were not on the committee, you did not have a right of attendance. There is slightly different practice in different councils.

The Chairperson: At the moment, are the mayor and deputy mayor barred from voting in plenary session?

Mr A Maginness: No.

Mr Durkan: There is provision in the Bill to make all committee meetings open to all councillors.

Mr Eastwood: That makes sense. I attended meetings of committees that I was not on if there was a specific issue relevant to my constituents. I understand the point about the separation of powers. It is a slightly different system here; we are not America yet. The First and deputy First Ministers vote in the Assembly, even though they chair the Executive meetings.

Lord Morrow: A president?

Mr Eastwood: We are not there yet either. We are working on that one.

I think that the mayor should be able at least to attend meetings. I understand why they would not be able to vote. However, having been in the role, I know that the mayor has to go out and defend council decisions. It is difficult to do that when not involved in some of the decision-making. Some decisions may be taken without the council's involvement, so there needs to be at least a working knowledge of what is going on. I see no problem with their sitting at the meetings but not necessarily having a vote.

Mr Durkan: There is provision in the Bill for that.

Ms MacHugh: We are making all meetings open to everybody: councillors, public and press. The issue is whether you feel strongly enough that they need to be ex officio members. If they cannot vote, what is the fundamental difference between that and their attending meetings ?

Mr Boylan: The Armagh executive model has one member from each party, and they bring a recommendation, which goes to the statutory council meeting, normally chaired by the mayor. Any councillor can sit in on any meeting.

I am trying to figure out what the problem would be. The mayor is there to represent the whole area and has that right. That is a recommendation from the council and agreed by the corporate council. Are we saying that, because the mayor cannot vote, they have some special representative power? All they are doing is speaking on behalf of the council, so I am trying to figure out what the issues are.

Mr Weir: If we are talking about everything being open to everybody, does that mean that we envisage a cabinet or executive meeting being fully open to the public unless there was a particularly sensitive matter?

Ms MacHugh: That is the presumption in the Bill.

Mr Weir: I am not saying that that is good or bad, but it is not normally how cabinets or executives operate.

Mr Durkan: It depends on the business on the day, so you may find that such meetings are more often closed than open.

The Chairperson: There are no further questions on this clause, so we will move on.

Clause 45 details the criteria to be used to determine the validity of a call-in and the guidance to be provided for solicitors and barristers. One concern raised was that, if you ask different solicitors for an opinion they will, perhaps, give you different opinions. It has been suggested that a panel of solicitors might give a more consistent response than if individual solicitors were used by different councils. Also, the criteria for call-in are important, and more clarification of those is needed.

Ms MacHugh: We discussed this with the Minister. The need for a barrister or solicitor was determined as a safeguard against call-in being misused for a political purpose. This would mean adding an additional safeguard to the original one. How would a panel be constructed and who would appoint it? Would the whole panel —

Mr Weir: Sorry to interrupt, Linda, but I am not sure that that is 100% accurate. I was involved in the PDP discussions on this. At that stage, it was agreed that some form of outside referral would be necessary to determine its legitimacy, but there was no mechanism to determine that it simply be

referred to a barrister or solicitor. There was no agreement on that, and it was one of the outstanding issues. It was a timing issue: it may well have been tackled by the panel had things moved on. However, it was among the issues still to be discussed and resolved, but it was put on ice. So there was no specific agreement or common understanding that the process would be that the chief executive would simply refer to barristers or solicitors. What was agreed was that there would have to be some form of mechanism to determine whether a call-in was legitimate.

Ms MacHugh: When you look at seeking legal advice, some of the larger councils being created will have an in-house solicitor. If there were a need to go outside the council to seek legal advice from some sort of independently appointed panel, in what position would that put the council's legal adviser? Is there, then, an assumption that there is no trust in the professional input from that legal adviser in the council? There are other issues around how the panel would be constructed, how it would work and how the call-off would happen. Would it be the whole panel sitting? There is the feeling that it is —

Lord Morrow: A minefield.

Ms MacHugh: — a bit of a minefield. It could cause more problems than it is there to resolve.

The Chairperson: It could bring in another layer of problems.

Mr Weir: There are two issues. On the grounds on which the mechanism is done, to be fair, probably the biggest concern is that there was very clear-cut guidance on what counts as a legitimate call-in on the basis of how reference to the community side of things is determined. Some level of guidance on that would be helpful.

With the exception of Belfast City Council, which has its own internal solicitor, most councils do not have — I suspect that, under a new system, they will not have either — an internal legal adviser. Perhaps other councils will waste ratepayers' money on that basis as well. Most councils, because of economies of scale, do not have an internal lawyer. They have a town's solicitors. My only concern is over what happens to something that keeps on being referred internally or quasi-internally. If a firm of solicitors were asked to rule on stuff that will affect the council, would there be a reticence for it to rule against what it would see as the majority position? Any call-in will come from a minority position. Are solicitors going to feel a degree of restriction? They might say, "If we're too awkward and block too many council decisions by way of agreeing that a call-in is legitimate, are we risking being appointed the next time that it comes to the appointment of solicitors?". As such, it probably has to be independently decided outside of the council. There is also a bit of a danger that, if a matter is simply referred to a solicitor or barrister, you do not have consistency. Perhaps the route around that is simply to ensure that whatever guidance that you have is very tight and clear-cut so that you are getting consistent decisions.

Mr Elliott: There are two aspects to it, one of which is criteria. There needs to be clear criteria and guidance. There is then the issue of who interprets that. Is it the in-house solicitor, if the council has one, or is it some sort of panel? For consistency throughout Northern Ireland, it would be much better if there were a central panel or group.

Linda, I totally take your point that it is about how you do that, but how do you do any of these things? You come up with a mechanism, formula and basis for doing so. That is how we do anything. I do not see that as a barrier in itself. If decisions are left to each council's legal advice, you will be into a nightmare situation in which you will have blocking mechanisms right throughout councils. It is absolutely necessary that there be clear, centralised criteria. You cannot leave the criteria up to each council.

