



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government Bill: Informal Clause-by-
clause Consideration

13 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 Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

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

The Chairperson: I welcome "The A-Team": Julie, John, Linda and Mylene. You have been working very hard, and so have we. We read the amendments last night, and Sheila has been working very hard on all of that too.

For this session, we only need to consider the clauses where further information or amendments were requested by us or suggested by the Department. We will start with clause 2, which deals with constitutions of councils. Following the meeting on 30 January, the departmental officials agreed to provide the wording of a technical amendment to clause 2(1)(b) to clarify that the code of conduct referred to is the one in the Bill. That amendment has been tabled.

Are members content with that, or do you need any further information from the officials? Content?

Members indicated assent.

The Chairperson: The officials also agreed to consider an amendment to specify a date by which the first draft of a constitution would be published, but we have not heard anything from you on that yet.

Ms Julie Broadway (Department of the Environment): We discussed that with the Minister, and he is not minded to table an amendment to specify a date. I think that the councils will be very keen to get that information out, anyway. To put the constraint of a date down might not be the best thing. There will be no departmental amendment on that.

The Chairperson: Really, an organisation should not start operating without a constitution. That is the first thing that you need to work with.

The Chairperson: Are members content with that?

Lord Morrow: Is the date a constraint? Is it not an incentive? I suppose that it is like beauty: it is in the eye of the beholder.

Ms Broadway: We could quickly go back to the Minister on that again to see whether —

Lord Morrow: I am not totally against what you are saying, but I am not just convinced, if you know what I mean.

Ms Linda MacHugh (Department of the Environment): Setting a date would need to be considered in terms of both what an appropriate date is and the fact that, if you set a date, it could be a rushed job or the task could expand into the date by which it is required. If you set it too far in advance it could delay it, as councils will think that they have until x date. Conversely, if a new council is having issues that it is still trying to figure out, having a date might force it into producing a constitution that it is not wholly happy with. We need to consider all those issues.

The Chairperson: What do you think would be a reasonable time, Lord Morrow?

Lord Morrow: First of all, I think that dates exercise the mind and are good for targets. I also believe that a date that is totally unreasonable is out of the question altogether. I am not talking about needing to have it done in three months or something like that. However, if you leave it totally open-ended, with no target date, it will be one of those things that continually fall to the bottom of the pile and might never get done. You could be running to two council terms or something like that before it gets done.

Mr John Murphy (Department of the Environment): To support the Minister's position, the Department will be issuing a model constitution that it has developed, with the issues that need to be in it. I think that we provided the Committee with a copy. The Bill also provides us with the ability to issue direction on what needs to be contained. You start to have a framework that will support councils moving to very quickly put that in place.

Lord Morrow: Do you see the first term of the new councils as an unreasonable time to expect that to be done? Is it four- or five-year terms?

Ms Broadway: It will be five.

Lord Morrow: Would it be unreasonable to expect the new councils to deal with that in their first five-year term? I do not think that that is unreasonable, but maybe others do.

Mr Weir: Would you not expect the constitution to be dealt with during the shadow year?

Lord Morrow: I was going to say two years, but I thought that, by the way the officials were coming here, they felt there was something that they were going to throw something out on the table that would surprise us as to why it could not be done.

Mr Murphy: We would envisage the councils looking at that during the shadow year so that they have it in place when they take on their full executive responsibilities.

Lord Morrow: I think that it would be excellent if it was done within the shadow period.

The Chairperson: So, by April 2015?

Mr Weir: Chair, there could be one or two ways to do this, either of which is slightly in advance of what is there: either put the date in the legislation or insert a subsection or whatever that would give the Department an enabling power to give a direction in terms of the date, in case it was felt that a particular council was pushing things down the pipeline unduly.

Ms Broadway: We can consider that and take it back to the Minister. That would be a solution.

The Chairperson: Yes, it would be a compromise.

Ms MacHugh: At the moment, the Bill says that you need a constitution and that you need to supply a copy of that constitution should anybody request it. If you do not have a constitution you will not be able to supply a copy. We can take the issue of an amendment that would allow us to implement a date, should there be a problem, back to the Minister. However, at the moment, we do not know whether there will be a problem or not.

The Chairperson: It is quite clear-cut, as Lord Morrow said, to say whatever time, or no later than April 2015. That is fair enough. The shadow council could work on that as their first piece of work. What do you think, members?

Mr Weir: With the best will in the world, a lot of constitutions can be quite bland in their nature. It should not be that difficult to crack. Some of the nuances around standing orders may need a bit more work but, in the wider context of a constitution, I do not see where the difficulties are.

The Chairperson: And there is a template for them to work on.

Ms Broadway: We are working with a model constitution.

Ms MacHugh: We will take that back to the Minister and let you know as soon as he makes a decision as to whether it is an amendment that he wishes to bring forward.

The Chairperson: Yes. And the date is in April 2015. Are members content with that?

Members indicated assent.

The Chairperson: We move on. The next one is clause 4 and schedule 1. The Minister was also asked to confirm, in writing, that subordinate legislation will be in place by the May 2014 elections, specifying the posts or grades of staff that will continue to be disqualified from being elected as a councillor, but we have not got any confirmation of this policy yet, Linda.

Ms MacHugh: The Minister has confirmed that, in subordinate legislation, we will name positions of political sensitivity, and we have had lengthy discussions about that. We will consult on the exact level that that will be pitched at, bearing in mind the strong views that the Committee expressed around the potential issues. Also, we will be putting a geographic restriction on it, so that any council employee cannot be a member of his or her council. We have taken that on board as well, and the Minister is prepared to put that into subordinate legislation.

The Chairperson: OK. So an employee can seek a position on other councils?

Ms MacHugh: Yes, in other councils. However, it will be restricted to only certain levels of employee in certain positions. We will want to take further soundings from local government on those positions as well, and then it will be going out for consultation.

Mr Weir: I presume, therefore, that what may be described as "the blanket ban" will be in force for the 22 May elections?

Ms MacHugh: Yes.

Mr Weir: What we are really talking about is the long-term position. I presume that, at least from the point at which regulations come in, they will be open, either by way of co-option or indeed the 2019 elections, if it is four years.

Ms MacHugh: Exactly.

The Chairperson: Are members content with that? Cathal, are you OK?

Mr Boylan: Yes.

Members indicated assent.

The Chairperson: We move to clause 10, "Positions of responsibility". This clause sets out the positions of responsibility within a council and the allocation process to be used. Departmental officials proposed a technical amendment to clause 10(4) to remove the word "prescribed" — to be replaced, I think, Linda, you said previously, by the word "statutory". Two amendments have been tabled to accomplish that. So, instead of "statutory", we take away the word "prescribed" and leave "public body" in there. Why?

Mr Murphy: A "public body" is defined in the interpretation clause as "a body established by statute". So it achieves the same policy aim, but we are clearly saying that it relates to external appointments to public bodies that are established in statute.

The Chairperson: So what are the implications when you take out "or other association"?

Mr Murphy: We are not aware of any statutory associations. So this is just to provide clarity for a council with respect to positions that are caught by schedule 3.

The Chairperson: Are members content with that?

Members indicated assent.

The Chairperson: There is also the mechanism. We talked about STV/d'Hondt being the default position. Is there going to be any change in that?

Ms MacHugh: No.

The Chairperson: So the Minister is OK? You are keeping that.

Mr Weir: Chair, just to clarify about the positions of responsibility, is it prescribed later on, or will it be left to the standing orders and the constitution? Obviously we have a list of positions. We do not clarify whether they are annual positions or positions for the full period. I appreciate that the external representatives may be something that is like a block bit. I am just wondering, because the point was made. I appreciate that, in terms of the likes of chairs and deputy chairs, they are more or less annual in relation to that. It is unlikely that any council will go directly down this route, at least in the short term, but if you are having a cabinet-style executive, it will probably make sense for those positions, at least within a party, to be effectively ring-fenced for each block period, which would be different from where the chairs and vice-chairs would be. If you were having a cabinet, a degree of continuity would be needed, and more so than if you were simply swapping about the chair or the vice-chair of a committee.

