



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Local Government (Miscellaneous
Provisions) Bill**

24 September 2009

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR THE
ENVIRONMENT**

Local Government (Miscellaneous Provisions) Bill

24 September 2009

Members present for all or part of the proceedings:

Mrs Dolores Kelly (Chairperson)
Mr Cathal Boylan (Deputy Chairperson)
Mr Roy Beggs
Mr John Dallat
Mr David Ford
Mr Danny Kinahan
Mr Ian McCrea
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Ms Sonya McAnulla)
Councillor Ross Hussey) Omagh District Council
Councillor Sean Clarke)

Mr Jim Stewart)
Mr Tommy McCormick) Department of the Environment
Mr Ivan Gregg)
Ms Oonagh Warke)

The Chairperson (Mrs D Kelly):

I invite the witnesses from Omagh District Council to come forward. They are Sonya McAnulla, policy officer for Omagh District Council; Councillor Ross Hussey from the Ulster Unionist Party; Councillor Clive McFarland from the Democratic Unionist Party; and Councillor Sean Clarke from Sinn Féin. We have received an apology from Councillor Pat McDonnell who was to have been here. You are all very welcome. You will have between 10 and 15 minutes to brief the Committee and then take questions from members.

Mr Kinahan:

I declare an interest as a substitute member of Arc21. I am also a member of Antrim Borough Council.

Mr Beggs:

I declare an interest as a member of Carrickfergus Borough Council.

Mr Weir:

I declare an interest as a member of North Down Borough Council, as vice chairperson of the Northern Ireland Local Government Association (NILGA) and as a member of policy development panel A.

Mr I McCrea:

I declare an interest as a member of Cookstown District Council.

Mr Ford:

I declare an interest as a member of Antrim Borough Council.

The Chairperson:

I declare an interest as a member of Craigavon Borough Council.

Councillor S Clarke (Omagh District Council):

Councillor McFarland is not here, although he works in the building for one of the parties, so he may turn up yet.

Mr Weir:

I sincerely hope that it is our party that he is working for. *[Laughter.]*

Councillor S Clarke:

On behalf of Omagh District Council, I thank the Committee for the Environment for inviting us to present oral evidence on the Local Government (Miscellaneous Provisions) Bill. As you are aware, Omagh District Council responded to the public consultation on the Local Government (Miscellaneous Provisions) Bill. This morning, we will reiterate some of the points that are set

out in our written submission, and we will amplify some of the council's comments and recommendations.

Omagh District Council notes the need for the legislative framework, but it will be the regulations that will fully inform the implementation of the Bill's statutory duties. We are keen to establish how and when consultation on the regulations that relate to the Bill will take place. The council wants to be consulted on those regulations, as, indeed, I am sure that all councils will want to be consulted.

Ms Sonya McAnulla (Omagh District Council):

We will present oral evidence in accordance with the three Parts of the Bill. Councillor Hussey will deal with Part 1: "contracts of councils" and local government reorganisation.

Councillor Ross Hussey (Omagh District Council):

Omagh District Council notes the content of part one of the Bill and recognises the need for a robust statutory basis on which to procure the significant contracts that will be required, particularly in relation to waste infrastructure. The proposed legislation sets out the powers that permit councils to enter into contracts in connection with the discharge of their functions. Those will include contracts for the provision of waste management infrastructure. We believe that it is imperative that the necessary waste infrastructure is put in place to ensure that councils meet European targets and avoid punitive fines. That is also necessary to ensure that the procurement process takes place in a competitive market environment in which bidders can be assured that contract uncertainty is minimised.

Regarding local government reorganisation, Omagh District Council notes that, in order to regulate the implementation of the review of public administration (RPA), the Department is taking considerable powers to itself without any formal commitment to listen to the views of local government. Those powers relate to a range of matters such as governance, finance and staff; a specific example is governance for transition committees in new councils.

The policy development panels have given careful consideration to those matters, and there is broad agreement on the use of proportionality in governance structures. However, the draft legislation gives no commitment to that fundamental principle. The council recommends that the Local Government (Miscellaneous Provisions) Bill should give a clear commitment to the

principle of proportionality. The details of that can be developed further after appropriate consultation on the regulations.

Ms McAnulla:

Chapter 2 relates to the control of disposals and contracts of existing councils. Omagh District Council strongly recommends that the transition committees have a consultative role, rather than the power to direct, in the business and finances of the constituent councils in the year preceding the establishment of the new councils.

The existing 26 councils were elected to make decisions in the best interests of their communities and to develop and see plans through to fruition. Therefore, where councils have taken corporate decisions on land disposal, or made significant progress towards capital or non-capital contracts as part of a corporate or business plan, they should be allowed to proceed in a proper, democratic way without the Minister, the Department or the statutory transition committees having the power to veto such established plans. Any decisions taken by a constituent council which are within its plans and identified as continuing to meet the needs and priorities of its community, and which pre-date the Minister's announcement of 31 March 2008, should be permitted to proceed, with transition committees being informed rather than being given a veto.