Mr Weir: One possible solution was suggested. We have in the legislation that if a complaint is made against a councillor, it will go to the local government complaints commissioner, or whatever the title is. Could whatever that office has responsibility for have operating under it a panel that could determine the legitimacy of call-ins? That, or something of that nature, is one possible solution to getting a Northern Ireland-wide interpretation.

Mr Elliott: Chair, I do not think that there is a Department here that does not have some sort of appeal mechanism for something. DSD obviously has its appeal mechanisms, as does the Department of

Agriculture. I am not saying it should be an appeal mechanism, but having a forum would give more consistency and result in less chance of blockages in individual councils. That is the key to it.

The Chairperson: And take it outside the council as well and give it independence.

Mr Elliott: Yes.

Mr Durkan: I can see the rationale behind that, but it would throw up even more complications, such as how the panel would be paid for and by whom. By all councils? I am sure there are some councils that do not have the funds.

Mr Weir: To take an example, and this is a little bit off the top of my head, my understanding is that what you are looking at by way of a mechanism for the complaints procedure and the code of conduct is a form of top-slicing that would pay for that. There could be a function within that that also determined the legitimacy of call-ins. If you are top-slicing for one thing, it is not a big leap to have some slight, additional level of top-slicing for another. I think that the mechanism —

Mr Durkan: It may be a particularly big slice.

Mr Weir: Depending on what is needed.

Mr Durkan: It is the guidance, I suppose.

Mr Weir: You going to need something for that.

The Chairperson: You also have to ask whether you are sidestepping the council's own solicitor by duplicating the work.

Ms MacHugh: If the decision were taken by that outside body and then legally challenged, where would it end up?

Lord Morrow: It sounds like a lawyer's paradise.

Mr Elliott: It is going to be a lawyer's paradise one way or the other. All that I am trying to find is a mechanism that will reduce the potential for blockages in councils. That is important.

The Chairperson: Yes.

Ms MacHugh: The debate also calls into question the independence of the legal profession if there is then an inference drawn when you are seeking legal advice that it depends on whom you go as to what the advice will be. *[Interruption.]*

The Chairperson: Peter, can you please be quiet?

Mr Weir: Chair, I was just going to say —

The Chairperson: I cannot hear Linda.

Mr Weir: Sorry.

The Chairperson: Linda, please repeat.

Ms MacHugh: The whole discussion is premised on the assumption that if you ask the legal profession for advice, you may not get the right advice, or it may be the wrong advice, and therefore you need some independent legal person. If I were a lawyer, I would be quite nervous at this point.

Mr Elliott: We have to be clear about this: it is different legal advice that keeps solicitors in jobs. That is the reality.

Ms MacHugh: That is true.

Mr Elliott: If you go to different solicitors, you will get different advice. Let us not argue about that. That is a fact that nobody can —

Mr Weir: The issue is at least to have something that is consistent. Lawyers would look at the thing dispassionately and independently, but they might well come to very different verdicts. There is the potential to bring call-in into a little bit of disrepute. For example, what is intended by the sale of a play park as it relates to the play park strategy? That can be interpreted in different ways.

In one council, it could be ruled as a legitimate call-in, yet if the same thing were to happen a month down the road in a different council, it might not be regarded as a cross-community issue. The facts could be pretty much the same but people have interpreted them differently in each case. There is a danger that that could turn call-in into somewhat of a mess.

The Chairperson: Yes, but not if you have a clear set of guidelines and criteria. It is also good to have an independent person with a legal mind — the solicitor — to look at the issue and interpret it. That would be better than having it debated among different party councillors. We should not be too insulting about or not trusting of our solicitors to do their job properly. If they are set out clearly, the guidance and criteria are easy to interpret. Perhaps we should leave it to our solicitors to do their job.

Mr Boylan: I do not know about that, Chair. There are too many solicitors on this Committee.
[Laughter.]

Mr Weir: I think that you will find, Cathal, that there are two barristers but no solicitors. We do not want to have to sue you for libel.

The Chairperson: We still have quite a few items to discuss, and I am aware of the time. I think that we will leave the matter there.

Mr Weir: I have one other wee issue to raise on the local government stuff. When the Committee met on Tuesday — I think that Linda and others were going to see the Minister later on the broader issue — there were some concerns over the code of conduct appeals mechanism and a couple of other issues. Indications were given that you were going to seek the mind of the Minister that afternoon. Is there any update?

Mr Durkan: The officials came to me on Tuesday afternoon with feedback from their session with the Committee. The appeals mechanism formed part of that feedback. My mind on that is that there should be one. It is important that we be as open and fair as possible. I think that you, Peter, advocated it at the session. I am certainly of a similar mind.

The Chairperson: Would that be appealed to the High Court?

Mr Durkan: Yes.

The Chairperson: OK. You will put in an amendment to that effect. I think that a lot of stakeholders made comments about a lack of an appeals mechanism.

Mr Weir: That would be a very positive development. It would be helpful if we can see a draft amendment as soon as is possible.

The Chairperson: We will talk further with Linda later. Members, we are now moving on to the taxi legislation.

There are a couple of papers for members to look at. There is a departmental reply on taxi meters; the SL1, which is another departmental reply; and another paper on taxi legislation. There is a very useful timetable that sets out how the Department is going to proceed with subordinate legislation.

Mr Boylan: Clauses in the Local Government Bill are being raised with the Minister. We have done 50 clauses up until now. There may be other elements of the Bill to discuss. Is there another opportunity for the Minister to come back to the Committee?

Mr Durkan: No problem.

Mr Boylan: We have done the first 50 clauses, and issues were raised on the four clauses discussed today. There may be other issues that we can invite the Minister back to discuss.

The Chairperson: If we have time. We are at clause 69.