Mr Eastwood: Do you mean in terms of the party or the person?

Mr Weir: In terms of the party, because you could elect someone and then they could fall under a bus tomorrow. A dead person in a cabinet position might sometimes be an improvement on whoever is there, but, in general, in any of these things it would be on the basis of a party position. Even if, for the sake of argument, say because of the way d'Hondt fell, you might want to have a situation where a party might want to have the chair of the council, effectively two years in a row. It may be that, because of the way d'Hondt falls, it may be in a position to pick that. However, there has to be a bit of variation or flexibility, so that it could be Joe Bloggs one year and Josephine Bloggs the next — whatever way it happens to be — rather than necessarily ring-fenced. It strikes me that it probably makes sense if it is at least allowable, from the point of view of a cabinet position, that it is something that can actually roll forward for the full term on that side of things. I suspect that no council, certainly in the first term, will go for a strict cabinet; they maybe will go for a streamlined system of some description.

Ms Broadway: I think that that had not been the original intention, but we can look at it.

Ms MacHugh: Is that something that the Committee wants us to take back to the Minister?

Mr Weir: That flexibility of that may be something that can be dealt with purely in guidance, so I am not necessarily saying that there needs to be an amendment. However, there may just need to be a wee bit of clarity so that people understand how the system will work in terms of those different representations. Even for the external representatives of the council, I suspect that some external representatives are elected on an annual basis. There are quite often particular external bodies where they are looking for someone to sit for the full term of the council, so it would be a four- or five-year appointment.

The Chairperson: So is there going to be an amendment on that?

Mr Weir: What I am saying is we should maybe ask for clarification, but it may then be mentioned that there will be something in guidance. Maybe we need to check that there is no legislative tweaking required in relation to it. It may well be settled in guidance. For (a) to (f), or some of them, it may be. Positions (e) and (f) may operate completely differently from (a) and (b), but we may just need that bit of clarification on it.

Mr Boylan: Are you leaving it to choice? Or are you asking specifically for a certain position? Are you leaving it up to the council to decide what way it wants it? What way do you want to do it?

Mr Weir: So long as we can be clear that there is that opportunity. It may be that at least an opportunity is given in the cabinet style to allow it to be an appointment for the full term of office, if that was agreed as part of the overall mechanisms. So long as that same opportunity is not given for positions (a) to (d). Those are things which clearly should rotate annually.

The Chairperson: OK. Let us move to clause 11, "Arrangements for discharge of functions of council". The departmental officials agreed to consider amending the wording of this clause on borrowing money to address a possible conflict with the Local Government Finance Act (Northern Ireland) 2011. So the proposed amendment has been tabled, members; do you want to ask the officials for any further clarification on this? Are you happy with the amendment? It seems straightforward to me.

Members indicated assent.

The Chairperson: We move on to clause 23, "Permitted forms of governance". The Committee asked the Minister to consider whether committees outside the executive, exercising quasi-judicial functions such as licensing or planning, would be subject to call-in or qualified majority vote, and we have no response as yet.

Mr Murphy: No. The operation of the call-in and QMV will be covered in guidance, as the Minister said in the Chamber. Those will be specified as mandatory elements of standing orders, which, again, will be made under regulations. They are subject to the draft affirmative.

The Chairperson: OK. Are members content with that?

Members indicated assent.

The Chairperson: We move on to clause 25, "Council executives". The Committee asked the Minister to clarify the role of mayors and deputy mayors in a council executive, and whether they would have voting rights. What about this? No decision has been made.

Ms Broadway: The Minister is not minded to make an amendment in relation to that.

The Chairperson: Are we going to have guidance?

Ms Broadway: Yes.

Mr Murphy: The provisions for access to meetings and information of an executive will allow members of the council, including the major and deputy mayor and the chair and vice-chair of the council, to attend, unless the executive is discussing something commercial in confidence or personnel issues. They will have that free access so that they are aware of what is happening in the council. As well as that, the regulations will specify that the decisions of an executive should be published within two days

of the decision being taken, and that will be published and circulated to all members of the council. The regulations will provide for that information to be available across the council.

Mr Weir: I appreciate what has been said. It may not necessarily be through the Committee, but, on the basis of the position of mayors and deputy mayors, I may seek an amendment on that. I appreciate what is being said about openness. I suppose the only issue, then, is that quite a number of decisions may be commercially sensitive and are then purely kept to the cabinet style, and because of their nature, people may have to be excluded. The problem is that if you are talking about a mayor or a council chairperson of a particular borough, there may well be sensitive bits of information that they may not necessarily have a vote on, but they may have a strong need to know what is being said, because it could very easily impact on the borough as a whole. I am not sure that not at least having them as a member of an executive, albeit there is a reasonable enough reason for them to be non-voting members, is particularly good enough in that regard. I may not necessarily put forward an amendment to the Committee today, but I may look at amending clause 25.

The Chairperson: Thank you.

Are members content that the Minister is not going to table an amendment on this? Does the Committee want to push for one? We can talk about that later. However, we are clear that the Minister is not going to amend the Bill on this point.

We move on to clause 34, "Reference of matters to overview and scrutiny committee etc.". There are two tabled amendments to this clause to replace "excluded" with "prescribed". Linda, can you explain a bit about that, please?

Mr Murphy: Originally, we were providing that excluded matters would be specified in an order, whereas all the other aspects about the operation of the executive would be in regulations. We wanted to be in a position where you had one piece of subordinate legislation dealing with all aspects of executive arrangements. The draftsman has taken the view that it is easier to say "prescribed", so it still allows us to do it in regulations. The draftsman has done it in a technical way that he felt delivered what we required.

Ms Broadway: Instead of referring to an "excluded" matter, it is a "prescribed" matter. Under the interpretations, "prescribed" means "prescribed by regulations". It means that we can include in the regulations on executive arrangements anything on overview and scrutiny.

The Chairperson: OK. It is really a technical amendment. Are members content?

Members indicated assent.

The Chairperson: Tom, are you OK? You look puzzled.

Mr Elliott: No, I am OK.

The Chairperson: We move on to clause 45, "Power to require decisions to be reconsidered". The departmental officials agreed to report back to us after discussions with the Minister on the criteria for a call-in and guidance on the use of a solicitor or barrister in the procedure for the reconsideration of a decision. We have not got any written response from you yet.

Ms Broadway: The Minister is not minded to bring forward an amendment on that issue.

The Chairperson: So, the Minister is not going to put in an amendment. Suzie has tabled a paper on a study in England of local councils about the call-in system, but it is only a fictional model; there is not really a working model as such. It has findings and opinions from different councils.

OK, members. There will certainly be guidance, but there will not be an amendment.

Mr Murphy: There will certainly be guidance. As I said earlier, the call-in procedure will be a mandatory element of a council's standing orders. It will be specified in regulations.

The Chairperson: We have discussed before whether there should be a panel of solicitors or one designated solicitor outside the council. That is not going to be amended; the Minister is not minded. Members, maybe we can discuss that in closed session.

The next one is clause 50, "Application to committees and sub-committees". The Department has tabled an amendment to the clause to remove the word "be".

Ms Broadway: That is a mistake that was not caught in a proofread.

The Chairperson: That is fine.

Clause 58 concerns investigations. Departmental officials agreed to report back to us on discussions with the Minister on the possibility of an amendment to the clause to deal with minor complaints. We also asked the Minister to reiterate his intention for the role of the Commissioner for Complaints to be reviewed after three or four years. There is one tabled amendment. Maybe the officials can clarify it.

