



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

Local Government (Finance) Bill

10 June 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Roy Beggs
Mr John Dallat
Mr Danny Kinahan
Mr Ian McCrea
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Ms Marie Cochrane)
Mr Dickson Holliday) Department of the Environment
Ms Lizanne Kennedy)
Ms Brenda Mooney)

The Chairperson (Mr Boylan):

The next item of business is a departmental briefing on the Local Government (Finance) Bill. Members have received a copy of the briefing paper. I welcome Marie Cochrane, Dickson Holliday, Brenda Mooney and Lizanne Kennedy.

Mr Beggs:

I declare an interest as a local councillor.

Mr Weir;

I also declare an interest as a local councillor.

Ms Marie Cochrane (Department of the Environment):

On behalf of my colleagues, I thank the Committee for giving us the opportunity to brief members on the Local Government (Finance) Bill. The Chairperson has already introduced us, but I will explain a little bit more. I am Marie Cochrane, and I am from the policy and legislation section of the division, as is my colleague Dickson Holliday. My other colleagues, Brenda Mooney and Lizanne Kennedy, are from the finance policy section of the local government policy division.

Officials last briefed the Committee on the responses to the consultation on the Bill on 3 December 2009 after a synopsis of replies to the consultation had been provided to the Committee. At that meeting, we outlined the main concerns that had been raised by consultees. The Department's response to the consultation was subsequently sent to the Committee; it has also been placed on the Department's website, and all respondents have been notified of that. A few amendments were made to the Bill following consultation, including minor changes to the drafting of individual clauses, further entries in the schedule of appeal, and the addition of a schedule of consequential amendments.

Two new provisions were added to the Bill before it was introduced in the Assembly. To ensure that all provisions for local government finance are in the same Act, a new clause, clause 30, was added to the Bill, concerning payments due by councils to central government. That repeals and re-enacts section 145 of the Local Government Act 1972. There is no change to the existing policy. Also, in response to a comment made during the consultation, clause 40 of the Bill was amended to clarify that councils may pay for an officer's membership of an official body

where that membership is considered necessary for, or beneficial to, carrying out the duties of the job. That will be limited to one membership per officer.

The Bill was introduced by the Minister on 19 April and completed its Second Stage on 27 April. The Committee will have received a memorandum of delegated powers that gives more information on each of the enabling powers in the Bill.

One of the aims of the Bill is to modernise the legislative framework for local government finance. As is currently the case, the council must make arrangements for proper administration of its financial affairs, but it will now have to designate an officer as its chief financial officer. That chief financial officer is required to submit a report on the robustness of the estimates for the annual income and expenditure for the next year, and the council must consider that before agreeing the annual budget.

The Bill also includes provision to enable the Department to make regulations about council reserves. As members will have seen from the delegated powers memorandum, the Department does not plan to exercise that power at the moment.

The Bill will change the name of the district fund to the general fund, and also gives councils the powers to establish whatever other funds they consider appropriate without having to obtain the approval of the Department. Councils are also currently required to get the approval of the Department for any borrowing. The Bill will remove that, and place a new duty on the council to determine and keep under review an affordable borrowing limit.

Councils will be able to borrow for the prudent management of their financial affairs; for example, by borrowing to refinance their existing budgets.

Regulations will stipulate that councils must have regard to the ‘Prudential Code for Capital Financing in Local Authorities’, published by the Chartered Institute of Public Finance and Accountancy (CIPFA), in determining their affordable borrowing limits. That is complemented by another CIPFA publication, ‘Treasury Management in the Public Services: Code of Practice’, which councils will be required to have regard to in carrying out their functions under Part 1 of the Bill.

Clause 14 of the Bill gives the Department power to impose a limit on councils borrowing from national economic funds. Regulations made under this power require the agreement of DFP. It also gives the Department the power to make a direction to limit the borrowing of a council. Those are powers of last resort and the Department will not use them unless it becomes absolutely necessary.

The new system for capital expenditure will take standard accounting practices as its starting point. Regulations will specify that certain expenditure by councils is regarded as “capital expenditure”: for example, that includes expenditure on such things as computer software and financial assistance to a third party, where that assistance is used on expenditure which would be classified as capital if the council undertook it. Generally, money received from the disposal of an asset is a capital receipt, but regulations will specify some exceptions. Income of less than £5,000 from the disposal of capital asset is not regarded as a capital receipt, nor is income from some operating and finance leases.