Mr Boylan: Clause 69 is a big issue, with its community planning element. I certainly would like time to discuss that element. When will we get an opportunity to go through that clause?

The Chairperson: We have only two more weeks, and we are planning two additional meetings for the next two Tuesdays.

Mr Boylan: OK. I will say this now, and then we will move on to the taxi stuff. Under community planning, I would like there to be an element on tackling deprivation and social exclusion. I know that we will get into the issues when the officials are here, but I am mentioning them now while the Minister is here. I am happy to move on to the taxi stuff.

The Chairperson: OK. I remind members to switch off their phones. We are picking up a mobile signal from somewhere.

Minister, I am sure that you are aware that a subcommittee of this Committee was at the meeting at which a model of a three-mile exclusion zone for Belfast public hire was discussed. We know that officials have talked to you about it. We certainly talked to them at great length at the meeting about the proposal. Is the subordinate legislation timetable on track? Is there any further engagement with Belfast public hire?

Mr Durkan: First, it is important to reiterate that the purpose of the Taxis Act 2008 is to improve standards in the taxi industry for the benefit of consumers and the public. The issue around the proposal — if you can call it a proposal — for a three-mile exclusion zone is one that I am not overly warm on, to be honest. However, time and again, I get Assembly questions for written answer on the subject. The previous time that I was here, the issue of enforcement was raised. Some may say "lack of enforcement", but enforcement activity has increased over the past few months.

I think that the implementation of a three-mile zone — I know that there were talks around certain times, such as when you might have two-tier and single-tier times — will make things even more difficult to enforce, if not impossible, and more confusing for the public.

Mr Weir: The Minister needs to be aware of the seriousness of this. There was that subcommittee meeting. Everybody is keen to crack the issue and get agreement. There are no specific regulations for some form of exclusion from Belfast city centre, which was floated as a possibility as the Taxis Bill was going through. There was a possibility of the single tier not excluding something separate happening in Belfast. We can quote Hansard on that. I read the paper that was produced by the Department, and it used nice words about implementation being done in a fashion that would have sympathetic timetables for Belfast public hire. That is the key element to cracking this and getting it over the line.

Arising from that would be the need to create a Belfast taxi plate for the area. The other, non-legislative issue that you mentioned was enforcement. The other element to that is a key commitment to what is happening in Belfast, although there are big concerns over what is going on across Northern Ireland. If there is a specific commitment to there being a separate Belfast enforcement team as part of the overall plan, people across the board may be able to agree and live with it if those elements are put in place. We are not talking about big numbers — it may comprise half a dozen people. However, if we simply talk about a longer period of implementation or about being in some way vaguely sympathetic to Belfast public hire, without there being something that directly impacts on the city centre single-tier situation, there will not be agreement. I do not think that the legislation will go through on that basis. I am sorry to be blunt, but it is important that you know the lie of the land. A number of us are concerned about this; concerns are not coming from just one party or individual. It is a concern shared by at least three parties represented on the Committee. What I have said is key to providing that accommodation, Minister, and it is important that that be made absolutely clear.

Mr Durkan: I appreciate your frankness. It is the key to cracking it. When I assumed the role, I also assumed that the issue had been cracked and had just been postponed until this September, before being implemented. The Committee and Assembly passed an SL1 for single tier in June. Lord

Morrow said earlier, on another subject, that people sometimes make decisions in life that we must stand by. The SL1 to implement single tier has been passed, and the only way that it can be rescinded is to have it prayed against in —

Mr Weir: On what has been passed and what can be prayed against, I will just say that we can push all of this into causing a degree of conflict, where we raise the stakes on things and create a situation in which the Committee or the Assembly is forced to pray against legislation, or, indeed, to enact legislation. It is fairly clear that those who have expressed concerns represent a pretty overwhelming majority of the Assembly. I do not think that people want to pray against the SL1. I think that they want to see a solution that accommodates the particular situation in Belfast, on which there can be a degree of agreement. That will mean that single tier will operate fully throughout the vast bulk of Northern Ireland. That seems to be a reasonable enough solution that can be put in place. If we are forced into a situation in which actions need to be taken to overturn things, so be it in those circumstances. However, it would be very wise for all of us to try to reach some wider agreement. I know that others may —

Mr Durkan: I have previously in the Assembly, if not at my most recent meeting with the Committee, displayed a degree of flexibility and a willingness to look at things. Any solution along the lines that you mention is going to be extremely difficult to reach. I say again that I will continue to look at finding one, but I do not think that we are ever going to get something that will make or keep everyone happy.

Mr Weir: Perhaps, at least, it will create an equal level of unhappiness around the place. At present, one section of the industry is deeply unhappy, and other parts are to a lesser extent. What is needed is something that people can buy into.

The Chairperson: They are a small minority, however, Peter. You are talking about around 400 vehicles from Belfast public hire.

Mr Weir: When figures were previously given, a mistake was made in providing information. I think that, off the top of my head, the figure should have been 439. That was misread as 349 and was then rounded down to 300.

We are talking about several hundred jobs. As with a lot of these things, if the taxi industry were starting up tomorrow, you might look at a different solution. However, we have to deal with the situation as it is and make it workable.

The Chairperson: The taxis legislation came on board in 2008. In fairness, the industry has been —

Mr Weir: With respect —

The Chairperson: — given a lot of time.

Mr Weir: With respect —

The Chairperson: It has been given many years—

Mr Weir: With respect —

The Chairperson: — to adjust —

Mr Weir: With respect —

The Chairperson: — to the situation.