Ms Broadway: The amendment allows the commissioner, if he considers that a matter should be referred back to the council for local resolution or some form of mediation, to take that action rather than carrying out an investigation.

The Chairperson: Are members content with that?

Members indicated assent.

The Chairperson: What about the review?

Ms Broadway: The Minister is happy to give an undertaking that that will be reviewed.

The Chairperson: So, he will mention that in Consideration Stage. Are members content with the answers?

Members indicated assent.

The Chairperson: Clause 60 concerns reports. The departmental officials agreed to report to us on discussions with the Minister and the Commissioner for Complaints on the possibility of a moratorium on complaints two or three months in advance of an election. We have not seen any amendment on that.

Ms Broadway: We have discussed it with the Minister. He is not minded to bring forward an amendment.

Ms MacHugh: One of his concerns is that, whilst he understands the concerns of the Committee about spurious or malicious complaints against councillors, that has to be balanced against the possibility of actual and real complaints being barred from being investigated during that time. His concern was that, in trying to defend the honour of councillors who might face a bogus accusation, you might also, conversely, prevent real misdoing being brought into the public domain prior to the election.

The Chairperson: I understand that. Are members content with that?

Mr Weir: Not really. I appreciate the point being made. If it were the case that a complaint could be made and nothing would ever happen, that is a different kettle of fish. However, it could be used in a malicious way — in a way that, with the best will in the world, the councillor would have no opportunity to clear his or her name prior to an election. What had been talked about was, essentially, a delay. That issue may be considered for an amendment. I appreciate why it is being said, but I think that there are pitfalls.

The Chairperson: Is a moratorium before elections the practice in other jurisdictions?

Ms Broadway: Not that we are aware of.

Mr Weir: One of the problems is that it is difficult to judge how people will use or abuse the system until it is in place. My concern is that, in Northern Ireland, there might be motivations that do not exist elsewhere. People with visceral attitudes might come to the fore, which would not necessarily be the case in, for example, Wales or England.

The Chairperson: Do you mean a person bringing a vexatious complaint?

Mr Weir: The problem is that, if somebody brought a completely spurious, vexatious and malicious complaint a month before the election, it would take a while for it to be shown as such, and the mud may well stick. The person may be cleared on 5 June, which is two weeks after the election. That is grand, but, because their name has been dragged through the mud, they may have lost their seat and had their career wrecked in the meantime.

The Chairperson: I go along with the explanation of the officials and the Minister. If a genuine complaint happened just before an election, that would mean that you would be gagging someone, and that is against natural justice.

Mr Boylan: It could be one tweet.

The Chairperson: How can you stop people tweeting?

Mr Boylan: No. That is not the point. That is not what I am saying.

Mr Weir: There is nothing to stop anybody tweeting and doing pretty much anything they want. The issue is whether anything they do is given substance in the form of a complaint at a time when a councillor does not have an opportunity to clear their name or have that level of justice.

Mr A Maginness: Even if you had a moratorium on the substance of the complaint, you could not have a moratorium on the actual complaint. In other words, if Joe Bloggs put in a complaint against councillor so-and-so, you could not stop that being publicised.

Mr Weir: No, but the point is that there would be a moratorium on somebody lodging a complaint during that period.

Mr A Maginness: I do not think that you could do that. I think that a complaint has to be lodged within a certain time. All that you could prevent by way of moratorium is the substance of the complaint.

The Chairperson: You could also face a legal challenge if you suddenly said that people were not allowed to lodge a complaint within a certain period. If I suddenly had a very serious complaint and felt that I had been gagged —

Mr A Maginness: I am saying that I do not think that you can stop a complaint being lodged. That would be against all the laws on fair play, equity and so forth. However, there might be some room to restrict the disclosure of the substance of the complaint.

Lord Morrow: What about the timelines, Alban?

Mr A Maginness: That is what I mean. You could possibly have a moratorium on the substance of a complaint.

Lord Morrow: What about the lodging of a complaint?

Mr A Maginness: No.

Lord Morrow: So, if an issue were to arise now, you could complain about it in 10 years' time?

Mr A Maginness: No, I am not saying that. The important thing is that a person should always have the ability to lodge a complaint. All that we can do as a legislature is say that there is a moratorium on the disclosure of the substance of that complaint. I do not think that you could suppress, as it were, or prevent someone lodging such a complaint, because that would be inequitable.

The Chairperson: There is always difficulty in suppressing the content of the complaint. Quite often, complainants go to the press or make it known to people by other means.

Mr A Maginness: The point is that they might be forbidden in law to do so.

Ms MacHugh: When the commissioner gave evidence to you, he gave his undertaking that the nature of a complaint and, indeed, whether or not a complaint had been made, would be kept confidential unless and until, of course, it came into the public domain in another way.

Mr Weir: The one complication of that is that a complaint made by someone who has genuine concerns is kept confidential. However, someone who puts in a malicious complaint simply to try to destroy the character of a particular councillor, or even a council candidate, will have a big incentive to publicise that. To some extent, you might end up protecting someone against whom a genuine complaint has been made but also making it open season for people making complaints for malicious purposes.

Ms MacHugh: I do not think that the Bill has the ability to place a moratorium on anybody disclosing the substance of a complaint if the complainant was outside the council structure, for example.

The Chairperson: Are members content with the explanation, or do you want to have a further discussion in closed session?

Ms Broadway: The commissioner is aware that this is an issue. He has been discussing it with colleagues in Wales because there is evidence that, just before an election, the number of complaints increases. He has been discussing how that is dealt with.

Mr Weir: Perhaps we could get a wee bit more information on how that it is dealt with. I appreciate that it is one of those issues about which there will always be criticism, no matter what is done. Some will argue that we are trying to gag people if we go down a particular route. On the other hand, I can envisage a real-life example happening just ahead of an election in which a person's role as a councillor will be completely wrecked because of a malicious complaint made against them. That person will not have time to clear their name. Quite often, when there is a complaint, despite all that is said about being innocent until proven guilty, an awful lot of people take the view that there is no smoke without fire. They will say that so-and-so must be guilty until the person is cleared. When you depend on public opinion to elect or not elect someone, that can be very damaging. We need to take care in whatever position we take on that.

The Chairperson: I have just been reminded that this is our final clause-by-clause session. We really do not have time to get any further information.

Mr Weir: That may well be the case. Whether or not the Committee tables an amendment may be significant, but, if we get further information, it may guide a lot of us. We are not at Consideration Stage yet, so further information might provide a guide to us and help us to decide whether to table an amendment then or at Further Consideration Stage. That decision might also relate to whatever assurances are given in the House in connection with this issue. I appreciate that the boat may have sailed as far as amendments at Committee Stage are concerned, but there are other options.

The Chairperson: We will need to have further discussions about that in closed session.

We will move on. No amendments were proposed to clause 60.

Clause 62 concerns decisions following report. Officials agreed to report back to us on discussions with the Minister on the possibility of an amendment to introduce an appeals mechanism for complaints, possibly to the High Court. Members have the tabled amendment before them, which allows for appeal to the High Court. Are members content, or do you need further information?

Mr Weir: Let me clarify. I am broadly content with the idea of an appeal to the High Court. On that basis, is there any indication of the potential grounds for appeal? By appeal to the High Court, do you mean simply the equivalent of a judicial review, or do you mean that such an appeal could be based on the sentence or the merits of the case against the person?

Ms Broadway: In Scotland, legislation specifically allows for grounds for appeal, three of which are really the provisions for judicial review. However, there is an additional ground for appealing.

Mr Weir: I would like the grounds to be wider than judicial review. Although procedure may have been followed perfectly, there may be an unduly harsh verdict that, for example, disqualifies a councillor. Alternatively, we may want some level of appeal to say that what the councillor is accused of is not accurate. I think that there needs to be something of that nature. If the legislation simply refers to the right to appeal to the High Court, that leaves a very grey area: is it just judicial review or does it go wider than that? There may be some merit in inserting what the potential grounds for appeal are. You mention the Scottish legislation in which that is provided for. I think that it needs to be wider than judicial review.