In respect of Chapter 3, Omagh District Council notes clause 14, relating to the constitution of the statutory transition committees. The council reiterates its support for committees to comprise equal representation from each constituent council, and it believes that 16 members is the optimum requirement — with the exception of Belfast City Council and the Causeway group, whose unique circumstances indicate an optimum number of 20.

Omagh District Council supports proportionality and inclusivity in the representation on the transition committees and recommends the use of d'Hondt, in the first instance, or Sainte-Laguë to ensure inclusivity. We do not support use of the single transferable vote. The council would like further clarity on what provisions the regulations will make regarding the election of the chairperson and his or her tenure.

Omagh District Council opposes the chairperson having a casting vote and advocates that agreement on decisions or recommendations should be by consensus. The council would support

the use of call-in and qualified majority voting as a check-and-balances safeguard.

Omagh District Council agrees with the statutory transition committee functions set out in clause 15. We would, however, point out the importance of including in the legislation a provision to empower statutory transition committees to develop new plans that incorporate the vision and priorities for the new council, particularly the power to prepare a community plan and a pilot area plan for the new municipal area. The council recommends that the legislation also provides the powers for the statutory transition committee to take decisions on naming the new council and to determine its headquarters.

I will hand over to Councillor Hussey to talk about the provisions relating to severance payments to councillors.

Councillor Hussey:

Omagh District Council welcomes a severance scheme for councillors to recognise the time spent serving the public, in some cases for decades. Local government was the only democratic forum that operated throughout the Troubles, with significant decision-making and progress falling to local representatives. It is, therefore, fitting to recognise their significant contribution in bringing Northern Ireland to where it is today. It is also fitting to recognise that local government is now opening up to new and challenging responsibilities that demand different skills and attributes from councillors. It is, therefore, allowing new people to enter and to contribute to local government in a new era.

Although the council recognises that the detail of the severance arrangements will be in the regulations, it requests an amendment to Clause 17(1), which states that the regulations:

“provide for the making by an existing district council of payments (“severance payments”)”.

Although the Council notes that the detail of the severance arrangements will be set out in the regulations, Omagh District Council recommends that clause 17 should be amended to recognise that — as the reorganisation of local government is a central government initiative — the cost of the severance scheme should be met by central government.

Omagh District Council awaits the details on criteria, the methods of calculating payments and the procedure for applying for the severance payment. However, with reference to the detail, the

council recommends that a minimum of one council term, or four years, should be the period of service required for someone to be eligible for a severance award. The council also recommends that the next of kin should receive the severance reward where a councillor has died in post and that MLAs, MPs, MEPs and members of the House of Lords should not be eligible for a severance award. However, it advocates that consideration should be given to an incentive for MLAs to vacate their council posts.

The council agrees with clause 17(3), which inserts a new paragraph (f) into section 4(1) of the Local Government Act (Northern Ireland) 1972, meaning that persons who receive severance payments are disqualified from being elected or from being a councillor. Furthermore, the council recommends that a clause be inserted into the Bill that would mean that if the recipient of a severance award wished to return to local Government at a future date as an elected representative, he or she would have to repay the award in full.

Ms McAnulla:

Omagh District Council notes and agrees with the clauses as set out in Part 3 of the Bill which is entitled “Miscellaneous and Supplementary.” The council particularly welcomes the inclusion of clause 18 which relates to giving councils powers to vest land for the purpose of Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997. Indeed, the need for such a provision was originally raised by Omagh District Council, and the council welcomes the swift and appropriate action that the Department has taken to amend the legislation in that respect.

Councillor S Clarke:

On behalf of Omagh District Council, I would like to again thank the Committee for inviting us here today and for listening to our oral submission. The Council hopes that the Committee will give careful consideration to its written submission and oral evidence in its final deliberations on this very important piece of legislation. The Council also asks that the progression of the Bill to statutory status is dealt with quickly, because any delay its implementation would be detrimental to the social and economic development of our existing communities.

In conclusion, I remind the Committee of the council’s request that further consultation takes place with local government prior to the finalisation of the subordinate regulations. We will now be happy to take any questions from the Committee. Thank you very much.

The Chairperson:

Thank you for a very concise presentation. I note with interest the council's concerns on the relationship between the transition committees and the existing councils, and I am sure that Committee members will have some questions to put to the witnesses.

Mr Ross:

Councillor Hussey spoke about the severance element of the Bill and said that severance should be paid for two reasons: long service and to encourage people to step down and allow new blood into the councils. On the first reason, Councillor Hussey stated that he believed that someone should be in post for one term to be eligible for severance pay. Will the public really accept that a councillor who has only been in post for four years will have given long service?

Councillor Hussey:

The length of, and what constitutes, a term is what we are talking about. Our argument is that someone must have served at least one term, and someone who has come in for six months would obviously be excluded from any formal recompense. We are arguing for one full term.

Mr Ross:

So, if you were elected in 2005 —

Councillor Hussey:

The decision of what constitutes a term must be made by the Committee and the Assembly.

