



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Planning Bill: Formal Clause-by-clause
Consideration

30 May 2013

NORTHERN IRELAND ASSEMBLY

Committee for the Environment

Planning Bill: Formal Clause-by-clause Consideration

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Sydney Anderson
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

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| Mr Brian Gorman | Department of the Environment |
| Ms Irene Kennedy | Department of the Environment |
| Mr Simon Kirk | Department of the Environment |
| Mr Ian Maye | Department of the Environment |

The Chairperson: I welcome Irene Kennedy, Brian Gorman, Simon Kirk and Ian Maye, who are here to brief the Committee on their response. Irene, do you want to start?

Ms Irene Kennedy (Department of the Environment): Thank you. Chair, we wrote to the Committee yesterday evening, setting out our response to the two potential amendments. Amendment No 1 would mean that, from the date of Royal Assent, policymaking by the Department under part II and part III of the Planning (Northern Ireland) Order 1991 must be carried out with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development, and, in doing so, attention must be paid to the desirability of achieving good design.

In clause 6, an amendment to affirm that the reference to material considerations in the determination of planning applications includes a reference to any economic advantages or disadvantages likely to result from the grant or refusal of planning permission will also apply from the date of Royal Assent. Subject to Executive agreement, the Minister agrees to support this and take it forward as a departmental amendment at Consideration Stage. The Department will work to expedite the associated policy and guidance.

We suggest that clause 27(1) be amended to include reference to clauses 2(1) and 6(1) and have circulated an amendment to that effect.

The Chairperson: Do members have any comments on that?

Mr Hamilton: That is fine.

The Chairperson: Irene, at the last meeting, we talked about whether this amendment would make our three-year review messy, given that we will also review the 2011 Act. There is also mention of a review when it comes into operation in 2015. What will be the timescale for that?

Ms I Kennedy: It will depend on when the clause is commenced. What we have drafted — it is really encompassed in amendment No 2 — is that the review will be three years from the date of commencement, which, we hope, will be towards the end of this year. That would mean a review in 2016 specifically looking at clauses 2 and 6. There will be similarities, but I suppose that you are looking specifically at the outworkings of those two areas, and, later, the wider review will also pick those up.

The Chairperson: Will the review of the 2011 Act be a wider review?

Ms I Kennedy: Yes, it will include the operation of the 2011 Act, the reformed system and the transferred system with most planning functions devolved to council.

The Chairperson: Will that be in 2018?

Ms I Kennedy: Yes.

The Chairperson: OK, so that is a gap of two years. What —

Ms I Kennedy: Potentially, it depends on the date of commencement.

The Chairperson: All that you can say, then, is that, in 2018, if you have already done the review of clauses 2 and 6, you could skip the —

Ms I Kennedy: You would probably provide comment on that. Then, in 2018, you would be looking at the situation with the powers transferred to councils, so that will be a slightly different context.

The Chairperson: Are members content with that?

Members indicated assent.

The Chairperson: That is really all that we need from you, Irene. Is that right?

Ms I Kennedy: Yes, certainly. The Department, in its response, sets out its approach to amendment No 2.

The Chairperson: OK. Let me see where we are now.

Mr Boylan: Before we go on, Irene, once enacted, by when — date and year — will clauses 2 and 6 be in operation for planning applications?

Mr Ian Maye (Department of the Environment): From the date of Royal Assent.

Mr Boylan: Which will be?

Mr Maye: It depends on when the Bill completes its remaining stages.

Mr Boylan: *[Inaudible due to mobile phone interference.]*

Mr Maye: *[Inaudible due to mobile phone interference.]*

Mr Hamilton: *[Inaudible due to mobile phone interference.]*

The Chairperson: Irene, we hear all the time that the single strategic planning policy statement (SPPS) will be put in place before clauses 2 and 6 are in operation. Can that still happen? Will you have the SPPS ready for planners before the commencement of clauses 2 and 6?