The Chairperson: What about the cost? The Complaints Commissioner also mentioned that it will be very costly for people to take anything to the High Court.

Ms Broadway: There was evidence that the cost of appeal and judicial review is quite similar.

The Chairperson: So it would cost a lot to take an appeal to the High Court.

Mr Weir: I know that cost can be a deterrent. Generally speaking, I know that the stakes are high, but it is likely that the cost will follow the event. So, if the High Court found in favour of the appellant, it is fairly likely that the appellant would be awarded costs. The big downside —

The Chairperson: Yes, but the risk —

Mr Weir: Risk is the big downside. However, I think that, at the very least, people should have the opportunity to appeal to the High Court. They are probably risking a large amount on getting the right verdict. If someone was disqualified and consequently stood to lose tens of thousands of pounds over the next three or four years, they may well regard an appeal as worthwhile.

Ms Broadway: In Scottish legislation, the grounds for appeal against an adjudication are these:

"The finding was based on an error of law; there has been procedural impropriety in the conduct of the hearing; the Commission has acted unreasonably in the exercise of its discretion; or the Commission's finding was not supported by facts found to be proved by the Commission."

Mr Weir: Yes. That stands to reason, but the only issue might be whether there is an additional ground: less about the facts and more about the merits. I wonder whether there is scope for an appeal against the sentence.

Ms Broadway: There is something further, which applies to an excessive sanction:

"The Commission has acted unreasonably in the exercise of its discretion"

Mr Weir: Is that under a separate heading from the ground that the commission acted unreasonably?

Ms Broadway: Let me check. I can make this document available to you, if you want.

Mr Weir: Will you read out the section?

Ms Broadway: Yes.

"That the commissioner's finding was not supported by the facts found to be proved by the commission"

On the sanction being excessive:

"The Commission has acted unreasonably in the exercise of its discretion".

Mr Weir: Are those part of the same block?

Ms Broadway: It is all in relation to an appeal.

Mr Weir: I understand that. I am sorry. I am not making myself clear. Are the reference to the sanction and the reference to the commission acting unreasonably two separate points?

Ms Broadway: Sorry. Yes, they are. They are two subsections.

Mr Weir: If they were one and the same, it would be a question of reasonableness in the level of sanction, which is different from the level of sanction being too severe. I think that, if those were put in as the specific grounds, it would clarify that and not leave any doubt about what the appeal route is.

The Chairperson: Do you want them inserted into the amendment?

Mr Weir: It would probably be an additional subclause, something like, "The grounds for appeal under subsection 13 would be under one or more of the following", which would be followed by a list. I just want to say that, at the moment, there is a lack of clarity.

Ms Broadway: We will take that back to the Minister

The Chairperson: The next one is clause —

Lord Morrow: May I just ask briefly —

The Chairperson: I am sorry, Lord Morrow. Yes?

Lord Morrow: May we hear the team's thoughts on clause 63(1)(c), which includes the wording, "suspend or partially suspend". How do you partially suspend a person?

Ms Broadway: That would happen if the commissioner was carrying out an investigation and it looked as though it might lead to disqualification, or there might be a reason why that person should be taken out of a particular committee. In that case, the commissioner would have the power to issue an interim report and partially suspend the person while the investigation was ongoing.

Mr Weir: Would that apply, for instance, if the complaint was something to do with planning? In that case, a person can be taken off the planning committee but is able to remain a councillor throughout that period. Is that right?

Ms Broadway: Yes.

Lord Morrow: So that is what you call a partial suspension. What would be the status of the councillor during that period?

Ms Mylene Ferguson (Department of the Environment): It would be down to the particulars of the case and how the commissioner viewed it. It may just be that they need to be suspended from a particular committee, or it may extend further. It just depends on the nature of the case.

The Chairperson: Specific circumstances, really. Are members content with clause 63?

Members indicated assent.

The Chairperson: We move to clause 67, which is on the expenditure of the commissioner. Departmental officials agreed to report back to the Committee after discussions with the Minister on the apportionment of the commissioner's costs and whether this clause will be amended to reflect that. We have received no amendment. Previously, we heard that it might be top-slicing.

Ms MacHugh: We now have the Minister's agreement that that would be the case, so he will put forward an amendment to make that top-slicing provision.

The Chairperson: When will you bring us the amendment?

Ms MacHugh: We heard that the Minister agreed to that just 10 minutes before we arrived. We will get that drafted as soon as we can and get the precise wording of the amendment to you.

The Chairperson: OK.

Ms MacHugh: By close of play today, but I will not be here.

The Chairperson: We will need to look at it today, really.

Ms Broadway: Yes.

We have an additional amendment that you have not yet been made aware of. The amendment is to clause 64 on recommendations. As drafted, if, in the investigation of a case, it becomes clear to the commissioner that a council's procedures might leave some sort of grey area that could give rise to someone being in breach of the code, or if there was such a grey area in the procedures of another public body that could provide means for someone being in breach of the code, the commissioner can issue a report to the council or public body, stating that there may be an issue. As it stands, the commissioner must send a copy of any recommendations to the council and DOE but also to any other relevant Department. The issue is this: how do you define "relevant Department"?

It would be easier for DOE to assess which other Departments are involved and send the report administratively to them than for the commissioner to do so. So the amendment to clause 64 is to put DOE at the centre: we will receive the report from the commissioner and then follow up with other Departments. It would mean that we would omit clause 64(2)(b), omit clause 64(3)(b)(ii), and take out clause 64(6) completely, meaning that DOE would be at the centre rather than all Departments receiving the report.

The Chairperson: It just makes it simpler it all going to DOE. Are members content with that?

Members indicated assent.

The Chairperson: We move on to clause 68 on interpretation. The clause clarifies the position of a councillor who is disqualified but has been appointed to an outside body. There is quite a long amendment. Will you explain it to us?

Ms Broadway: Last week, the Committee raised the point that we need to be clear on this. In the provision as drafted, it is clear that a councillor, when acting in a representative role for their council, is covered by that clause. However, what about a councillor who is not acting as a representative of their council but is on a public body by virtue of being a councillor? The amendment is to clarify that the provision also covers people acting by virtue of being a councillor.

Mr Weir: I just want to clarify what it covers. The one example that immediately came to mind was appointment to the Library Authority and the opportunities, as I understand it, given to councillors to apply. It was the process — I presume that it is the same under the current CAL Minister — that 11 councillors were picked. They are not there as a representative of their council. However, the fact that they are a councillor is effectively a qualifying factor — it may not be a strict qualifying factor — in their serving on the authority. So this would cover that situation. Is that right?

Ms MacHugh: Yes.

The Chairperson: I think that a lot of organisations would invite a local councillor on to their board.

Mr Weir: A grey area is whether they are inviting them because they see them simply as an important local person, for want of a better phrase, or they are there purely because they are a councillor.

The Chairperson: Sometimes, that is difficult to define, which is the issue. I am on a number of boards, and I think that they invited me because of my connection with the Assembly.

Mr Weir: The distinction is that, if it is a statutory body, it is probably purely on the basis of being a councillor. If, for the sake of argument, it was a local charity that wanted to have somebody in the public eye on the board, that is a different kettle of fish.

Ms Broadway: Yes, in the sense that they do not hold that position by virtue of being a councillor.

The Chairperson: I hope that we are clear on that. Are members content with the new section in clause 68?

Members indicated assent.

The Chairperson: We move on to the amendment to clause 78, which removes, "aim to". That is very much welcomed, by me anyway.