Mr Ross:

What is your council's view? Are you saying —

Councillor Hussey:

The council has recommended that anyone who has served for at least one term should be considered and given the opportunity to apply. It is highly unlikely that such a person will do so, because that may be his or her first foot on the ladder. However, we have recommended one term.

Mr Ross:

As regards getting new blood into the councils, if severance payments were to be introduced by

the Assembly, should eligibility run right up to the date of the next election, or should the window of opportunity be much tighter?

Councillor Hussey:

The council did not set a scale on that, but I, personally, believe that it is something that should be done sooner rather than later. People who wish to leave should be given a set date and allowed to leave on that date, thereby allowing someone else to gain some experience of local government before an election. That is my personal opinion. The council has not given that as an answer.

Mr Ross:

Would the closing date be before the next election?

Councillor Hussey:

The closing date would have to be before the next election, because someone might say well maybe I will run, but if I do not get elected, I will apply for the severance package. That is not to say that people would do that; all politicians are, of course, very honourable people.

Mr Weir:

The Chairperson called me after a reference to “honourable people”. I thought that I had switched on to an episode of ‘Family Guy’, but it is actually Omagh District Council.
[Laughter.]

Councillor Hussey:

Go for it, Peter; do anything that you can to help my profile. Of course, you are called Peter.

Mr Weir:

I am not sure who would volunteer to be Stewie or Brian, but that is another matter.

Thank you for the comprehensive coverage of the various aspects of the Bill. You mentioned the role of transition committees. In the next year or two, we will all have to tackle the inevitable level of tension that will arise from the transitions committees’ role vis-à-vis the existing councils and how they fit into the new councils. I note that you responded to the consultation document with the idea of a consultative role, rather than a veto role, on the budget for the year preceding the establishment of the new council.

I note that the legislation, if I am reading it correctly, does not tie down a particular timescale. Clause 10 states:

“The Department may direct that, with effect from a specified date, an existing council shall not”.

The legislation considers that the approval of the transition committee will kick in at an unspecified date. Do you feel that the transition committees should have only a consultative role on the budget for the year before transition, or is there a point at which the consultative role should morph into a veto role? Should the existing councils have complete powers to set budgets and capital contracts in the future right up to the day of their dissolution, or do you simply feel that it is premature for transition committees to have a role in the agreement of the budget for the year preceding the new council?

Councillor Hussey:

I will express my opinion and, if my colleagues disagree, Sonya will kick me and Sean will hang me. Omagh District Council was elected to serve for a term. That term has been extended until May 2011, and the council should have authority to exercise its role until that date. That answers the question.

Mr Weir:

Leaving aside the fact that next year’s budget will be dealt with by the existing 26 councils, including Omagh, some budgetary decisions will, presumably, have to be taken for the financial year that begins in April 2011. The new councils will be responsible for the implementation, oversight and development of that budget. The work on setting the budget for 2011-12 must be done prior to the establishment of the new councils. However, that budget will, effectively, be the responsibility of the new councils. Will that work be done by the transition committee or Omagh District Council?

Councillor Hussey:

Again, the transition committees will have a role. Had a shadow council had been elected prior to transition, it would have resolved a lot of those issues, because it would have had authority to move forward. There must be an element of consultation and we must work together on that issue.

Mr Weir:

You mentioned — I suppose it is a slightly separate issue — the range of issues as regards governance of transition committees. You highlighted your views on several areas of government, which will be subject to regulations. However, I note that you questioned the way in which the chairperson's position would work. This perhaps relates to the concern about communication, and I appreciate that the regulations have not yet been released. However, policy development panel A, which deals with governance, has reached agreement on how that chairpersonship would operate. One of the Omagh councillors is a vice-chairman of that panel. Is it the case that you wish to know which items of governance have been agreed on by the parties to be put into the regulations? Is that the position with regard to governance, as opposed to, in a sense, not knowing what would happen?

Councillor Hussey:

Yes, that is the case.

Mr Ford:

I welcome the delegation. I wanted to follow up Peter's point about clause 10 and the references to the powers of transition committees. I am not a member of the Antrim/Newtownabbey transition committee, but I know that informal discussions about the capital programmes of both councils have taken place and that there has been a measure of agreement. It seems to me that, in most cases, there is an acceptance that there is a role for the transition committee. Omagh District Council is the key voice that is saying that there should not be such a role. Are there reasons particular to Omagh that have led you to identify problems that other people have not?

Councillor S Clarke:

We are not saying that transition committees should not have a role; we are saying that they should not have a veto. There are developments that we would like to take forward.

Mr Ford:

There are developments that we in Antrim would like to take forward, but we accept that, in the current circumstances, we will discuss them with our Newtownabbey colleagues. Do you foresee particular problems? Is Fermanagh District Council opposed to capital programmes going ahead in Omagh? What is the issue?

Councillor S Clarke:

I do not think that Fermanagh District Council would be opposed to anything that we do.