Mr Maye: The simple answer is no. We are still on schedule, according to our timetable, to publish the first draft of the SPPS before the end of this calendar year. That is our firm target. It may well be possible to publish in advance of this provision and the Bill receiving Royal Assent, but it may be around the same time.

The Chairperson: This will need to go out to consultation, though. Is that what you were saying?

Mr Maye: That is only the consultation document. We intend to have in place the final policy statement before the transfer of functions to local government on 1 April 2015, so we have built that into our delivery timetable.

The Chairperson: So there will be a gap of a year between your having the final version of the SPPS and the commencement of the new clauses?

Mr Maye: Yes, but it will be framed in the context of those clauses. As part of the preparation process, it will be put together with clauses 2 and 6 in mind. The other point is that we have not yet determined what weight will be accorded to the draft single strategic planning policy statement when it is published for consultation. Significant weight may not be attached to it at that point, but it may have some material weight in the planning process.

The Chairperson: OK, but, essentially, are the planners still working on all the planning policy statements?

Mr Maye: Yes.

The Chairperson: Right. So there will be a gap of a year and a half between the existing planning policy statements and the new SPPS when the two clauses are in operation.

Mr Maye: Roughly, yes.

The Chairperson: How will that impact on the life of the planners? Will they look at both: the draft SPPS and the current PPS?

Mr Maye: Yes, and they do that routinely as we introduce planning policy statements under the existing regime. The existing planning policy statement will continue to carry weight until the final planning SPPS is adopted by the Executive. So a transitional period is built into the preparation of all policy. We deal with that as a matter of course and advise our colleagues in the operational teams on how to deal with those issues and what weight to give policies at various stages of preparation.

The Chairperson: Will we be criticised for putting the cart before the horse by commencing clauses 2 and 6 without the SPPS?

Mr Maye: That is for others to judge. Certainly, following discussions with the Minister, the Department does not think that it would pose any insuperable problems to the operation of the planning system or the preparation at this point.

The Chairperson: How will we reassure stakeholders, many of whom objected to clauses 2 and 6 on the grounds that they would add extra weight to economic development? All along, the assurance from the Department at the stakeholder event or briefings here has been that clauses 2 and 6 would be addressed by the new SPPS, which will define and clarify what economic development is and what constitutes sustainable development requires. So how will we assure stakeholders that clauses 2 and 6 will not add weight to economic development?

Mr Maye: On the Department's responsibilities, stakeholders will have to judge us by our actions when the Bill receives Royal Assent and those new provisions bite on the operation of the planning system.

The Chairperson: I have a serious concern. I believe that you said that the SPSS would be in place at the same time as the Bill achieves Royal Assent. If that were so, I would be content to support the amendment. However, knowing that there will be a gap, meaning confusion for a year and a half, I feel that I certainly cannot support the amendment. I will put that to other members. Tom has just come in. We are discussing amendment No 2. Tom, you raised the issue of a review. The Department has tabled an amendment on that. Are you content with that?

Mr Elliott: Yes.

The Chairperson: That means that, in 2016, we will have a review of clauses 2 and 6. In 2018, we will have a review of the Planning Act 2011. Have members any comments on that?

Mr Hamilton: I am content.

Mr Boylan: It is grand, Chair.

The Chairperson: It is grand? I thought that you had raised your hand.

Mr Boylan: No, I am fine. I have asked my question. I am just wondering whether anyone else will ask about clauses 2 and 6 before we start.

The Chairperson: OK. Members, I would like to put this to a vote. Is that the right way to do it?

The Committee Clerk: Chairperson, we are about to embark on formal clause-by-clause consideration. As the Committee goes through each clause, it can indicate whether it is content. If any member wants to raise an objection to a particular clause, that would be the time to do so.

The Chairperson: What about the amendments suggested by the Department? Will we deal with them now?