Sorry, we are on clause 69, which is on community planning. I had jumped ahead. The Committee asked the Minister to give an assurance at Consideration Stage that the role of the voluntary and community sector would be outlined in statutory guidance. Departmental officials agreed to report to us after discussion with the Minister on a possible amendment to the clause to include in statutory guidance well-being, equality and good relations. What about that one, Linda?

Ms MacHugh: At this stage, the Minister is not minded to amend the clause. However, he is still taking soundings, so he has not reached a definite conclusion. However, we can give an undertaking that that will be expressed in guidance.

Mr Murphy: The Minister is happy to give that assurance at Consideration Stage. We will work with various bodies in local government and other key stakeholders in developing the guidance. The equality and good relations duties on councils and the statutory partners will be a clear element of the guidance.

The Chairperson: There will be guidance but not in the Bill.

Ms MacHugh: As I said, he is still considering it. At this stage, he is minded not to amend the Bill but has not come to a final conclusion. He will shortly but not just yet.

The Chairperson: Is he minded to table an amendment on the role of the voluntary and community sector?

Ms MacHugh: No.

The Chairperson: Just in guidance.

Ms MacHugh: Yes.

The Chairperson: OK.

Mr Boylan: On deprivation, poverty, social inclusion and all those things, and I can speak only from experience in my area, I am concerned that some old areas in towns and rural settlements are already a wee bit left behind in councils as it is. In a larger council, where they will be linked to bigger urban settings, I am afraid of them getting swallowed up and missing out, so we need to ensure that the likes of tackling deprivation and all is tied down.

I mentioned last time that neighbourhood renewal addresses some issues, but the small areas of deprivation — areas at risk, as they are called — are not being addressed at the minute. We need to ensure that councils take responsibility under the new regime.

Ms MacHugh: As I said the last time that we discussed this, community planning is one route but another is the urban regeneration and community development framework, which DSD has issued to councils as the framework against which it is going to be monitoring performance. The obligations on councils to tackle deprivation are enshrined in that document. I do not have enough of a working knowledge of the document to know exactly how the issues around tackling smaller pockets of deprivation are addressed, but that may be worth looking at.

Mr Boylan: We have an opportunity now to address deprivation. It is out there. Some people may not have experienced it, but I have used the example about one town area having three wards, with two wards being affluent and the other being in the older part of town. We possibly have an opportunity through the clause to address that, even through working in partnership with other Departments.

Mr Murphy: In addressing those issues in guidance, you have greater flexibility to hone in. You can cover the main thrust in statutory guidance but develop certain themes through additional advice notes or further iterations of the statutory guidance.

The Chairperson: Are members content with all the information and the explanation?

Members indicated assent.

The Chairperson: However, we need to press the Department to find out fairly soon whether the Minister is content to table an amendment on equality and good relations.

We move to clause 76. A possible amendment to clause 76(1) is to insert "reasonable" before "arrangements".

Ms Broadway: The Minister has agreed to forward the amendment.

The Chairperson: OK. Again, will we see the amendment tonight?

Ms Broadway: Yes.

The Chairperson: Clause 78 is on duties of Departments in relation to community planning. There is an amendment tabled. It is the one that I jumped to earlier, to remove "aim to" from clause 78(a). It is really just to make the wording a bit stronger. Are Members content?

Members indicated assent.

The Chairperson: We move to clause 85, which is on powers to make supplemental provision. There is a departmental amendment to this clause, too, to strengthen Assembly control of the power by making it subject to a super-affirmative resolution. Are members content?

Members indicated assent.

The Chairperson: We move to clause 95, which is on improvement planning and publication of improvement information. Officials agreed to report back on the possibility of amending the clause at subsection (3)(a) from "31st October" to "30th November" to facilitate the local government auditor in the preparation of financial accounts for councils. What about that?

Ms MacHugh: That is an operational issue that the Audit Office has raised with the local government auditor. The Minister has agreed to bring forward an amendment to amend the date by which a council has to produce its report to 30 September, so that will give an additional month. It is really a case of striking a balance between the operational requirements of the Audit Office and the issues that would arise for councils from bringing the date forward too far. Therefore, we have provided for an additional month in the legislation.

The Chairperson: Will you explain the procedure for those of us who do not understand the local councils' procedures?

Mr Murphy: The new framework will require a council in the early part of the financial year to publish a plan of what it intends to do to improve the delivery of its services, etc. The following year, it will be required to gather information to assess how it performed against the targets that it set itself and any targets set by Departments, and publish a report. Originally it was supposed to be by 30 October, to give a council the time to gather that information. The auditor would then go in and confirm whether the council, in delivering its performance improvement duty, had complied with all the duties specified in the Bill.

As we said, the auditors felt that one month was not sufficient time for them to undertake that role, and they wanted either the date for the council to prepare its report brought forward or the date for the production of the auditor's report to be moved to January. The difficulty with moving it into January is that that would then create a problem for the council in preparing its improvement plan for the incoming year, because it has to take account of anything that the auditor identifies. Therefore, it was felt more appropriate to bring forward the date. We are still giving the council six months in which to gather the information and assess how it has delivered against its improvement plan.

The Chairperson: I understand now. The councils are going to bring the information a month before — in September — which would allow the auditor almost two months to deal with it. Members, are you content with that?

Members indicated assent.

The Chairperson: Have you spoken to the Northern Ireland Audit Office (NIAO) about that?

Ms Broadway: Yes.

Ms MacHugh: Actually, we needed to speak to the Minister, so I am not sure that we have had the opportunity to tell the NIAO that we are bringing forward the amendment, but we did discuss the issue with it before we took advice to the Minister.

Mr Weir: Was it content with what was suggested?

Ms MacHugh: I am not sure that we got down to exact dates, but it expressed its view about the issue of having only a month. We took that view away and considered it, and this is what we have agreed with the Minister would be an appropriate balance between giving councils enough time to do their work and giving the Audit Office enough time to do its work.

Mr Weir: Chair, I appreciate that, and I appreciate that it is too late for a Committee amendment. However, it might be worthwhile for the Committee to contact the Audit Office to see whether it is content with what is being proposed here.

I think that we need to be a wee bit more informed. I appreciate what Linda is saying about discussing this with the NIAO. However, for it to say, "Yes, we are happy enough with things", does not seem entirely watertight. It seems to me that it is talking about a period and the bit of discussion before you went to the Minister. I think that we need to get a wee bit of reassurance on whether it is content with the position.

The Chairperson: We are very, very tight for time. Perhaps we can make a phone call or something.

Mr Weir: Chair, I am not suggesting anything from that point of view. I think that doing it through the Committee is probably the way to go. I appreciate that we have to sign off on the clause-by-clause scrutiny today, and I am not holding that up. As with a number of other things, there will be a few loose ends, and, with the best will in the world, the Committee may not be a great position to do anything about that, because our time will have passed. However, collectively, we may seek amendments or reassurances, or, depending on what response we get, we may simply say, "Look, we are happy with things". I think that it is worthwhile at least enquiring about the NIAO position, because we do have a bit of time between now and Consideration Stage and Further Consideration Stage.

The Chairperson: However, in our report, we need to be quite clear on what our position is.

Mr Weir: Our report can be based only on the information that we have. If we get subsequent information, that may supersede, in the broadest sense, the report. I am not suggesting that we go back and change reports, or anything of that nature. I think that our job as MLAs is to be as informed as possible when we get to Consideration Stage. Therefore, it would be worthwhile at least making that enquiry, and a couple of other items will probably come into it as well.

The Chairperson: In our report, we are saying that we accept the explanation to date.

Mr Weir: Yes, based on the information that we have.

The Chairperson: Based on the information that we have received so far. OK.

We move to clause 96, which deals with improvement information and planning. The Department has provided a series of amendments to clauses 96 and 98 to replace the reference to "95(6)" with "113". The amendments have been tabled. Perhaps Linda or John can talk us through this.