Ms McAnulla:

It is probably more to do with the fact that both councils have a corporate plan in place and that we have told our constituents that we will follow that plan until 2010. Some of those projects, in both council areas, were agreed last year or the year before and have not yet come to fruition. It is a case of wanting to take those projects to completion, rather than having a statutory commission making decisions in favour of either Fermanagh District Council or Omagh District Council, or being unable to make progress for financial reasons or other issues. It is from that perspective that we are saying that a consultative role would be appropriate; we would, however, be concerned about a veto.

Mr Ford:

Turning to governance, it appears that there is a similar muddle. As I understand it, you specifically said that you did not want the chairperson of a transition committee to have a casting vote and that you wanted the transition committee to proceed by consensus. We all appreciate that working by consensus is a good thing if it can be achieved. However, it is not always achieved, whether in a district council, the Assembly or this Committee. There has to be some mechanism, if there is no consensus. Yet you seem to be saying, "let us have consensus", without recognising that it might not be possible.

Councillor S Clarke:

In our presentation to the Committee we said that there can be consensus, and that we would consider call-in or qualified majority voting. We are saying that a simple majority of one should not be enough to make a decision. There should be a mechanism by which a decision can be reached that is not simply 50% plus one.

Mr Ford:

In the context of a transition committee, which has to go through business in a relatively short time, if a decision cannot be achieved with 50% plus one, a two-thirds majority will probably not be achieved either. That is a recipe for delay when there is already an enormous number of significant and serious decisions that have to be taken in a very short timescale, over the next 18 months.

Mr Boylan:

Thank you for your presentation. Each council area has a corporate plan, but I can see a problem emerging if a decision is made about a project at one end of the district council area that is linked to a neighbouring district council. A super council may take in three former council areas, and a community at one end of a council area may end up being excluded from a decision-making process because it does not form part of the corporate plan.

You have your own corporate plan, and that, perhaps, is where the transition committee role is important. It is OK if you are dealing with issues that are right bang in the centre of your own district at present, but if those issues border on another district council area, and you were to decide, for example, to vest land, then the people on the periphery would have issues.

Councillor S Clarke:

We recognise that there could be a problem. We are not saying that that is why we are only councillors while others are MLAs, and it is up to them to work it out. However, we are still convinced that a veto is not the way forward. We would consult with Fermanagh council about matters on the Omagh/Fermanagh border. For example, it does not make sense to have something in Dromore and something in Irvinestown. Councils have to be sensible about that, too. The other end of the district, for example, is totally divorced from Fermanagh.

Mr Boylan:

Obviously, you have considered that.

Mr Dallat:

Again, I welcome the delegation. I could not agree more that vetoes are a disaster, no matter where they are. The council is entirely justified in ensuring that they are not introduced. When I was, rudely, out getting the correct files, you referred to the Causeway group.

Ms McAnulla:

We said that we accept that 16 representatives would be optimum number for most transition committees, with the exception of Belfast City Council and the Causeway group, which would have up to 20.

Mr Dallat:

You are aware, of course, that the Causeway group includes two councils that are currently under nationalist control, which will be gerrymandered into a new unionist council. Anyway, we will skip that. I am defeating my own argument here: the severance scheme or scrappage scheme — which is it?

Councillor Hussey:

Severance scheme. *[Laughter.]* If we scrap them, do we have to cremate them?

Mr Dallat:

Well, Belfast is the only place where you can do that at the moment.

Councillor Hussey:

Maybe a special deal can be arranged.

Mr Dallat:

Scrappage is a terrible term, but it was used unfairly in the South about long-standing councillors who gave a lot of service. You referred to MLAs — this is not of a personal interest whatsoever; it means nothing to me — but what is your view on someone who sat for 20 or 30 years on a council and came into this wonderful place for, let us say, a couple of years? Would they qualify for severance or have they immediately ruled themselves out?

Councillor Hussey:

Our understanding or opinion would be that they rule themselves out automatically once they become an honourable MLA.

Mr Dallat:

It is highly questionable whether we use the term “honourable”. That could cause more political problems. *[Laughter.]*

Mr Weir:

Speak for yourself, John.

Councillor Hussey:

I was, of course, speaking only about the members of this Committee.

Mr Dallat:

Chairperson, I am wasting your time. Please continue.

The Chairperson:

Thank you very much.

Mr Beggs:

Again, thank you for your presentation. Is it the case that you thought that the Department should not have a role in determining expenditure if the council decided to buy certain assets?

Ms McAnulla:

We felt that there should be a consultative role rather than a veto role by the Minister, the Department or the statutory transition committee.

Mr Beggs:

There are significant safeguards in having that considerable role. The Department has that role at present, and, for that matter, if any government Department wants to have any significant expenditure, it must be approved by DFP and checked out by the Gateway Review process. Why is Omagh District Council opposed to an independent review? Councils, or anyone, can make mistakes and get carried away with their projects and perhaps not see a bigger picture. Sometimes, there are advantages in having someone independent coming in and double checking things, because expenditure will have a significant effect on ratepayers. Why do you oppose that role being continued under the RPA?

