



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government Bill:
Ministerial Amendments for Consideration Stage

13 March 2014

NORTHERN IRELAND ASSEMBLY

Committee for the Environment

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Members present for all or part of the proceedings:

Mrs Pam Cameron (Deputy Chairperson)
Mr Colum Eastwood
Mr Tom Elliott
Mr Alban Maginness
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

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| 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 Deputy Chairperson: Members have been provided with a departmental letter on the rationale for the ministerial amendments and a list of proposed departmental amendments. The amendments have not yet been seen or considered by the Committee. Departmental officials will brief us on the amendments, and they will focus on the new ones.

I remind the witnesses that the session is being recorded by Hansard. I welcome back Linda and Julie, even though they did not leave, and welcome Mylene and John. Thank you very much. I do not know who wants to lead off this time.

Ms Linda MacHugh (Department of the Environment): I will. The Minister has tabled some very late amendments, which cover three separate areas.

The first is the issue of dual mandates. Concerns were raised recently that, as currently drafted, clause 4 of and schedule 1 to the Bill, which deal with disqualification, may not be within the competence of the Assembly, as they refer to disqualifications for being elected, and elections are an excepted matter. The advice that the Minister received previously indicated that those are issues about the disqualification of councillors rather than about elections. More recent advice contradicted that position, suggesting:

"the safer course of action would be to bring forward suitable amendments"

to deal with the issue. To adopt any other approach ran the risk of the Bill being referred to the Supreme Court after Final Stage, with the potential of it not to proceed to receiving Royal Assent. The

Minister felt that he was not prepared to take that risk. As the provisions in Part 2 are largely a re-enactment of the provisions of the Local Government Act (Northern Ireland) 1972, with the modifications to provide for placing a bar on dual mandate and removing the blanket restriction on officers being councillors, the Minister took the view that he would have no option but to oppose all the clauses in Part 2 that relate to this issue, ie clauses 3 to 9. The alternative would have resulted in weakening rather than strengthening the Bill, and that would have been the wrong direction of travel. So, keeping them in but modifying them to allow these MLAs, MPs and MEPs to be just councillors, would have taken away from the existing legislation in the 1972 Act, which we wanted to keep there, at least for the time being.

The proposal that the Minister is putting forward is to remove clauses 3 to 9 but insert new clauses to provide for the bar on dual mandate and to make the necessary amendment to section 4 of the 1972 Act to remove the blanket prohibition on council employees being councillors. Those new provisions will focus not on being elected but on just being councillors.

As a consequence of the removal of clauses 3 to 9, a number of further amendments are required. Although it looks as though the Minister is bringing forward a lot of amendments, it is really about the one issue, and the words "being elected" as opposed to just being councillors.

In Part 10 on community planning, at previous sessions Committee members raised with us the potential for the community planning provisions to include promoting equality of opportunity and tackling poverty, social exclusion and patterns of deprivation. Following further consideration on the matter, the Minister decided to bring forward the amendments necessary to make provision in relation to those two important considerations. It is really strengthening the description and meaning of "equality" and "tackling poverty and social exclusion".

Finally, in Part 14, under control of councils, the Minister is bringing forward amendments in relation to the actions of councils in connection with international obligations in order to ensure that councils, in exercising their functions, are not taking action that is incompatible with international obligations. Provision will be made for any Department to direct that the action must not be taken. Provision will also be made for any Department to direct a council to take any action that that Department considers is required for the purposes of giving effect to any international obligation. It is just highlighting in the Bill that councils have international obligations that they cannot ignore.

Those are the amendments that the Minister is putting forward.

The Deputy Chairperson: On the removal of the blanket ban on council workers being able to run for council or be a councillor, you have simply removed the blanket ban. How is that going to work?

Ms Julie Broadway (Department of the Environment): As Linda was saying, this is all in relation to one word, "elected", but to do that we are removing all of Part 2 and leaving it in the 1972 Act. However, three areas where those provisions are in the 1972 Act will be modified to bring them into line with what was originally in the Bill. Those three areas are in relation to dual mandate, so a new clause, 9A, is being added to deal with dual mandate. A new clause, 9B, deals with officers being councillors. It re-enacts what was in the Bill in relation to officers being councillors. It has the same effect.

The other amendments that are being made to the 1972 Act, as a result of moving those provisions back, take account of the new ethical standards framework in the Bill. So, for example, in the 1972 Act, the oath or declaration that councillors take is being amended to refer to what will be the new code of conduct. Some 17 amendments relate to putting Part 2 back into the 1972 Act.

Mr Weir: I have a few questions. I understand the logic of this, and I have no particular problem with it. I just wonder why it comes so late in the day. Did the Department fall down in not teasing this out earlier or not getting it properly cleared? We are in a situation where, with the best will in the world, we are seeing this very late. We have been through a very long process on this and now we see these amendments. Ultimately, any party or individual can bring forward an amendment, but these are the departmental amendments that we are seeing, basically, for the first time on the Thursday before Tuesday's Consideration Stage debate. This is not just one wee tweak; it affects whether seven clauses stand part of the Bill.