Mr Murphy: These are really technical amendments, Madam Chair. When the Bill was drafted, we referred to guidance issued under clause 95(6), but any guidance will now be issued under clause 113. Clause 95(6) simply states that, subject to the generality of clause 113, the guidance can deal with specific issues of performance improvement. The amendment is just to clarify the clause under which guidance is issued.

The Chairperson: So you replaced it with guidance?

Mr Murphy: Yes.

The Chairperson: Are members content?

Lord Morrow: It sounds all right.

The Chairperson: Sorry, there is another issue with the clause. Departmental officials also agreed to provide the wording of an amendment that would review the audit process after two to three years. We have not received any response on that.

Ms Broadway: The Minister agreed this morning to bringing forward the amendment. When we leave here today, we will work on it. We have already started work with the draftsman on a draft of that amendment, but it is not fully completed yet. You will hopefully have it by close of play today.

The Chairperson: There will be a amendment on the review.

Ms MacHugh: It will provide an enabling power for the Department to determine, in consultation with the local government auditor, the councils on which a report should be produced.

The Chairperson: OK. So we will see that this evening?

Ms MacHugh: Yes.

The Chairperson: Are members content?

Members indicated assent.

The Chairperson: Is the audit process going to be reviewed every two years or three years? Do we know?

Ms MacHugh: Sorry, I think that I am lost. Do you want to talk about the review? The local government auditor raised an issue about having to do a performance review in every council every year and advocated taking a risk-based approach. Again, the Minister has taken that on board. We will bring forward an amendment to provide an enabling power for the Department to determine, in consultation with the local government auditor, which councils should be audited on performance in which year. Not all councils will necessarily be done in every year. A risk-based approach will be taken. After a few years, evidence will have been gathered as to those councils that might need more attention than others, . We have said all along that, because this is new, we will want to review the process, and the Minister will want to review it after a couple of years. It is an undertaking that there will be a review.

The Chairperson: There is not going to be an amendment.

Ms MacHugh: No. The amendment will be focused on the frequency of council review.

The Chairperson: I think that that is sensible. I think that the NIAO is quite concerned about too much unnecessary work.

Clause 98 is on audit and assessment reports. Officials agreed to report back on the possibility of amending the clause at 98(3)(a) from "30th November" to "31st January" or, alternatively, bringing forward the date of the publication of council accounts to a date earlier than 31 October. This relates to clause 95.

Mr Murphy: Yes. As I explained, we take the view that we need to leave the auditor's report at 30 November, and we then change clause 95 to bring forward the date by which a council has to have prepared its report.

The Chairperson: Are members content with that?

Mr Weir: Yes, but with the same caveat that we want to check the views of the Audit Office to guide us.

Members indicated assent.

The Chairperson: OK. Can we ask it to come today?

Mr Weir: Chair, as I said, this is not to be part of our report but to give us guidance. If we simply get a one-page letter from the Audit Office, I am sure that it would satisfy us.

The Chairperson: Clause 100 is on annual improvement reports. Officials agreed to consult the NIAO on the possibility of amending the annual requirement to publish a report on all councils.

Mr Murphy: That is the issue that Linda has just addressed. We are currently working to try to tie down the wording of the amendment, and we will have it with you later today.

The Chairperson: OK. I know that we talked about this previously, but perhaps not since informal clause-by-clause scrutiny began. Clause 101(4) states: "The Department may direct". I think that the NIAO is quite concerned about the word "direct" and has asked it to be changed to "request". The NIAO is saying that it is independent. It is not in the Department, so no Department should "direct" it; rather, it should "request" of it.

Ms MacHugh: The local government auditor is independent in how audits are undertaken. However, it is the Department that has the statutory responsibility for the provision and oversight of local government functions, including the provision of a local government audit function, so setting audit policy is for the Department.

The role of the Comptroller and Auditor General (C&AG) in this is to provide the staffing and the expertise. He, as C&AG, and the Northern Ireland Audit Office gather their responsibilities and powers from a different route. The local government auditor sits in his office but gets powers from the Department, and from legislation that the Department sets. We have talked at length with the Comptroller and Auditor General, the Audit Office and, indeed, the local government auditor, and I think that to suggest "request" as opposed to "direct" would fundamentally change the relationship between the Department and the local government auditor. I think that that is certainly outside the scope of the Bill. It may be that, once we have got the reform process out of the way, we want to do a more fundamental review of the audit provisions for local government. However, at this stage, the Minister is not minded to bring forward an amendment on the issue.

The Chairperson: OK. I do suppose that subsection (6) states:

"Before giving a direction under subsection (4), the Department must consult the local government auditor."

Ms MacHugh: Absolutely. It is a working relationship. As I said, to change "direct" to "request" might seem like a one-word change, but it would fundamentally change the legislative relationship in many respects. The issue would need to be considered in a much wider context and within a wider review of the audit provisions for local government, which is something that we intend to do once we have the new councils up and running. That is our next project.

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

Members indicated assent.

The Chairperson: We move to clause 106, which deals with the partnership panel. Members, you have the four amendments from the Department.

Perhaps you can talk us through them, John.

Mr Murphy: Initially, it was the case that the Bill provided for the Department to appoint councillors to the panel. That was just a mechanism. The Department would not have had a differing view. However, to respond to the views of local government, we have sought to change it now so that each council will nominate a member. Therefore, the Department's role in appointing, which was, as I said, just a formal mechanism, will no longer exist. It would be purely with the 11 new councils to nominate whom they wish to sit on the partnership panel.

The Chairperson: I have one query. You have inserted "(3A)" at the end, but it is already there.

Ms Broadway: It is (3A), not "(3)(a)".

Mr Murphy: It is a proposed new subsection.

The Chairperson: OK. I am with you now. That is my fault.

Mr Weir: To clarify, will subsection (3A) be additional to what is there as opposed to replacing it?

Mr Murphy: No.

Ms Broadway: We are replacing —

Mr Weir: Are you replacing subsection (3)(a) with (3A)?

Ms Broadway: No.

Mr Weir: That is what I am trying to establish.

Ms Broadway: We are amending subsection (3)(a) so that instead of it stating "councillors appointed by the Department", it would state just "councillors". Therefore, the panel is to consist of councillors and Ministers. New subsection (3A) would then specify that each of the 11 new councils will nominate. The councils nominate directly, so there is no need for subsection (4). We will not need to consult with councils, because they will nominate directly.

The Chairperson: Yes. That is clear to me now. The Northern Ireland Local Government Association (NILGA) is quite strong on the issue. It really wants to see something like that in the legislation.

Do members agree with the amendment? Are you happy with it?

Mr Weir: May I make a slightly pedantic point? Will it be subsection (3A), or, because you are replacing (4), would you then renumber it (4)?

Ms Broadway: Yes. The subsections will be renumbered when the next draft of the Bill is produced after Consideration Stage.

The Chairperson: You said "councillors". Will it be a single councillor, not more than one?

Ms Broadway: It is to be one councillor from each of the new councils.

The Chairperson: Yes, so 11 councillors.

Mr Weir: Enough for a football team, but no substitutes. *[Laughter.]*

The Chairperson: OK. We now move to Part 14, the heading of which is "Control of councils by Northern Ireland Departments". Officials agreed to consider removing the word "Control". You suggested "Supervision" last time.

Ms Broadway: The Minister has agreed to change it to "Supervision". I do not think that it is necessary to table an amendment, because the headings are technically not part of the legislation. That can be done simply as a printing amendment, I understand.

The Chairperson: Fair enough. That is simple. Why do we have to fight over it so much? *[Laughter.]* OK, righty-ho. Thank you.

Mr Boylan: So we are losing control?

Ms MacHugh: But you are gaining supervision. *[Laughter.]* That reflects the wording of the 1972 Act.