Mr Weir: With respect, Chair, I have two points to make about that. When the Taxis Act came into law — looking around the table, I think that Cathal and I are the only survivors of the First World War — it was not done with uniform agreement. People had different views. To be perfectly honest, we were tortured with the legislation for months. It was also the case — this is on public record — that, when mention was made of the single tier at that stage, the officials clearly said that it would not necessarily be something that would apply across Northern Ireland. They said that something could be looked at for Belfast. We read that into the public record on a previous occasion, so this is not novel. We have

to deal with the situation as it is. Mine is a reasonably sensible suggestion. People could simply try to direct the single-tier system. That is not what is being said. It may well have been the position of some a while ago that they simply did not want single tier, full stop. There is acceptance that there will be single tier for the vast bulk. This is about trying to do something that caters for the specific circumstances of Belfast, particularly the centre of Belfast, where there is a particular set of circumstances. That is not unreasonable. It is a compromise. If there is a bit of give and take, people can agree on it.

Mr Durkan: It is fair to say that the problems and confusion created by the two-tier system are nowhere more pronounced than in the centre of Belfast.

The Chairperson: We have to think of the consumer, who is the primary concern for all of us. It is about the quality of taxis, consumer convenience and understanding. If you say that, within three miles, you can get only a black taxi, and nobody else —

Mr Weir: Sorry, that is not accurate. If you phone looking for a taxi, you can get a taxi anywhere. What you cannot do is simply pick up a cab at random. That is where there is a distinction. There is nothing to preclude anybody from getting a taxi within the three miles, so let us not misrepresent the situation.

The Chairperson: You then have the silly situation at Belfast City Airport now. Before you leave the airport, you have to ring a taxi. The taxis are outside in the taxi rank, but you are not allowed to jump into a taxi. There is a desk that you have to approach to ask for a taxi. That is a two-tier system.

Mr Weir: With respect, previous systems operated in the airports. Nobody is suggesting that what is there is necessarily perfect, but sometimes changes made have not been beneficial. I may be hogging the issue, and perhaps other members are looking in.

Mr Boylan: There is not much more to say now that Peter is done. We need a solution. I totally agree with what Peter said. I would not like to scupper all the good work that has been done in Committee. We have given the issue a fair hearing, and we can attach blame to everybody, because a total lack of enforcement has led to this situation.

We built in a two-year review. Although people may argue that we have not implemented the Act in full, it is clearly seen not to be operating under a single-tier system, and it will not operate. Minister, I ask you to consider the issues seriously. If it is the case that, come September, when we have to look at it, I would certainly consider praying against the SL1. I hope that we do not have to go down that route.

A group of people have come to us over the past six months with genuine concerns. To be fair, Chair, we agreed in principle to delay the rule until September on the premise that the issue would be looked at and talked through with DRD and everybody else to try to get a resolution for the centre of Belfast. We are not trying to create an issue. Different people whom I have met have asked, "Why are you doing this? You are not doing this for us".

If we had thought that we were bringing something through that would stop a group of people or create problems in one section of the industry, we would not have agreed the SL1 in the first place. However, there was facility to look at a two-tier system in Belfast. If anybody else wants to come to us and say, "It may be the case that this can operate in the likes of Derry", that is grand. Come and talk to us. However, the major issues thus far have been around Belfast. We have to get a solution, Minister, and I hope that you will take that on board and bring forward something, no matter how difficult it is to do.

When the Committee went through its 17-week consultation period and took presentations, the issue of enforcement and all the associated matters should have been raised. It has taken this length of time for that to happen, so I ask you seriously to bring forward some solution. I support Peter's comments.

I met both sides of the industry on the issue, and there are concerns on both sides. The information that I have gathered over the past six to eight months certainly does not stack up in favour of having a single-tier system in the city of Belfast. It is something that we seriously need to look at, because, come September, if I am still on the Committee, I will unfortunately be looking seriously at stopping the rule on single tier. I do not want to do that, because there has been good work done. Both sides of

the industry have to clean up their act, and we have to recognise that. Therefore, hopefully, the Minister can bring something forward that will address the issue.

Mr Elliott: I think that the Minister said at the start that the system was to come in to provide a better service for the public. Is it better for the public? Are the rules being obeyed or will this cost the public more? From what I have seen since I joined the Committee, the process will create more expense for the public. If you are getting a better service, perhaps you have to pay for it, but we need to look at that. There is an issue around whether it is a single- or a two-tier system. What is being suggested in Belfast is that there is a difficulty with enforcement. Enforcement has just not been taking place. Nothing has happened to those operating outside the law or the spirit of the law, and that has not been resolved. There is no indication that it will be resolved under this system. What I am hearing is that changes are being requested, especially in Belfast, because that is, I think, the only area it applies to. Perhaps others will keep me right as to whether, in different areas, there might be the public-hire system in the spaces, but I do not think so.

The Chairperson: Just Belfast.

Mr Elliott: I do not think that what is being asked for is outrageous or too difficult to change or implement. Perhaps the Minister and the officials could give us an indication of whether they see it as too big a job to change it or have a two-tier system in Belfast. Let us hear the argument for not having a two-tier system. From what I hear, I know that it would not be a huge operation to change it and put that in place.

Mr Durkan: Who are you hearing that from?

Mr Elliott: From the industry, from members of the public who have an interest and from some consumer groups.

Mr Durkan: I have met Belfast Public Hire and am well aware of its concerns. I remain committed to helping Belfast Public Hire to engage with other Departments on the training and business support assistance that can be given to them, especially with DRD on issues of ranks and bus lanes, which will be very important, regardless of whether the Bill proceeds or not. I would certainly like it to proceed as planned for September.

Peter was talking about equality. When I met representatives of Belfast Public Hire, they stressed to me their desire to see a level playing field. Does the creation of a single-tier system not create a level playing field?

Mr Elliott: Nothing that you have told me, Minister, changes my view that it is not a level playing field, simply because the enforcement is not there to deal with it. The enforcement is not —

Mr Durkan: Will a single-tier system not create —

Mr Elliott: What I am not hearing is how the proposals for a single-tier system will change that or make it better. Why can a two-tier system not operate in Belfast with some simple changes to the proposals? I have not heard any of that. At this stage, my sympathy is still with the consumer groups and the industry, which are saying that a two-tier system would be better immediately in Belfast.