I will come to a couple of other wee things in a minute. It appears to me that really all that was needed to cover the main things was three adjustments to the 1972 legislation. I must query why

there were seven clauses and two schedules in the first place, if only a couple of small amendments were needed and if the pre-existing law was sufficient, other than new issues of dual mandate and the disqualification of councillors.

Ms MacHugh: You have asked a few questions there. First, we had received conflicting legal advice from various sources, and it was only late last week that —

Ms Broadway: It was the Friday of the week before.

Ms MacHugh: Yes, it was the Friday of the week before that we saw the detail of the conflicting legal advice. So, it was very late in the day, but in that respect it was —

Mr Weir: Was the advice about challenge? Did it come from the Attorney General?

Ms MacHugh: I am not at liberty to say where it came from because of legal convention.

Mr Weir: OK. Basically, you received conflicting legal advice, and you have now jumped, very quickly at the last minute, to make changes. It would have to be reasonably substantial legal advice, from a substantial source, but we can all draw our own inferences from that.

Ms MacHugh: The initial intention of bringing it into the Bill was that, had all of this provision been in the 1972 Act, there would have been bits in the 1972 Act and bits in the Local Government Bill 2014, and it would have been basically easier and a lot cleaner to get them all.

Ms Broadway: Equally, quite a few of those provisions have been amended so many times over the last 40 years, in particular the provisions about qualification and disqualification. Because it had been amended so many times, the language made it quite often difficult to read the provision on disqualification.

Ms MacHugh: I am working through potential legal solutions to that. One solution would have been to simply take out the words "being elected" in the current Bill, but, as I said in my opening statement, that would have weakened the existing law in the 1972 Act, because it reads:

"for being elected or being a councillor".

So we did not want to run the risk of weakening the position by taking the words "being elected" out completely from the categories of people who are currently disqualified from standing for election.

Mr Weir: In taking this forward, with the exception of these quite focused changes, we rely on the 1972 Act. From that point of view, at Consideration Stage, we are taking out those various parts of the legislation. Presumably, there is no intention to put any of that back in at Further Consideration Stage? As far as you are aware, this is a one-off exercise?

I will pick up the Deputy Chair's point in relation to the power to exempt certain officers from disqualification. Does that mean that you will be bringing forward further regulations in relation to them, specifying, to take the example that has been raised, the issue of whether someone is able to represent the council for which they are the employee, as opposed to another council, and at what level?

The other issue that you mentioned was in relation to financial obligations. There is a reasonable enough argument as to why that is in the Bill, but why did it not emerge earlier? Why has this come in so late?

Ms MacHugh: Again, we were looking at issues that were raised, and the Minister wanted to strengthen certain provisions, as with the community planning provision.

Mr Weir: So a late decision was made in relation to that? OK.

Mr A Maginness: I have just one point of clarification. If you had not done this, there was a risk that this could be referred to the Supreme Court. Is that right? The Minister was not prepared to take that risk, and thus the need for those further amendments. That is your position correctly stated, is it?

Ms Broadway: Yes.

Mr Eastwood: This is probably something that should have been picked up, because not every councillor is elected; some are co-opted. Is there anywhere else in the Bill where that might be an issue?

Ms Broadway: No.

Mr Eastwood: So that has been covered and checked?

Ms Broadway: Yes.

Mr Elliott: Thank you for your presentation. "Conflicting legal advice" is a phrase that we hear quite regularly here. I suppose that that is what keeps lawyers in jobs and makes them money. So we are not terribly surprised at that. However, obviously, you have had conflicting legal advice over this matter. It is unfortunate that we cannot be given sight of it and that you cannot give us some knowledge of that conflicting legal advice, because it is very important to the assessments that we make of those amendments. Please forgive me if I am wrong, and do put me right, but am I right in saying that the real change is that, in the existing clause, we were saying that you could not be elected as a councillor if you were an MLA, MP or MEP, whereas now you can be elected but you cannot take your position? Is that it in a nutshell?

Ms MacHugh: Those are the practical outworkings of the amendment that we are making, yes.

Mr Elliott: Lord Morrow, Peter Weir and Alban may all be elected as councillors but cannot take their seats?

Lord Morrow: We could each hand our seat over to other people.

Ms MacHugh: Clearly, this legislation will not come into effect before the forthcoming election because Royal Assent and the regulations will not be made in time. However —

Mr Elliott: Sorry, I thought that you were hoping to have Royal Assent through by then? That is what you indicated to us.

Ms Broadway: Yes, but people will already have been nominated to stand for the election four to six weeks beforehand. The legislation will not be in place when the nomination process starts.

Mr Elliott: OK.

Ms MacHugh: So, I think that the intention is to look at ways of closing what will essentially be a loophole in time for the next elections.

Mr Elliott: Yes.

Mr Eastwood: Can I just add — sorry, go ahead.

Mr Elliott: Just on the issue of conflicting legal advice, is it fair to ask — well, it is fair to ask but whether your answer is another issue— whether some of that advice indicated that the proposals within the legislation were OK?

Ms Broadway: Yes.

Mr Eastwood: Some of us, for example, could stand for election and hand over our seats to others. That could happen. Members of the House would have bigger mandates than first-time candidates. What is the plan to address that between this election and the next?