Councils will be able to use capital receipts towards capital expenditure, repaying loans, principal or premium. The Bill makes provision to enable the Department to make regulations that require non-monetary receipts from the disposal of an asset to be treated as if it were money. The Department does not at the moment see a need to make regulations about non-monetary receipts.

The Bill will also replace the general grant with two grants: the derating grant and the rates

support grant. Other than the name change, clauses 26, 27 and 28 will re-enact sections 3 to 6 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002. There will be no change in the way the grants are calculated. The Department currently carries out an annual equality monitoring exercise. A statutory formula is used to calculate the resources element of the general grant, and that continues to show no adverse impact on any of the section 75 groups. That annual equality monitoring will continue to be carried out when the grant is renamed as the rates support grant.

Currently, DOE is the only Department which has the general power to pay grants to councils. That arrangement is unsatisfactory and it attracted comment from auditors, as the Department was paying out grants over which it had no control in respect of policies for which it had no responsibility. The power to pay grants to councils is extended to all Northern Ireland Departments, not just the Department of the Environment.

The other aim of the Bill is to update the legislation on councillors' remuneration. The Bill re-enacts the current provisions on councillors' remuneration in the Local Government Act (Northern Ireland) 1972, with some additions. The Department will be able to make some regulations requiring a council to make and publish a scheme of allowances to councillors. The scheme will give details of the levels of allowance that will be paid to councillors in the forthcoming year. In particular, it will give detail of responsibilities which will attract a "special responsibility allowance", along with the level of special responsibility allowance to be paid for each responsibility. The scheme will also include details of all the allowances paid to each councillor during the previous year. In the interests of transparency, councils will be required to publish this scheme on their websites.

The Bill also enables the Department to establish a panel to provide advice to the Minister on payments to councillors. The panel will meet only as and when required to do so by the Minister. He will direct the panel on which aspects of councillor administration are to be reviewed and set a deadline for the receipt of the panel's report. A secretariat will be provided to the panel by the Department.

The Department intends to make three sets of regulations that will come into operation at the same time as the Bill. One set will deal with capital finance and accounting; those will refer councils to a number of published codes of practice, besides the 'Prudential Code for Capital Financing in Local Authorities' and the 'Treasury Management in the Public Services: Code of Practice', already mentioned. The code of practice on local authority accounting in the United Kingdom and the best value accounting code of practice, both published by CIPFA, outline the proper accounting practices to be observed by councils in the preparation of their accounts.

The second set of regulations will revoke and replace current regulations on local government payments to members and will include the requirement for councils to make and publish a scheme of allowances. The final set of regulations will allow for the establishment of the independent remuneration panel to consider payments to councils.

All of the regulations will be issued for consultation in autumn 2010. The Department will, of course, provide the Committee with the consultation document and draft regulations in advance of the consultation.

The Local Government (Finance) Bill also provides powers to enable the Department to issue guidance to councils. The Department intends to issue guidance on investment by councils. That will encourage councils to formulate policies and strategies for prudent investment of funds that they hold on behalf of ratepayers. The guidance will emphasise the security and liquidity of money that is invested, rather than yield.

Clause 31(5)(c) also allows the Department to issue guidance with regard to payments to members. Guidance under the clause will be issued after the regulation on payments to members has been made. Again, the Department will consult on the guidance and will advise the Committee in advance of the consultation.

Thank you, Mr Chairman. My colleagues and I are happy to take any questions that the Committee may have.

The Chairperson:

You deserve a drink after that. Thank you for your presentation. Who does the Bill specify will have the role of chief financial officer? Will the chief executive retain that role, or will it be taken by a local councillor?

Ms Cochrane:

The Bill does not actually specify that the two roles have to be separated.

The Chairperson:

OK.

Ms Cochrane:

I should say that the overwhelming majority of councils that responded to the consultation supported the separation of the roles of chief financial and chief executive. However, it would be for the council to decide which officer it wishes to designate on its behalf as chief financial officer.

Mr Dallat:

I see that clause 23 relates to power to invest. Perhaps, it is more for clarification than anything else. You will be aware that in the past, some councils had unfortunate experiences with Barings Bank and, in more recent times, the Anglo-Irish Bank and Northern Rock before those banks were rescued. Is it not appropriate to have something in statute that imposes some kind of guidelines on how local government should invest?

Ms Brenda Mooney (Department of the Environment):

The Department's intention is to put out guidance on investments that is similar to that which exists in GB at present. In response to the Icelandic bank incident, in particular, GB updated its investment guidance. Our first step is to look at that guidance to see what good practice exists elsewhere.