Mr Durkan: I have had representation from the Consumer Council, which strongly advocates a move towards a single tier.

The Chairperson: Most respondents throughout the consultation period support a single tier.

Mr Boylan: With no disrespect, Minister, there is a consumer element and a provider element. We would not have heard so many complaints if enforcement had been properly enacted in Belfast, but it has not been, Minister. One good thing is that that has led to us knowing about the problems that we will face under the single-tier system. I am glad that we are seeing that up front. That is where a level playing field has not been created. Looking back, I am glad that we built in a two-year review and the opportunity for a two-tier system. I repeat what I said: I do not want to undo all the good work of the previous Committee, but, reading between the lines, Minister, it looks as though you are not even prepared to look seriously at addressing the three-mile issue. I agree that there might need to be

assistance in clearing footfall at a certain period at the weekend and with trying to get both sides of the industry to look at that. However, we need to bring forward something concrete.

Mr Durkan: I think that the Hansard report will show that I stated that I remained open to looking at this, and I do. However, looking at it or coming back with something biddable or acceptable to everyone are not the same things.

Mr Boylan: That is a fair point, Minister. However, we had a meeting in December with officials when we went through this for about an hour and a half, and we still have not heard anything.

Mr Weir: If you saying that there might need to be variation at particular times, that is not unique. You mentioned different levels of enforcement. If you go to Belfast or anywhere else, there is completely different enforcement of parking regulations depending on the time. A lot of parking zones are restricted between 9.00 am and 6.00 pm, with the regime changing the minute you go past 6.00 pm. So the idea that there cannot be something nuanced that takes account of the time is not a sustainable argument.

Mr Durkan: As regards the consumer issue that we were discussing before Cathal asked his questions, the Consumer Council is strongly advocating the move towards a single-tier system. Other groups that I have received representations from are also in favour of that option. Most recently, Pubs of Ulster contacted me with a view, and I imagine that that organisation will contact the Committee as well.

Mr Weir: Minister, that would be a very watertight position if the argument was that there should not be a single-tier system anywhere in Northern Ireland, but that is not what is being said. We are talking about geographic exclusion to deal with this particular problem. In effect, it will mean that a single-tier system will operate in the bulk of Northern Ireland. No one is arguing against that. We are simply trying to find a reasonable compromise.

Mr Durkan: As I have said, the problem is most pronounced in Belfast city centre, where the two-tier system is operated. There are public and private safety issues. We want the streets in the city centre to be cleared as quickly as possible at night. If someone is trying to flag down a taxi, they might fear for their safety. They might not be able to flag one down, but five taxis that someone down the street has phoned to book pass them by, with no taxi available to stop for them because no public-hire vehicles go past. It is difficult, and often the person trying to flag down a taxi does not know why the five vehicles have not stopped because they are not from Belfast and do not understand the system.

Mr Boylan: To be fair, Minister, we hear different stories. I know people who have phoned to book taxis to come into the city and have stood around waiting for an hour to an hour and a half. So what I am saying —

Mr Durkan: Well, they will not have to phone —

Mr Weir: To be honest, a car simply pulling up to allow someone to get into the back of it does not strike me as being the safest or most watertight of situations at a time when people can be vulnerable. It cuts both ways.

Mr Durkan: The displeasure with how enforcement has or has not been carried out has been expressed today and previously. We have seen much more enforcement activity over the past couple of months. The single-tier system will allow enforcement officers to concentrate on illegal taxis and rogue operators rather than trying to police which taxi picked up where and at what time.

Mr Boylan: That is the point that I was coming to before I was interrupted by the phone issue. To relieve the stress and pressures of footfall at certain times, both sides of the industry need to come together, and we have asked for that to be taken on board. Both sides of the industry should work together to relieve the pressure. I still think that the three-mile suggestion is fairly good, and we should try to come up with a solution along those lines.

Mr Paul Duffy (Driver and Vehicle Agency): Just to give some clarification on illegal picking up, which is the main offence that the public hire sector has raised with the agency. Over recent months, we have increased the number of enforcement operations to detect and deter illegal picking up. A three- or five-mile radius would not make much difference to enforcement activity.

That is because the concentration of taxis illegally picking up is predominantly in the city centre. The difficulty that we have with detecting that type of offence is that although Mr Weir talked about having a Belfast team with six members of staff, it is resource-intensive to detect such an offence. As I described, an enforcement officer has to flag down a taxi successfully to start with; has to take a journey for which he or she is charged; and then issue a fixed-penalty notice. That can take quite some time. If six members of staff were policing that during the day, our evidence suggests that the number of fixed-penalty notices that you would issue would not deter or change behaviours. So if you were to have a three-mile radius and six members of staff, I am not convinced —

Mr Weir: I am not going to be tied in with specific numbers, but there needs to be a dedicated commitment to Belfast. To be perfectly honest, a coach and horses are being driven through a range of things that happen illegally at present. You can go any night to check that out for yourself if you wish. That is part of the problem. The one advantage in having a narrowly defined area is that you at least allow a bit more concentration there. However, the Department must show at least some willingness to enforce and to show its commitment to a clear, specific and agreed problem. You have an overall enforcement team, but promising to dedicate some of them to dealing with the Belfast problem would at least go some way to start doing that.

If it is an issue of having to go through so many hoops to get a conviction, we need to look at, and be honest about, whether we have a system that is unnecessarily bureaucratic and to see whether we need to change the law. We can perhaps cross that bridge when we come to it. I do not wish to tie that in directly with the current situation. However, it is clear that the law is being flouted day in and day out. Simply saying that it would be easier to have a single tier because a range of laws would not be flouted is not the way to deal with illegality.

The Chairperson: Why not? That is the way to remove it. If you have a single-tier system, you do not need to have enforcement officers conducting checks. You are also maintaining the monopoly for one section of that issue in Belfast.