The Committee Clerk: We have three proposed amendments from the Department. As you consider each clause in turn, on those with amendments — clauses 2, 6 and 27 — you can just put the Question that the Committee is content with, say, clause 2 subject to the proposed amendment.

The Chairperson: OK. We will do that, then. The departmental staff will stay with us. Is that correct?

Mr Maye: We will stay.

Mr Hamilton: Sure what else would they be doing? *[Laughter.]*

The Chairperson: Well, it is fairly straightforward. We will now commence formal clause-by-clause consideration of the Planning Bill. Members, you have been provided with the Bill, written submissions and other documents. Formal clause-by-clause consideration is the final opportunity to discuss the clauses. Any decisions will be final. The Bill has 28 clauses, and the Committee shall now consider each clause in turn.

Clause 1 (Statement of community involvement)

The Chairperson: Members previously indicated that they were broadly content with the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 1 agreed to.

Clause 2 (General functions of the Department and the planning appeals commission)

The Chairperson: Members received legal advice on this clause at our meeting on 16 May. The Department also explained why a proposed amendment suggested by Community Places was not acceptable to it. Members then indicated that they were broadly content with the clause.

Is the Committee with the clause 2, as amended?

Mr Hamilton: It is not amended.

The Committee Clerk: It should be that the Committee is content with clause 2, subject to the proposed amendment.

The Chairperson: Sorry. The amendment is in your papers. In page 2, line 1, at end insert

"(3) The Department must, not later than 3 years after the coming into operation of section 2(1) of the Planning Act (Northern Ireland) 2013, review and publish a report of the implementation of this Article.

(4) The Department must make regulations setting out the terms of the review."

Mr Hamilton: Do you want to divide on that?

The Chairperson: Yes. I want to put this to a vote

Question put, That the Committee is content with the clause, subject to the proposed amendment.

The Committee divided:

Ayes 7; Noes 1.

AYES

Mr Boylan, Mr Elliott, Mr Hamilton, Mrs D Kelly, Mr Milne, Lord Morrow, Mr Weir.

NOES

Ms Lo.

Question accordingly agreed to.

Clause, subject to the proposed amendment, agreed to.

Clause 3 (Meaning of development)

The Chairperson: We previously indicated that we were broadly content with the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 3 agreed to.

Clause 4 (Publicity etc., in relation to applications)

The Chairperson: Again, we indicated that we were broadly content with the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 4 agreed to.

Clause 5 (Pre-application community consultation)

Question, That the Committee is content with the clause, put and agreed to.

Clause 5 agreed to.

Clause 6 (Determination of planning applications)

The Chairperson: Members received legal advice on this clause at the meeting on 16 May. Members then indicated that they were broadly content with the clause.

Question put, That the Committee is content with the clause, subject to the proposed amendment.

The Committee divided:

Ayes 8; Noes 1.

AYES

Mr Anderson, Mr Boylan, Mr Elliott, Mr Hamilton, Mrs D Kelly, Mr Milne, Lord Morrow, Mr Weir.

NOES

Ms Lo.

Question accordingly agreed to.

Clause, subject to the proposed amendment, agreed to.

Clause 7 (Power to decline to determine subsequent application)

The Chairperson: Members previously indicated that they were broadly content with the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 7 agreed to.

Clause 8 (Power to decline to determine overlapping applications)

Question, That the Committee is content with the clause, put and agreed to.

Clause 8 agreed to.

Clause 9 (Aftercare conditions for ecological purposes on grant of mineral planning permission)

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

Clause 10 (Clause 10: Public inquiries: major planning applications)

The Chairperson: Members were briefed by the Department on this clause at the meeting on 16 May, when they were informed that the power to appoint persons other than the Planning Appeals Commission (PAC) would be used only as a last resort and only if the PAC's workload was too much. Members then indicated they were broadly content with that explanation and the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 10 agreed to.

Clause 11 (Appeals: time limits)

Question, That the Committee is content with the clause, put and agreed to.

Clause 11 agreed to.