Councillor Hussey:

Did you not receive a copy of the script, Roy?

Mr Beggs:

I said that it was in your oral presentation; I did not see the answer in the written submission.

The Chairperson:

We do not have your oral presentation. However, today's session is being recorded by Hansard, and a transcript will be available later. If you are unable to answer any questions today, you can forward additional information to the Committee for consideration.

Councillor Hussey:

We will do that.

Mr Beggs:

As a local councillor who is not on a statutory transition committee, I have a degree of resentment that those committees will have budgetary authority. I prefer the shadow mode that was mentioned earlier. Nevertheless, I understand the position. That budgetary responsibility should be a key role because, without that deciding role through the transition committee process, we run the risk that each council will push ahead with its expenditure plans and, in two years time, will reach a point where pricing mechanisms for leisure centres or commercial bin collections are suddenly out of kilter. At that point, significant differences between council areas will be unjustifiable because the councils will have amalgamated and the same pricing regime will have to apply throughout the whole new areas.

There are less than two years to run in this council term. A new capital expenditure asset on property will be expected to last for 25 to 30 years, and all ratepayers in the new area will pay for that expenditure. Therefore, is it not reasonable for transition committees to have a role in agreeing future capital expenditure and disposal of assets that may be required by the new joint authority?

Ms McAnulla:

We would prefer that the transition committees do not have the power to veto a capital expenditure project that has been significantly advanced by an existing council. By all means, we expect the statutory transition committees to have an input into decisions that are taken for the new council areas. We are talking specifically about projects that are well advanced.

Councillor S Clarke:

We are talking about projects that we have prioritised. We are not saying that we should go crazy and start spending. The council has unanimously agreed certain priorities, which, unfortunately,

will not be started by 2011.

The Chairperson:

I presume that part of the difficulty is that the council does not want the transition committee to have a veto over proposals such as those for Lisanelly barracks or the educational centre of excellence. However, Mr Beggs has a valid point. If you decide to build a huge swimming pool

—

Councillor Hussey:

I want to return to Mr Beggs's earlier point. I understand where the Committee is coming from, but we have made our position quite clear: the 26 councils were elected to make decisions in the best interests of their communities, to develop plans and to bring those plans to fruition. Omagh District Council believes that, if a council has already taken corporate decisions on the disposal of land, or has significantly progressed capital or non-capital contracts as part of the corporate plan or business plan, it should proceed in the proper democratic way without the Minister, the Department or the statutory transition committee having the power to veto such established plans. Therefore, we believe that there should be no interference if we have already progressed to that point.

We accept that the transition committee should take on some matters that we have on the long finger. However, if we are in the middle of refurbishing something, we will not stop. Moreover, if we are about to award a contract, we would find it very difficult to cope with interference, because we were elected to do that, and we want to deliver it.

Mr Beggs:

I have no doubt that contracts that are already signed will have to be honoured. However, are councils not required to seek departmental approval at the moment?

Councillor Hussey:

We know that we must get permission for all proposals, such as to apply for a loan. The Department still has that veto. All councils want to finish what they have started; Omagh District Council is no exception. We do not want anything to be blocked, because that would create animosity between the two councils before the new structure comes into place. We could return to the argument that a shadow council should have been in place in the first instance. However,

that is politics, and we could spend all day arguing that matter.

Mr Boylan:

You have made a valid point, and I do not disagree with the essence of what you are saying. However, if a project has been undertaken that will affect ratepayers in the other council district, we need to look at that process. We support the projects, and I do not think that anyone wants to stop them. All I am saying is that you have to sell the project for a particular district to the people in that district who will have to pay for it in the future.

The Chairperson:

Thank you all very much for your presentation and for taking questions this morning. We invite you to provide the Committee with any additional relevant information. Thank you all very much.

The Chairperson:

Members have been provided with a table that explains each clause of the Local Government (Miscellaneous Provisions) Bill and outlines the issues that have been raised in submissions to the Committee. Members will now have the opportunity to consider each clause. Members can decide whether they are content with each clause as drafted, whether they need additional information, or whether they wish to seek an amendment. Departmental officials will provide an overview of each clause that relates to waste, namely clauses 1 to 8 and clauses 18 to 19. They will also answer any queries that members have on the clauses.

I welcome the officials to the meeting. They are Jim Stewart, deputy principal in the local government policy division; Tommy McCormick, local government policy division; Ivan Gregg, planning and environmental policy group; and Oonagh Warke, planning and environmental policy group. I ask the officials to go through clauses 1 to 8 and 18 to 19 one by one, briefly explaining the practical meaning of each and then to answer members' questions on each clause.

I remind members that today's session is not a formal clause-by-clause analysis of the Bill. It is a consideration of each clause, which will make us familiar with them when we come to the formal clause-by-clause analysis. If members are content to proceed, I invite Mr Jim Stewart to begin.