The Chairperson: Next, members, is clause 108, which deals with inquiries and investigations. You agreed to report on the possibility of amending the clause to include the right of appeal for councils against the findings of any investigations. Have you a response on that?

Ms Broadway: That is one that we will need to follow up on quickly today for you. We do not have a response on it yet.

The Chairperson: When will we get the response?

Ms Broadway: We will follow that up today.

The Chairperson: OK.

Lord Morrow: It is a big day.

The Chairperson: It is going to be a long day for them. *[Laughter.]*

Ms Broadway: It was a long day yesterday, too.

The Chairperson: It was a long day yesterday. I know; we got your list at 8.30 pm. No, no —

Ms Broadway: It was at 5.00 pm. *[Laughter.]*

The Chairperson: All right, OK. I got it at 8.30 pm.

Ms Broadway: Yes. *[Laughter.]*

The Chairperson: I was sitting waiting for it. *[Laughter.]* I am glad you did not have to work too late then; 5.00 pm was fine.

The next clause is 111, which deals with the power to review provisions relating to surcharge. There is a tabled amendment. Members, are you content with that?

Mr Boylan: *[Inaudible.]*

The Chairperson: Yes, the clarified position.

Members indicated assent.

The Chairperson: OK. Next is the new clause after clause 115. It is clause 115A.

Mr Boylan: It is in bold.

The Chairperson: Yes. Officials agreed to provide the wording of a DFP amendment to allow for transitional rate relief in consequences of changes. Are you happy with that, members?

Members indicated assent.

The Chairperson: That is fairly straightforward. I am glad to hear people saying yes so quickly.

Mr Weir: Chair, you said the magic word "DFP".

The Chairperson: Oh dear; there are party politics at play here.

Next, is the new clause after clause 119. The amendment has been tabled to allow for the abolition of the Local Government Staff Commission. Are members content with that?

Members indicated assent.

The Chairperson: The next clause is —

Ms Broadway: Chair, officials would like to speak to that. We have another amendment in relation to a new clause 117A, which is a consequence of introducing the general power of competence. At present, there is provision for making special payments in the Local Government Finance Act (Northern Ireland) 2011. However, with the general power of competence, that goes much further than that power to make special payments. So, essentially, those provisions are no longer needed. Sections 37, 38 and 40 of the Act would need to be repealed to take account of that. We have an amendment drafted that we can send to you this afternoon.

The Chairperson: So that is really a technical —

Ms Broadway: It has a capital A.

The Chairperson: Yes.

The Chairperson: It is tidying up.

Ms Broadway: Yes. It is a consequence of the general power of competence.

The Chairperson: OK. Are members content with that?

Members indicated assent.

The Chairperson: OK. Next is clause 121, which deals with schemes for transfer of assets and facilities. We have a tabled amendment to allow particularly for the transfer of Armagh County Museum to the new council. Five amendments have been tabled. You explained it last time. Members do you need to hear all that again?

Mr Boylan: No.

The Chairperson: No? You are happy with that. OK.

Mr Weir: Chair, I note that it takes just one DFP amendment to deal with the long-term securing of finance for local government, but to deal with the issue of Armagh County Museum, there are five separate amendments.

Mr Boylan: Rightly so. It is well noted. Thank you very much.

Mr Weir: Absolutely. It is a good job that we have our priorities right.

The Chairperson: OK. We will move on now, members. I think that we will have a short break after this. Is that correct?

The Committee Clerk: Yes, at the end of the closed session.

The Chairperson: OK. Clause 122 deals with compensation for loss of office, to which an amendment has been tabled. Are members content with that? Linda, do you want to add anything?

Ms MacHugh: No. We discussed it last time. That is the issue of who pays compensation.

Ms Broadway: It is just to make sure that the provisions in clause 121 and 122 cover everything that the Executive agreed concerning the functions being transferred and powers being conferred.

The Chairperson: Yes. Is everyone happy with that?

Members indicated assent.

The Chairperson: We are on clause 123: Supplementary and transitional provisions, to which two amendments have been tabled. The first is to replace this clause with a new clause.

Ms Broadway: That is the same sort of amendment as proposed to clauses 121 and 122: it is a tidying up of clause 123 to take account of the amendments that will be made to the other two provisions.

The Chairperson: Are members content?

Members indicated assent.

The Chairperson: OK. Clause 124 is: Interpretation. There is one proposed amendment, and the Department has provided details of three consequential amendments. Are those technical?

Ms Broadway: Yes. The definition of "external representative" has been added to take account of the amendment that is to be made to section 10. The new definition of "local government body" has been added to take account of the amendments in clauses 121 to 123. They are consequential to those others.

The Chairperson: OK. Yes, that goes back to the "external representative".

Ms Broadway: That is right.

The Chairperson: OK. Are members content with that?

Members indicated assent.

The Chairperson: Lord Morrow, do you have something to say?

Lord Morrow: It is OK, Chair.

The Chairperson: We then move to clause 125: Regulations and orders, amendments to which have been tabled to ensure that clauses 51 and 54 are subject to the daft affirmative rather than the negative resolution procedure. Are members content with that?

Members indicated assent.

The Chairperson: We move to schedule 3, Positions of responsibility. Officials agreed to provide clarification on the wording at Part 3(14) regarding the absence from the district of the chair of a council.

Mr Murphy: That, Madam Chair, is simply to ensure that there is continuity in the operation of a council, so that if the chair appointed is absent, unable to attend or to contribute for a period of three months, the position would be declared vacant. That would allow the party that had selected that position — if the Sainte-Laguë system had been used — to put a new person into the chair.

The Chairperson: Are members content?

Members indicated assent.

The Chairperson: OK. Thank you. We move to schedule 4: Appointment of councillors to committees. Officials agreed to investigate a possibility that, using the quota greatest remainder formula, independents may not be appointed to any of the council committees.

Mr Murphy: We need to work through the mechanics of the difference between the provision's application to individual committees and on a bloc. To sort of [*Inaudible.*] that one, we need to work that through.

Mr Weir: The Committee Stage of the Bill will be over the line by the time that is worked through. It is a wee bit difficult for people to get their heads round and, to be honest, even to make sure that we get what we want. However, it may be helpful of you to produce two or three scenarios as working examples. I suppose that most of the councils will have 40 members. Examples of a couple of different distributions of seat allocations for, let us say, eight main committees each with 15 members would show how that would work out in practice. I have a bit of concern that if it is purely done one committee at a time and is, if you like, almost completely self-contained, it will create a degree of distortion across the board. There would not be a single distortion if you were looking at just one committee. It would not necessarily even go against small parties, but, depending on different parties, it will give either a level of over-representation or under-representation. It will possibly depend on where they fall with the remainder. You might almost get a situation in which a smaller party, for instance, gets the final seat every single time, disproportionately. That party might also not be given its proper proportion across the board. In particular, I suspect that it would mean that independents would have grave difficulty getting onto those committees. Can some worked examples be produced on that? It may be too late for a Committee amendment, but one or other of the parties could consider tabling an amendment, and that would probably get broad support, if there were a need for an amendment. It might be that, when we see the figures, it looks perfectly grand and no one has any complaints, but it is important to work through that.

The Chairperson: How does that process work? I am quite confused about the quota and the greatest remainder process.