Ms Broadway: We need to work that out, discuss it with the NIO and get further legal advice on exactly how we go about doing that between now and the further elections.

Mr Eastwood: You are committed to dealing with it anyway?

Ms Broadway: Yes. Obviously, it goes against the policy direction and intention of the Bill, but, at this stage, that is the only solution that we can come up with.

The Deputy Chairperson: Just to clarify; Lord Morrow could run in this election but not take the seat, and then the party could co-opt?

Lord Morrow: There is always a possibility, Chair.

The Deputy Chairperson: I can definitely see how there could be a political advantage for parties.

Mr Weir: Could I make a pedantic point with regard to the English? Should "disqualifications for being councillors" not be "from being councillors"?

Ms Broadway: Apparently. We queried that.

Mr Weir: It does not sound like good English to be perfectly honest.

Ms Broadway: We queried that when it was being drafted, but we were assured that it is actually correct.

Mr Weir: OK.

Ms MacHugh: I picked that up when I saw the first draft of the Bill, but then I realised that legal people speak in a whole different language.

Lord Morrow: Legal people do that. Chair, the three groups that have been singled out — Members of the Assembly, the House of Commons and the European Parliament — are not allowed to stand. They are disqualified. Does that pass equality legislation? Would the European Court of Human Rights be happy with that?

Ms Broadway: Yes. We got legal advice on that at a very early stage.

Lord Morrow: Which legal advice did you get? *[Laughter.]*

Ms Broadway: We got legal advice from the Departmental Solicitor's Office on that. As long as there is justification for it, it does not come into conflict with human rights.

Mr Elliott: It could be worth your while to get your own advice, Lord Morrow.

Lord Morrow: Do not count it out that we have not already done that. Anyway, that is by the by. The end justifies the means, or the means justifies the end.

Ms Broadway: There is a balance between people's right to vote for the person who will represent them and someone else's right to stand for election.

Lord Morrow: Yes. Section 75 says something different — equality of opportunity and all of that.

Ms Broadway: Yes.

Lord Morrow: I suppose that that does not apply to those three categories of people. That is a wee bit harsh, but anyway. I suspect that that one will be tested.

The Deputy Chairperson: OK, are there any further questions, members?

Mr Elliott: Chair, perhaps I can ask a question that is not related to that issue, if it is all right? Why is there such urgency to bring forward the Bill next week? Basically, that gives members less than two days to put in amendments.

Ms Broadway: Because of the time that is needed if we want to get the Bill through before the election. It takes, on average, between four and six weeks to get Royal Assent. So, because of the timing of the Assembly's Easter recess, we needed to get all of the remaining Assembly Stages through by 8 April.

Mr Elliott: Chair, thanks for your tolerance on this. I am just saying that we are getting conflicting advice, not only from solicitors, but from you. I recall that, at an earlier Committee meeting, it was indicated that there was no huge urgency and that, if it was not through by the elections, we could live with that provided that it happened soon after that. However, all of a sudden, that has changed and there is huge urgency to get Royal Assent before the elections.

Ms MacHugh: I think that what we said was that, if the Bill was not through by the election, it could still happen, and the councils could still operate in shadow form. However, they would not have the governance, structures, frameworks and the ethical standards regime applied from the very outset. Clearly, it would still mean that the elections could go forward. However, it would be much more preferable to have all of that in place. Indeed, some of the transitional arrangements that we briefed you about earlier cannot be applied until the Bill is through. So, from an operational perspective, for those new councils starting off, it is much more preferable that they start on the footing on which we intend them to continue. Previously, we said that it is not absolutely business-critical to holding the elections and getting the new councils up and running. However, with regard to their operational workings, we really would like to apply a lot of the new Bill.

Mr Elliott: So, it is preferable to pressurise us and give us less of an opportunity to have our views than it is to ensure that the shadow councils have that year's lead-in instead of nine or 10 months' lead-in?

Ms MacHugh: Well, I suppose that the purpose of the Bill is to have the smooth transition and reform of local government. The smoother we can make that, the better.

Mr Elliott: Do you believe that pressurising us, in a sense, is good practice?

Lord Morrow: It is the lesser of two evils.

Ms MacHugh: I have to say that we would not have looked at it that way. Given the amount of consideration that the Committee has given to the Bill —

Mr Weir: Chair, to be fair to the Department on this particular one, prior to its being scheduled for 18 March, I think that the Bill was on the Business Committee's agenda for two or three weeks in a row. So, all of the parties would have known that it was coming up and could have been looking at what amendments they wanted to make. Some amendments have been tabled by different parties. I appreciate that, in one sense, it is not ideal. It would have been better if it had been given earlier approval by the Executive. However, to be fair, it is not as though this has dropped out of the sky.

Ms MacHugh: Yes. Our original plan was to get the Bill scheduled for 11 March, with adequate time between Executive approval and the Bill going into the Assembly. However, that just was not the case. I have to say that the timescale was out of our hands.

The Deputy Chairperson: OK. Any further questions from members? No. Thank you very much for your attendance today.