Mr Jim Stewart (Department of the Environment):

Clauses 1 to 8 are, essentially, contracts provisions. Clause 1 clarifies the powers of district councils to venture into contracts for the purpose of their functions. It also enables a council, when it is entering into a certified contract, to enter into a secondary or collateral contract with the financier or bankers associated with that contract.

Clause 2 is, effectively, the first stage of a two-stage approach. It provides safe-harbour protection to private sector contractors and financiers who enter into certified contracts. It does that by introducing a presumption that such clauses cannot be challenged other than by public law process; they cannot be challenged in private law.

Mr Weir:

I am happy to be guided by the Chair on when we should ask questions on each clause. Arc21 suggested adding two additional points to clarify those powers. Do you feel that it is necessary to incorporate those? What are your views on that suggestion?

Mr Stewart:

Those are the additional vires issues that —

Mr Weir:

I think that Arc21 wants the vires to be expressly clarified.

Mr Stewart:

Those are additional vires issues that are particularly related to waste contracts. Policy development in that area is dealt with my colleagues in the planning and environmental policy group. Therefore, perhaps Ivan could respond on those issues.

Mr Ivan Gregg (Department of the Environment):

The Department intends to include additional vires matters in the waste Bill. We were unable to include them in this Local Government Bill when it was drafted. We felt that the timescale was sufficient to allow the waste Bill to become statute by next summer. There has been representation from ARC 21 and others on such provisions, and the Department is content to bring them forward if the Committee is also content.

The Department is currently liaising with the Office of the Legislative Counsel on the drafting of those revisions and whether such revisions are technically possible in the time available. The Department is conscious that it does not want to delay the passage of this Bill by extending its Committee Stage. Therefore, it is doing its best —

Mr Weir:

It is no one's desire to hold-up legislation — particularly legislation on which everyone agrees. However, let us be absolutely clear, is the Department drafting possible amendments on those issues —

The Chairperson:

I would draw members' attention to the table of clauses. It might help members with some of the detail of the provisions in the Bill.

Mr Weir:

OK. If it is technically doable within the allowed timescale, is the Department happy enough to draft those amendments, and does it see sense in doing that?

Mr Gregg:

Yes.

Mr Beggs:

I am trying to understand the issue of certified contracts. The Bill gives guarantees to the financiers that are required in the waste infrastructure. I can understand that part of it, but it appears to me that any other contract that was signed by councils prior to the commencement of RPA may also be included. Those contracts may be inappropriate, and they may not have been subject to the same level of scrutiny and Gateway Review processes as this major waste Bill.

That is my reading of the proposed legislation; is that interpretation correct? Furthermore, why is the Department wishing to guarantee all contracts that have previously been signed? Those contracts, generally, would be honoured, but there is a potential risk that some contracts may have been inappropriate.

Mr Stewart:

The legislation applies only to contracts entered into after the legislation is brought into operation. I am not sure what you mean by contracts entered into prior to that date; I am not aware of local government having entered into any PPP/PFI projects.

Mr Beggs:

Where in the Bill does it stipulate that that provision applies only to PPP contracts — specifically to waste PPP contracts?

Mr Stewart:

It does not. Clause 1 covers all contracts. The remaining contract provisions in the Bill cover contracts that are certified contracts, including PPP or PFI contracts, where councils have gone through the unique certification process.

Mr Beggs:

Can you expand on that unique process? I find it very convoluted and difficult to understand.

Mr Stewart:

It is a convoluted legal process, but its whole purpose is to ensure that private-sector contractors and their financiers are given safe-harbour protection when entering into contracts with local authorities.

The legislation mirrors that which was introduced in Great Britain via the Local Government (Contracts) Act 1997. That was enacted after several private sector contractors entered into PPP or PFI contracts, which, when challenged in the courts, fell down, and gave local authorities wriggle room to get out of those contracts. The certification process was introduced to avoid contracts being challenged in private-law proceedings, and they can now only be challenged in public-law proceedings by means of judicial review or audit review.

The Chairperson:

Some councils have not traditionally tendered for contracts such as legal services provision. Indeed, there may not be a contract in place, other than an appointment made by a decision of council, or the use of a consultant. Where does that sit, because surely some of those decisions could be subject to equality challenges?

Mr Stewart:

I am not sure what you mean.

The Chairperson:

For example, Craigavon Borough Council, of which I am a member, decided on its legal services provider by a unionist majority vote. A substantial amount of money is spent on that service. Are new councils going to be tied into honouring contracts that were never tendered for or were never subject to a procurement procedure?

Mr Stewart:

Those types of contract procedures are outside the scope of the Bill. The Bill simply clarifies the power of councils to enter into any contract for the discharge of any of its functions, including, for example, legal services. The certification procedures outlined in clauses 2 to 8 of the Bill are for the more complex legal transactions, in which councils are entering into contracts of a significant size, and which are worth, perhaps, as much as £20 million to make them viable. The issues that you mentioned fall outside the scope of the Bill. The Bill simply clarifies that councils have a power to enter into any contract to discharge any of its functions. If a council wishes to enter into a PPP or a PFI contract, it will have to follow the rigorous certification procedures, as outlined in the Bill.