Mr Weir: Sorry, I have to say that it is not a monopoly. If I am anywhere in Belfast, I can pick up a phone and get any taxi. It is not a monopoly. Indeed, the danger, and my concern, is that, on that basis, you will have a potential duopoly. Also, the argument that is made is that it will remove the problem by removing many of the offences. If I were Chief Constable or Minister of Justice and had the opportunity to do that, I could halve the crime rate in the morning by abolishing half the offences. That does not help and seems to be a fairly woolly idea.

The Chairperson: The consumer who wants to go somewhere could just step out of their house or office and hail a taxi, as happens in other cities. At present, you must ring, ask for a taxi —

Mr Weir: Some cities operate single tier and others double tier.

The Chairperson: — and it may be five, 10 or 15 minutes before you can get a cab. I said previously to the Minister that visitors to Belfast were very puzzled by seeing taxis with signs flying past them and not picking them up. If we want to be a place for tourists, we must work in a way that is convenient to everyone seeking a taxi.

Mr Durkan: You have to phone a taxi, but not only do you not have a taxi service number, you may not know what street you are on.

The Chairperson: You do not know. The visitor simply sees an empty taxi and wants to get into it. That is how other cities work. If we want to have just black taxis for Belfast, we need many more of them. You seldom see a black taxi going down the street. You have to go to certain taxi ranks to get them, and, if you are between those taxi ranks, you will not be able to get a taxi by hailing the driver. We need to think about the public, the consumer and our image as a modern, progressive city that caters for everybody.

Lord Morrow, you have been very patient.

Lord Morrow: Chair, most of the things that I was going to say have been said. I want to be careful about going into vain repetition. Paul said that you had to commit six members of staff to police or monitor it. Did your Department not carry out some monitoring, for example, at the Ravenhill ground? Do you have that report available?

Mr Duffy: There was a number of operations with regard to what was happening at Ravenhill. We took legal advice on observations. The Department then arrived at a position that was issued to the major operators on the legality of what was taking place at Ravenhill.

Lord Morrow: What was that legal advice?

Mr Iain Greenway (Department of the Environment): Legal advice was taken from the departmental solicitors —

Lord Morrow: Which said?

Mr Greenway: — which was reflected in the guidance note that was issued on —

Lord Morrow: Which said? Sometimes, three words are used, and I do not know why those words are used particularly. Sometimes we get the word "information", sometimes it is "observation" and sometimes it is "report". I am not sure what I am going to get. Is this a report, an observation or information?

Mr Greenway: This is the legal position regarding taxi provision at Ravenhill rugby ground dated 18 October 2013, which was passed by the Department to interested parties and, I believe, has been provided to the Committee previously. That was the outworkings of the legal advice that was based on the observations made on the ground at — in this case, using the example you cited — Ravenhill rugby ground.

Lord Morrow: Will you refresh the Committee's thoughts regarding what it said? You need not read it all, but I am sure that there are salient points in it.

Mr Greenway: The advice reflects the Public Service Vehicles Regulations (Northern Ireland) 1985, the Taxis Act (Northern Ireland) 2008 and the Taxi Operators Licensing Regulations (Northern Ireland) 2012. It reflects on the legality, or otherwise, of taxis proceeding to Ravenhill and it makes clear that there must be an explicit engagement made from Ravenhill. That requires a request, by someone other than an on-duty employee of the taxi operator, to the taxi operator to send a specified number of vehicles at specified times to a specified location. I think I said before in front of the Committee that it is the same as Anna holding a party and asking for some taxis to come to her house at midnight to take six guests. A record of the request must be maintained by the operator in accordance with the 2012 regulations. Therefore, there are certain records to be kept. That is under the Public Service Vehicles Regulations.

Under the Taxis Act, there are certain requirements regarding the recording of the details of the customers being taken into the individual vehicles from Ravenhill to their chosen destination — dates, times, location of pick-up, location of drop-off, the number of passengers — and that must be recorded prior to or at the end of the journey and returned to the operating centre within five working days.

The advice then goes on to cover the guiding of patrons to taxis. Given that they have not been party to the engagement, it is important that the process of guiding patrons to a taxi makes it clear to them that they are free to use other means of leaving the ground, including other taxi firms. Regulation 49 of the 1985 regulations outlaws touting: the activities of a person employed as a driver to tout, call out or otherwise importune any person to be carried for hire in a vehicle. Section 43 of the 2008 Act draws those taxi provisions wider but has not yet been commenced. These are the salient points.

Lord Morrow: I am trying to make a point in response to what Paul said. With regard to the time involved and the difficulty in trying to detect, you feel that this is going to take a world of time and would be very difficult to enforce. The bottom line in all of this is lack of enforcement. I do not know how many prosecutions the Department has recommended over the past 12 or 24 months. Have you any figures for that?

Mr Duffy: In the past financial year, we carried out almost 2,000 operations in which we issued 277 fixed penalty notices, referred 88 files to the Public Prosecution Service and had 150 successful prosecutions.

Lord Morrow: What year was that?

Mr Duffy: That was 2012-13. We have figures for the first half of this year: we have had almost 800 operations, 125 fixed penalty notices, 55 files referred to the Public Prosecution Service and 53 successful prosecutions.

Lord Morrow: Have any operators been struck off as a result of their conduct and been told that they cannot operate any longer?

Mr Duffy: Yes.

Lord Morrow: Do you have the number?

Mr Duffy: No, but we recently revoked the licence of a taxi operator.

Lord Morrow: If the perception is that there is lack of enforcement, then I think that reduces confidence in the whole thing. What I am getting is that there is a lack of enforcement. I want to make clear that am not making light of what you say; I take on board the number of staff, including senior staff, that you have to engage and all of that. However, if we are to drive this forward, I honestly think that we have to look again at this, because I do not see that enforcement. I agree with Peter Weir and Cathal Boylan; where they are, I am too.