Mr Dallat:

Yes; I would have thought that was appropriate. As regards overall control, responsibility is placed in the hands of the chief executives and chief finance officer. Pardon me for not being terribly well prepared. Who in the council has overall responsibility for borrowing, and so on? Is it the chief finance officer?

Ms Cochrane:

It is the council.

Mr Dallat:

I am talking about the official who has day-to-day responsibility. Clause 1(2) states that:

“A council shall designate an officer of the council as its chief financial officer.”

Who controls that person?

Ms Cochrane:

The council.

Mr Dallat:

By “the council”, do you mean its elected members? I am interested in fraud prevention. Apart

from one day each year, I have never seen the council's books in 33 years. Therefore, I wonder what legislation or safeguard is in place to ensure that an officer does not transfer £25 million to his own account.

The Chairperson:

To follow on from that; other than the audit every year, is there an independent check to ensure that procedures are properly followed? I know that a council will make the decision, but, ultimately, the council involved may sometimes get something wrong. Is there an independent mechanism to challenge all of that?

Ms Mooney:

Is there not an internal control mechanism that allows the council's own auditors to ensure that propriety is adhered to?

The Chairperson:

That is obviously the auditor's role.

Mr Dallat:

I have been a member of the Public Accounts Committee long enough to know that fraud is a potential issue. I am not suggesting that our local councils are in any way dishonest, but there must be mechanisms for internal and external audit, and for receiving outside independent advisers on financial matters. Is the Bill the appropriate place to address that issue?

Ms Mooney:

May we take that matter away and obtain a response on it for the Committee?

Mr Dallat:

That is fair enough, but everyone say what happened to the PMS, an entirely honourable organisation that was not convicted of anything, but millions of pounds went all over the place. Other organisations further afield, which I will not name, constantly battle against fraud. There is an opportunity here to put in place something to protect ratepayers. I know that councils have wee audit committees and that members come in once a month to look at whatever it wants to see, but that is inadequate. There have been experiences such as the Icelandic banks and Barings Bank before that. However, Ms Mooney has acknowledged that the Department will look at that, which is fine.

The Chairperson:

It is an important issue when it comes to ensuring value for money, in which councils also have a role, but I expect the Department to back to us on the subject.

Mr McGlone:

To tease out the issue of what was referred to as guidance to local authorities: guidance strikes me as something that can be disregarded. To what extent will that guidance be mandatory? When does it reach the stage of being more than guidance? The Committee will probably revisit the issue when the Department returns with a brief on what other regions in these islands are developing as guidance. I am interested in hearing how mandatory such guidance would be, or, more to the point, how enforceable such guidance would be and at what point it would become more than guidance. Will there be a trigger point or mechanism?

Ms Mooney:

As part of the process, we will look for examples of best practice in other jurisdictions and make that our starting point. There is guidance on investments, if that is what Mr McGlone is referring to in particular.

Mr McGlone:

Not particularly; that is the first thing that comes to mind, but you are talking about applying benchmarking standards across all local authorities. How does one discern what may be mandatory guidance from that which is less than mandatory. In other words, I am trying to arrive at the benchmark point for achieving benchmarking.

Ms Lizanne Kennedy (Department of the Environment):

I refer the Committee to clause 25, which deals with guidance. Guidance will be statutory as opposed to just departmental, which would mean that councils must follow it.

Mr McGlone:

My point is that it depends on what is in the guidance.

Ms L Kennedy:

Yes, but we would be clearly stipulating in the guidance whether there would be any penalties imposed or audits conducted on the investments.

Mr McGlone:

You seem to be going down the route of saying what will happen if the offence is committed. I am trying to establish how things can be tightened up so that there is less opportunity for the commitment of an offence or misdemeanour — call it what you want. Your approach seems to be one of closing the stable door after the horse has bolted. However, I might be wrong on that. It is about arriving at the point where guidance is in place and where certain standards regarding the investment of money, for instance, are applied in local authority practices.

Ms L Kennedy:

We intend to issue this through clause 25, which makes it statutory guidance. That means that it has to be followed by councils. Therefore, the type of investment that can or cannot be made would be stipulated from the outset.

Mr McGlone:

It may well be, but I would like to see what is being stipulated. Are we coming to that?

Ms Mooney:

The guidance will be consulted upon.

Mr McGlone:

I appreciate that, but it will be back before us?

Ms Mooney:

Yes.

The Chairperson:

What is the time frame for that?

Ms Mooney:

The regulations will be going out to consultation in the autumn. By that stage, we will have a better idea of what we want the guidance to contain. The guidance will be out around about the same time.

The Chairperson:

Thank you for your presentation.