Clause 12 (Matters which may be raised in an appeal)

Question, That the Committee is content with the clause, put and agreed to.

Clause 12 agreed to.

Clause 13 (Power to make non-material changes to planning permission)

Question, That the Committee is content with the clause, put and agreed to.

Clause 13 agreed to.

Clause 14 (Aftercare conditions imposed on revocation or modification of mineral planning permission)

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clause 15 (Planning agreements: payments to departments)

The Chairperson: Members previously indicated that they were broadly content.

Question, That the Committee is content with the clause, put and agreed to.

Clause 15 agreed to.

Clause 16 (Increase in penalties)

The Chairperson: Members were briefed by the Department on this clause at the meeting on 16 May, when they were informed that the level of fine to be imposed in particular cases is a matter for the courts. However, the increase in the maximum level of fines to be made available under the proposed changes provides additional latitude for the courts to exercise their discretion in sentencing. Members then indicated that they were broadly content with that explanation and the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 16 agreed to.

Clause 17 (Conservation areas)

Question, That the Committee is content with the clause, put and agreed to.

Clause 17 agreed to.

Clause 18 (Control of demolition in conservation areas)

Question, That the Committee is content with the clause, put and agreed to.

Clause 18 agreed to.

Clause 19 (Tree preservation orders: dying trees)

The Chairperson: Is the Committee content with clause 19 as drafted?

Question, That the Committee is content with the clause, put and agreed to.

Clause 19 agreed to.

Question put a second time and negatived.

Clause 20 (Fixed penalties)

Question, That the Committee is content with the clause, put and agreed to.

Clause 20 agreed to.

Clause 21 (Power of planning appeals commission to award costs)

Question, That the Committee is content with the clause, put and agreed to.

Clause 21 agreed to.

Clause 22 (Grants)

Question, That the Committee is content with the clause, put and agreed to.

Clause 22 agreed to.

Clause 23 (Duty to respond to consultation)

Question, That the Committee is content with the clause, put and agreed to.

Clause 23 agreed to.

Clause 24 (Fees and charges)

Question, That the Committee is content with the clause, put and agreed to.

Clause 24 agreed to.

Clause 25 (Duration)

Question, That the Committee is content with the clause, put and agreed to.

Clause 25 agreed to.

Clause 26 (Interpretation)

Question, That the Committee is content with the clause, put and agreed to.

Clause 26 agreed to.

Clause 27 (Commencement)

The Committee Clerk: There is a proposed amendment to clause 27.

The Chairperson: Yes. At last week's meeting, the Committee indicated that it may wish to amend clause 27 to include clauses 2 and 6 in the list of clauses to be commenced at Royal Assent. An amendment has been proposed, which is amendment No 1.

Mrs D Kelly: What is the impact of that?

The Chairperson: I will read it out. In page 16, line 31, after "1" insert

" 2(1), 6(1),"

That means that clauses 2 and 6 are to be included in the list of commencements on Royal Assent.

Mrs D Kelly: That is grand.

The Chairperson: As previously discussed, I want to express concerns that there will be a gap between proper guidance or revised guidance and the commencement of the two new clauses. We need to put this to a vote.

Question put, That the Committee is content with the clause, subject to the proposed amendment.

The Committee divided:

Ayes 8; Noes 1.

AYES

Mr Anderson, Mr Boylan, Mr Elliott, Mr Hamilton, Mrs D Kelly, Mr Milne, Lord Morrow, Mr Weir.

NOES

Ms Lo.

Question accordingly agreed to.

Clause, subject to the proposed amendment, agreed to.

Clause 28 (Short title)

Question, That the Committee is content with the clause, put and agreed to.

Clause 28 agreed to.

Long title agreed to.

The Chairperson: We have now concluded the formal clause-by-clause consideration of the Planning Bill. Thank you all for going through the Bill with us. In particular, Irene and Angus, you have been at every meeting, so thank you very much.