Mr Weir: Chair, there is a sort of divisor figure that then suggests that there will be a certain number of whole places for all of the main parties on any committee. I do not know whether we use it in the Assembly, but, for example, because of the figures in the Assembly, it is pretty much guaranteed that the DUP will have a minimum of three representatives on every Committee. The figures guarantee that Sinn Féin will have two and that the SDLP and the Ulster Unionists will have one each. That fills up seven of the 11 places on any Committee. How you fill the other four depends on greatest remainders. If you apply that across the board, it means that, if, in each case, one party has an entitlement to 0.75 of a place, they will probably get one of the additional places in those no matter what. If a party has an entitlement of 0.2 under the greatest remainder system, there is probably a fair chance that it will not get any of those places. That, possibly, could skew the thing so that, instead of there being a split on, say, eight committees where one of those parties maybe gets six additional places and the other gets two, it could actually mean that one party gets eight and the other gets zero. That can happen with the greatest remainder system. It depends whether it applies across the board. If it is applied across the board, one problem is that you either have to have some negotiation or some formula then to work out who gets the choice on which committee. In the Assembly, it is applied across the board, and a degree of discussion tends to take place between the parties, and there will be a bit of give and take over who gets onto what Committee. Effectively, they will decide where parties get the additional place and where they do not.

The Chairperson: So, as Peter said, the proposed process is that all the committee positions be put together as a group.

Mr Weir: I think that I am right in saying that, in the way that it is currently drafted, the greatest remainder system would be applied to each individual committee. If you are having only one committee on the council, that would be perfectly fair. If you were to replicate that across a number of committees, particularly if the committees are the same size, it may well mean that it skews it overall and that some parties may be over-represented. That may not necessarily be the largest parties as a result of the quotas under the greatest remainder system, and some may be under-represented as a whole. That is where there may be a problem that may need some degree of tweaking. I suppose that the problem with moving to using greatest remainder for the whole system is that you may have to deal with the separate issue that if, for the sake of argument, your party, the Alliance Party, were entitled to representation on five out eight committees, some sort of mechanism would be needed for deciding which five out of the eight you would get onto. By the same token, it might be fairer to say

that, instead of Alliance being on every committee or being on no committees, you would be on the appropriate number of committees. Given the circumstances, unless the committees are very large, the system of quotas using greatest remainder is probably likely to mean that an individual independent member will have grave difficulty in getting onto any committee.

The Chairperson: How do we address that?

Mr Boylan: We are going to need the examples, I think.

Ms Broadway: We will work that through and provide the Committee with worked examples.

The Chairperson: Sorry, is the proposal to let the committees themselves decide?

Mr Weir: No, first, we have to establish whether there is a problem and to what extent there is a problem on that. So, the worked examples will steer us towards that. I have to say, we are getting a bit tired. I do not envy Eilis having to do the draft. I am not quite sure whether it is in legislation or procedure, but the Assembly uses the greatest remainder but applies it across all the main statutory Committees. There is probably a formula that could be used; for instance, in the legislation setting up the Assembly, the Northern Ireland Act or something. That could be used under those circumstances and could make the tweaks to be able to do that.

Mr Murphy: My understanding is that it is not. I looked at the Northern Ireland Act, and it does not provide any formula.

Mr Weir: It may not do, John, but it has been used to determine the overall balance of Committees here. It may well be the case that it is in the Standing Orders of the Assembly.

Mr Murphy: I think that there is material in Standing Orders, yes.

Mr Weir: Judging by the nodding that everybody else is doing, that may be the case.

The Chairperson: Sheila confirms that.

Are members content?

Members indicated assent.

The Chairperson: Schedule 9: minor and consequential amendments relating to local government audit. An amendment has been tabled. Are members content with that?

Members indicated assent.

The Chairperson: Schedule 10: transfer schemes. Again, an amendment has been tabled in relation to paragraph 2(3)(d) to allocate the responsibility to the transferee council for payment of compensation to staff, which would make it clearer. Are members content with that?

Members indicated assent.

The Chairperson: Schedule 11: minor and consequential amendments. Departmental officials have provided details of an amendment to the schedule. It is quite straightforward.

Ms Broadway: It is to ensure that the list of what is local government legislation specified in the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 includes this Act.

The Chairperson: That is right. Are members clear on that?

Members indicated assent.

The Chairperson: Schedule 12: repeals. Two amendments have been tabled. Perhaps you can quickly explain those.

Mr Murphy: On the discharge of functions by councils, section 104 of the Local Government Act (Northern Ireland) 1972 separated out the provision for a council to arrange for another council the discharges function into section 104 as opposed to section 18. We brought all the provisions relating to the discharge of council functions into a single clause. To remove that anomaly, we are repealing the appropriate phrases in section 104(1).

Ms Broadway: It is a consequential amendment because of the arrangements for the discharge of functions in the Bill.

The Chairperson: OK. Are members clear on that?

Members indicated assent.

The Chairperson: On to the next one.

Ms Broadway: The repeal of the Local Government (Best Value) Act (Northern Ireland) 2002 is to take account of the new provisions on performance improvement because they replace that Act.

We have an additional amendment. Earlier, I mentioned removing the power to make special payments because of the introduction of the general power of competence. It is to add sections 37 and 38 of the Local Government Finance Act to the repeal section. There is an amendment to section 39 of that to remove the right to make payments for special purposes, because it is no longer needed.

The Chairperson: Are members content with the explanation?

Members indicated assent.

The Chairperson: Are there any other issues that members wish to raise on any other clauses? This is your last chance.

Mr Boylan: Just one issue, because I missed the previous day. Are international obligations on council responsibilities — for the likes of waste management or biodiversity targets — included?

Ms MacHugh: If it goes anywhere in the Bill, it would be in the performance framework section. There are current policy obligations set by my colleagues in the environmental policy division. It would be a mix of the councils themselves determining that they were going to include waste management targets in their performance measures — that is something that they currently do — or indeed the Department could decide that it will use the new performance framework to set individual targets for councils within the parameters of the overall performance framework.

Mr Boylan: Go wider than that. Say a new obligation was brought forward. Is there scope to add it? How would that work? I am only using waste management and biodiversity as examples.

Mr Murphy: The Department with the policy responsibility could use clause 92 if it felt it appropriate. That provides for the Department to set performance indicators and standards.

Mr Boylan: To meet those obligations.

Mr Murphy: To meet those obligations.

Ms MacHugh: Or, indeed, if it was a different Department, there could be separate legislation that it could use to place a duty on councils to do certain things. There might be provisions there as well. John is right: they could use this as well. If, for example, it was a new international obligation, it is likely that the Department with the policy responsibility would need to bring forward legislation to ensure that Northern Ireland was meeting those obligations. I cannot determine, at this stage, whether duties would be imposed on councils and certain performance indicators in that legislation. However, in the absence of that, clause 92 could be relied on.

Mr Eastwood: You say that it would cover any European or international regulations or laws that would affect council performance. There are so many different ones.

Ms MacHugh: If the Department with the policy responsibility in Northern Ireland chose to do so, it could use clause 92 to set targets.

Mr Boylan: In setting those, however, it would have to come to the Assembly, would it not? How would that work within the legislative framework?

Mr Murphy: Through clause 92, they would come back to the Assembly through the draft affirmative procedure.

Mr Eastwood: Would it not be simpler to say in the Bill or in the guidance that councils should be cognisant of all their European and international obligations?

Mr Murphy: That is the other side to it. In addition to taking the more formal approach, and if a Department wanted, in the development of the guidance on performance improvement and community planning, if appropriate, those issues could be included.

Mr Eastwood: To this Bill.

Mr Murphy: Yes.

Mr Boylan: In statute.

Mr Murphy: Yes.

Mr Boylan: OK.

Mr Eastwood: Would you consider that?

Ms MacHugh: Certainly in the guidance, yes.

The Chairperson: Thank you very much, all four of you. We are moving into closed session now.

Ms MacHugh: I thank the Committee for its perseverance and patience with us. It has been a long haul, but we got through it.

The Chairperson: It has been a long haul. Thank you for your co-operation.

Mr Eastwood: We do not want to see you for another six months. *[Laughter.]*

Mr Boylan: Enjoy your Christmas holidays. *[Laughter.]*

The Chairperson: It is a long, long piece of legislation, and you have all worked very hard. Thank you very much.