The Chairperson: I am aware of the time. One last question from Colum.

Mr Eastwood: I will not take long. I think that if an enforcement body is set up to enforce things it should do so. However, as someone who gets quite a lot of taxis in a place where we are not allowed to hail them, it has never caused any trouble. I would far rather see the enforcement authorities, with their finite resources, ensuring that I get into a safe taxi and that the driver ticks all the boxes for health and safety and security and all of that. How much of your enforcement time is given to that aspect compared to figuring out who has picked up somebody here, there or wherever?

Mr Duffy: As I said, over the past two to three months, because of representation, we have been directing more time towards the illegal pick-up of passengers. It is a difficult balance to strike. Previously, we channelled more of our resources towards the more serious offences, such as illegal taxis or the unroadworthiness of vehicles. However, with limited resources, it is about balancing serious offences and the representations on detecting illegal pick-ups, which are minor licensing offences and carry only a £30 fixed penalty notice.

Mr Eastwood: So, is likely that, with increased focus on the picking-up issue, more serious offences will go without being enforced?

Mr Duffy: That is the balance that we, as an agency, have to strike in managing our resources. We try to take a risk-based approach in that we respond to intelligence. However, we also base our work on operators and drivers' profiles. As you focus your attention on illegal pick-ups, you cannot be doing targeted operations. You could be out for two or three nights on a targeted operation and not get the taxi that you have targeted. So, in themselves, they take a lot of time, but they are much more serious offences to detect.

The Chairperson: The single-tier system would wipe away the need for checking illegal pick-ups. If everyone could pick up a passenger, according to the needs of customers, the consumer could request or demand a taxi.

Mr Duffy: It would certainly remove an offence and would allow resources to be channelled to other areas. That would be a consequence of single tier.

Mrs Cameron: To follow on from what Colum said: what role does the Department have in ensuring that taxis are roadworthy, safe and legal?

Mr Duffy: We conduct operations throughout the week based either on intelligence that targets illegal taxis or by doing random roadside stops to check the roadworthiness of vehicles. In doing so, we will pull over a random sample of taxis no matter whether they are private, public hire or whatever. That is one of the detection methods for more serious offences that we try to dedicate time to.

Mrs Cameron: Finally, do you have any figures for the results of such checks?

Mr Duffy: Just the figures that I provided to Lord Morrow, which can be broken down into whether they were to do with having no licence, having an illegal taxi or roadworthiness. However, I do not have that detail.

Mrs Cameron: Could we get it?

Mr Duffy: Yes.

The Chairperson: The Minister has to leave at about 12.00 pm. We have five minutes. We will move on to the report on illegal waste activities in Northern Ireland. It is a very long report but, on page 100, you can see the key recommendations. Minister, it is quite a damning report that says that the regulatory regime is weak and that sentencing is low. Page 22 says that lots of things are wrong. Will you implement all the recommendations in the report?

Mr Durkan: The report is quite damning, as you rightly say, Chair. Unfortunately, I do not think it tells us and you, as a Committee, a lot that you might not have already suspected. I released the report promptly to ensure open debate and discussion on how we fix the huge waste problems that we have here, and my permanent secretary and the head of the Northern Ireland Environment Agency (NIEA) will soon complete their analysis of the Mills report recommendations and provide me with draft proposals on how we will action them. I will then review those proposals and publish a full response to the Mills report.

The Chairperson: It is very costly to try to remedy the waste dumped in illegal sites.

Mr Durkan: Absolutely. We are looking at that issue now. My predecessor managed to secure an additional £1.5 million from the Executive to deal with that issue in particular, and some of that involves getting someone to cost the damage done at the illegal dump. They will come back with not only a cost but recommendations or proposals for clean-up. It is in all our interests to ensure that the polluter pays. There is a criminal investigation ongoing, as well as our work through the Department, but the report underlines and emphasises the seriousness of the problem here with waste crime and the huge financial gain that can be made by people who are all too willing to exploit gaps in the system. It is up to us, therefore, to ensure that those gaps are closed, and the report highlights that clearly.

The Chairperson: There is very little risk of being caught. Minister, we look forward to your follow-up on that.

Mr Eastwood: I am reluctant to say too much when a criminal investigation is going on, but this was a bolt from the blue and people did not know it was happening. Maybe they should have known it was happening. It was a huge site on the outskirts of Derry with lots of illegal waste dumped in it. What kind of work is now being done with the police and other authorities to figure out if it is happening anywhere else? I am pretty sure that it probably is. If so, where?

Mr Durkan: Some more of the £1.5 million that my predecessor managed to secure was used to employ 10 new waste enforcement experts in the NIEA's environmental crime unit. That has helped us to set up a major waste crackdown through what is known as Operation Toothfish. Operation Sycamore is the big one up in Derry, but Operation Toothfish is dealing with other issues. It is being led by the environmental crime unit with the PSNI and currently involves 25 investigations across 31 sites. So, it is a very widespread and worrying issue.

The Chairperson: The report says that, in 2007 or 2008, people were already informing the NIEA about the illegal dumping and that, had there been proper investigation, the whole thing would have been stopped at that stage. Are you investigating that whole process?

Mr Durkan: Yes, my permanent secretary will provide me with recommendations on the report, but I was particularly perturbed by some of the reading in the report.

Mr A Maginness: It is very important to highlight that issue because it seems to be hugely lucrative for those who are carrying out that form of environmental crime. It is important that you, Minister, and the

Executive make representations to the judiciary to bring that mischief to their attention and say to them that it is a very serious problem and that there needs to be exemplary sentences to highlight the pernicious nature of the issue. It encourages criminal activity and damages the economy and the environment. It has to be repeatedly emphasised.

The Chairperson: It is a serious crime.

Mr Durkan: The issue is that, so far, the profits outweigh the potential penalties to offenders, and I have discussed that issue with the Minister of Justice.