The Chairperson:

At some later stage, when councils examine those other contracts for service provision and other legislation, and how those contracts are —

Mr Stewart:

Each council should have its own standing orders for awarding contracts. It is not for the Department to delve into the details of such standing orders. However, they ought to comply with equality legislation and any other appropriate legislation.

The Chairperson:

Thank you. Shall we move on?

Mr Stewart:

Clauses 3 and 4 of the Bill set out the procedures that councils — or councils-to-be — must satisfy in order to certify a contract. One of the requirements deals with contracts that are intended to operate for a period of at least five years. They are intended to be long-term service contracts, in the main. Clause 3 also allows the Department to make regulations concerning certain certification requirements. It is our intention to make such regulations; we will present them to the Committee shortly along with an SL1 letter that will advise members of the regulations that we intend to make.

Mr Beggs:

I am confused. Clause 3(2) states:

“the district council must have issued a certificate (whether before or after the contract is entered into) —”.

It is not clear how restrictive that special process is. It would appear, on the surface, that that requirement will also apply retrospectively to a wide range of contracts, as I said earlier. That is what I do not understand.

Mr Stewart:

I missed your reference.

Mr Beggs:

It is at clause 3(2). That could be a retrospective requirement, which would cover many other types of contracts that it does not need to cover.

Mr Stewart:

The certificate is not required to be issued on the date on which the contract is entered into. The certificate can be issued up to six weeks after the contract has been signed. Does that answer your question?

Mr Beggs:

I have not found where the legislation prevents the certification of other contracts that are totally unrelated to the specific issue of waste and which may already have been signed. Why are we preventing litigation, if it is appropriate in the case of contracts that have not been entered into correctly? Why are we giving that guarantee? I have not found where it restricts the certification

of other contracts, whether for cleaning services or anything else, that may be up and running today and have not been tendered for properly. I am trying to find in the legislation a provision for restricting contracts in future and, specifically, for those that deal with waste. Can you enlighten me?

Mr Stewart:

As far as I am aware, no PPP/PFI contracts have been entered into by councils. As regards future contracts, the only immediate ones that I am aware of that might be PPP or PFI are those associated with the waste infrastructure. Clause 1(3) of the Bill states:

“This Part applies to any contract which a district council enters into after 22nd June 2009.”

When the Bill was originally drafted, we anticipated that it was likely that some waste-management contracts might have been entered into between the date of the Bill’s introduction and the date of its legislative provisions becoming operative. That is now not the case. At the moment, the word is that the contracts will be entered into some time in 2011.

We intend, subject to the Minister’s agreement, to delete clause 1(3) and to amend clause 2(5)(a), so that it would, in effect, provide that the certification procedures apply only to those contracts entered into after the legislation comes into operation. Therefore, any contract that is operational at present will continue. As I said, I am unaware of any PPP/PFI contracts.

The Chairperson:

Thank you, Mr Stewart, for that clarification. We will move on.

Mr Stewart:

Although, clause 2 introduces the presumption that the certified contract is lawful, clause 5 preserves the right to challenge the lawfulness of any such contract. However, such a challenge is restricted to public law challenge by means of judicial review and audit review. Clause 5 also provides the second stage of giving safe-harbour protection to private sector financiers and contractors. It does so by providing that where, on public challenge, a court takes the view that a certified contract is unlawful because the council did not have the power to enter into the contract or had exercised any power incorrectly, the court may nevertheless decide that the contract can continue to have effect.

Clauses 6 and 7 provide for special terms — relevant discharge terms — of a certified contract, whether it is the main contract or a collateral contract, that will come into play in the event that a court finds the contract to be unlawful and that it should be set aside.

The Chairperson:

So clauses 6 and 7 only come into play if clause 5, concerning the judicial review, is enacted?

Mr Stewart:

Yes. Clause 18, entitled “Acquisition of land otherwise than by agreement”, is solely to provide vesting powers to councils so that they can acquire land for waste-management purposes under the Waste and Contaminated Land (Northern Ireland) Order 1997. Those powers were inadvertently omitted from the 1997 Order.

Clause 19 provides that the contracts provisions in Part 1 of the Bill and the vesting powers of the councils apply to local government joint committees constituted as bodies corporate, that is Arc21 and the Southern Waste Management Partnership (SWaMP).

Mr Weir:

I appreciate that the papers that the Department has submitted deal with various waste-management issues. Both Craigavon Borough Council and Belfast City Council have queried why that additional power to vest land is restricted to waste management and does not apply to wider —

The Chairperson:

Community planning?

Mr Weir:

Yes. Why is it not a power of general well-being?

Mr Stewart:

The Bill was originally drafted purely to rectify the omission from the 1997 Order. At the beginning of this year, we carried out our original consultation on the Bill on that basis. Any proposal to extend the compulsory acquisition powers of councils would require further policy development by the Department and, in fact, consultation with other Departments that have

responsibility for local government functions.