The Chairperson: It could also lead to us breaching directives and targets for landfill. We need to bear that in mind. We could be facing millions of pounds of infraction fines from the EU.

Mr Durkan: It is important that we get the message out as often as possible that it is far from a victimless crime.

The Chairperson: Absolutely. It affects all of us. Thank you, Minister. There are no more questions.

I want to touch quickly on the climate change Bill. What stage are we at now with that? I know that you put out a consultation.

Mr Durkan: Yes. My predecessor provided you with the synopsis of responses to the pre-consultation last June and you considered it last July, if I am not mistaken. It is my personal belief that we should ultimately aim to achieve a Northern Ireland climate change Bill. However, I am not convinced that I have the necessary political support to do so. In fact, I am fairly convinced that I do not. *[Laughter.]*

The Chairperson: You have the support of the Alliance Party.

Mr I McCrea: That will get it over the line. *[Laughter.]*

Mr Durkan: If we are to agree successful approaches to reducing greenhouse gas emissions and growing a sustainable, productive, low-carbon economy here, it must be based on partnership working across the public and private sectors and the voluntary and community sector as well.

As a follow-up to the pre-consultation, I met stakeholders from the business, energy, environmental and agrifood sectors in the past couple of weeks to take on board their views on tackling climate change and how government can assist in providing them with the appropriate framework to encourage the development of a low-carbon economy. There was a lot of forthright discussion during those stakeholder meetings but also a lot of helpful discussion. Various ideas and views have been put forward, and I believe that it is possible to build upon them.

For me, the main conclusions to be drawn from those meetings are that some people are still sceptical about the value of legislation at this time. All sectors would welcome working in partnership with the Department and government generally on the climate change agenda. It was interesting to note that all the sectors that I met are interested in working with one other on the agenda as well. They all support improved Northern Ireland data and research to inform measurement that is recognised and accepted across all sectors. As I said, there is, without doubt, need for a joined-up approach for the success of the green agenda across all government.

The Chairperson: Sorry, Peter, can you stop talking, please? I would like to listen to the Minister.

Mr Durkan: The Government need to be supportive of green business.

Mr Weir: We will be glad when you are an MEP. *[Laughter.]*

The Chairperson: Just show some respect to the Minister, please. Do not talk among yourselves.

Mr Durkan: It is about the development of technologies, including the facilitation of access to EU and other funding streams. I am very encouraged by the meetings I had last week, and I hope that this update is helpful to you.

The Chairperson: Thank you.

On Exploris, I know that —

Mr Boylan: I am sorry, Chair; I will be quick. I welcome some elements of this, but I think that there is a unique opportunity for the new formation of councils to draw down European funding and to adapt. I would like to see the Department working on that, because it is a very good opportunity.

Mr Durkan: That is fair enough. What came out of the discussions too was that we, not just in the Department of the Environment but across government, should do a lot more about greening up our act.

Mr Boylan: I agree with you. Green up the island. *[Laughter.]* I totally agree.

The Chairperson: Those who think that protecting the environment will damage their businesses are basing that view on a false premise. It very much a two-way process; it is interrelated. If we do not have the proper environment, the economy will not go upwards.

Mr Durkan: Of course, in many ways the market itself is dictating environmental improvement for industry.

The Chairperson: It is not either/or. It is really about working together.

Are members OK to move on?

There is one last thing. Can I get an update on Exploris? I know that the council has approved a reprieve for, I think, one year. Is that right?

Mr Weir: My understanding is that it said that it would produce a business case.

The Chairperson: Yes. A business case has been given to the development committee. What is your take on that?

Mr Durkan: I have made no secret of my commitment to Exploris, and I reiterate that. It is a very valuable facility, and we should all aim to keep it open. However, I do not necessarily agree with everything in the business case. There are some figures that I query, if not dispute.

The council is seeking £120,000 per annum from the DOE for the seal sanctuary. Regardless of the outcome, I am committed to the seal sanctuary. I am not sure where the council got its figures from. It wants a capital grant of £45,000 for signage for the seal sanctuary. I do not know how signage ties in with the conservation element that my Department remains willing to fund.

Furthermore, the council is seeking a further £900,000 capital grant to upgrade Exploris as a visitor attraction. Through my Department, I am prepared to look at what we can do. However, I am unaware of any other Ministers or Departments having indicated what financial support they might be able to provide to make up that capital grant.

The Chairperson: If Exploris has to close, what will happen to the seal sanctuary? Are you willing to keep that part open?

Mr Durkan: I have committed to doing so, and I reaffirm that commitment today. However, I am not sure that it would cost £120,000.

The Chairperson: The Committee went down to see it. The seals are just lovely. They were in the pond and in the cubicle-type thing.

Mr Durkan: Did you find it OK? There was no problem with signage. *[Laughter.]*

The Chairperson: Minister, I had a problem with my satnav. I put it in my satnav, and it took me to Strangford, so I had to take the ferry across. It was not just me; apparently if you are in Belfast and

you put the directions into your satnav, it will bring you there too. The people in the car in front of me on the ferry were from the city council, and they did the same thing.

Mr Durkan: I am going down there tonight for the statutory transition committee (STC), so thanks for the warning.

The Chairperson: Just key in "Newtownards" and go from there.

Mr Boylan: Bring the signage along with you.

Mr Weir: It would be better to look at where somewhere is on a map and then drive in that direction as opposed to relying on a satnav.

Whatever happens, the seal sanctuary will be pardoned. Leaving aside the rights and wrongs of other decisions and who has responsibility for what, this clearly falls within the DOE's ambit. From a conservation point of view, it is vital and could only really happen there.

Mr Durkan: I remain completely committed to it.

The Chairperson: We have covered all the items that are of concern to members. Thank you very much for your generosity, Minister, in giving us so much of your time.

Mr Durkan: Not at all.

The Chairperson: We look forward to seeing you again. Thanks to all your staff too.