The need for wider vesting powers was raised by local government members at policy development panel C, and, because of the extent of local government legislation that was to be brought forward prior to 2011, the former Environment Minister decided that the Department should legislate for only those provisions that were crucial to the reform of local government. The extension of the vesting powers is not so crucial. The former Minister did, however, give a commitment that any necessary legislation on wider vesting powers would be brought forward as soon as possible after 2011.

The Chairperson:

Can the Committee seek clarification from the current Minister on whether he holds the same view?

Mr Stewart:

We certainly could do that.

Mr Weir:

If wider vesting powers are being considered, perhaps we could also ask about the potential timescale. I can accept that there cannot be wider vesting powers in this Bill because that was not part of the original intent and was not consulted on. It goes beyond a bit of tweaking, as we saw with some other parts of the legislation. There would, potentially, be a case for another full consultation if such powers were sought. If it was decided, for better or worse, to have wider vesting powers in the Bill, could that not be included in other local government legislation that is coming up between now and 2011?

Mr Stewart:

A more appropriate Bill for it would be the local government reorganisation Bill, which will provide community planning powers and the power of well-being.

Mr Weir:

I agree with that, but you said that the previous Minister indicated that such powers may be considered for legislation post-2011. If wider vesting powers are felt to be a good thing, why can that not be part of a reorganisation Bill? The current Minister's view may or may not be

different, but could those powers be incorporated in one of the pre-2011 pieces of legislation?

Mr Stewart:

We can certainly take the Minister's view on that. We are, however, expected to begin consultation very shortly on that draft local government reorganisation Bill, and whether we could include proposals or develop policy in time would be another matter. That said, however, presumably if the current Minister was content, we could introduce provisions at a later stage as an amendment to that Bill. We will certainly follow it up with the Minister.

Mr Beggs:

Clause 19 refers to two of the joint committees that are constituted as bodies corporate. I understand that the third committee, the north-west group, is not included is because it operates on a different basis and that there is a lead council. Is that the case, or, if not, why was the north-west group not listed in the legislation?

Mr Stewart:

Although it is not a matter for local government policy division, I understand that the waste infrastructure is being procured on a different basis in the north-west region, namely, on a lead-council basis. Presumably, Derry City Council, as a lead council, could use the vesting powers to acquire land compulsorily for the north-west regional waste management group.

Mr Beggs:

Can you confirm that it could vest land in areas other than its own, because that might be where the facility is needed? Will the lead council that is providing the function be able to vest land for that purpose elsewhere? How would such land be obtained?

Mr Gregg:

One of the additional vires matters that will be included in the draft waste Bill, assuming transfer over, relates to the north-west specifically. That group had asked for power for the lead council to hold and acquire property on behalf of other councils. That was an issue that they had identified and which we were trying to address in the draft waste Bill. It may be possible to include an amendment on that. As things sit, however, Derry City Council can vest land on its own behalf. It is not an incorporated body, so it does not have the same powers as Arc21 or SWaMP.

The Chairperson:

The Committee was concerned about the Strategic Waste Infrastructure Fund (SWIF), which was raised by Arc21 and SWaMP. Is that your area of expertise, Oonagh?

Ms Oonagh Warke (Department of the Environment):

Yes.

The Chairperson:

That is good. I will ask The Committee Clerk to keep me right, but I seem to remember that there were concerns about moneys in capital and procurement. There was an issue about moving the money around.

Ms Warke:

Yes, the reprofiling.

The Chairperson:

There is a lot of underspend, and we are concerned about the infrastructure, particularly in waste management. Those bodies told the Committee that they need the ability to reprofile the money in order to drive forward their proposals.

Ms Warke:

I will explain the background. When the Executive approved the creation of that fund, they had to approve it as a capital fund for the groups. It subsequently emerged that resource money is the main money that the groups require to forward their procurements. The Department, as members know, submitted a bid in the May monitoring round to have an element of the SWIF capital reprofiled as resource. That was unsuccessful, but we have submitted a new bid to have it reprofiled in the current monitoring round. We are hopeful that it will be successful, because it is essential to enable the groups to engage with all the advisory services that are required to drive the procurements forward.

The Chairperson:

When do you hope to receive an answer?

Ms Warke:

We hope to know as soon as the Executive have determined the September monitoring round, which is scheduled for the end of September.

The Chairperson:

It strikes me that it will have to be done if we are to move forward and tackle waste management.

Ms Warke:

Absolutely.

The Chairperson:

Will you clarify any amendments that the Department is considering in respect of clauses 1 to 8 and clauses 18 to 19?

Mr Stewart:

Subject to the Minister's agreement, we will propose an amendment to omit clause 1(3). We will also propose an amendment to delete subparagraph (a) from clause 2(5).

The Chairperson:

That amendment will get round the issue of the time frame, is that correct?

Mr Stewart:

Yes, that is right.

The Chairperson:

That is fairly straightforward. Thank you all very much for attending. We will, no doubt, see you much more in the coming year.