



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government Bill:
Informal clause-by-clause scrutiny

6 February 2014

NORTHERN IRELAND ASSEMBLY

Committee for the Environment

Local Government Bill: Informal clause-by-clause scrutiny

6 February 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Cathal Boylan
Mr Colum Eastwood
Mr Tom Elliott
Mr Alban Maginness
Mr Ian McCrea
Mr Barry McElduff
Lord Morrow
Mr Peter Weir

Witnesses:

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

The Chairperson: We were at clause 69.

Mr John Murphy (Department of the Environment): The legislation is an overarching, high-level framework. At the same time, we can do the guidance, which will put flesh on the bones of the legislation and start to identify some of the issues that councils will want to think about. Respondents identified specific issues about clause 69 around sustainability, green spaces, the environment, and so on. We can deal with those issues and talk about them in the guidance.

There are two sides to the regional support structure. The partnership panel will provide the forum for political debate between councillors and Executive Ministers to address issues that may come up. However, one can imagine that local government itself may want to see what lessons it can learn from neighbouring councils. There is almost a duality in supporting the advancement of community planning across the region.

The Chairperson: That structure is already there.

Mr Murphy: Yes.

The Chairperson: Are members content?

Members indicated assent.

The Chairperson: The second comment is that the clause should include references throughout to community and voluntary organisations or even to categories.

Mr Murphy: We will certainly address that in the guidance because, in the main provisions, there are key players on two sides. There are the statutory bodies and Departments that provide services or deliver functions in a council area, and there is the community in its entirety. Certainly, when it comes

to the community, we talk about voluntary groups. There is the community sector and also the business sector, which will have something to add. Perhaps there are also faith groups. A whole range of bodies could have a role to play. It is probably better to ensure that we provide the appropriate coverage in the guidance. The guidance can be looked at and reviewed on an ongoing basis to ensure that we are providing the appropriate steps.

The Department is working with our departmental colleagues to alert them to their role in community planning. We are starting to engage with the statutory bodies that we are likely to name in the subordinate legislation to alert them to their role in community planning. We are trying to put that entire supporting structure into place without the need to name the community and voluntary sector in the Bill. It can be done through other approaches.

Ms Julie Broadway (Department of the Environment): That engagement with Departments and potential statutory partners will take place over the next six months to explain the expectation of community planning, the part that those statutory partners play and the duties that would be placed on them.

Ms Linda MacHugh (Department of the Environment): That engagement starts formally this afternoon with the first interdepartmental meeting on community planning, which Leo O'Reilly is chairing. It will be important to make sure that all Departments, not just those transferring functions, understand the changing relationship between central and local government and how community planning will help Departments to deliver against their Programme for Government targets through the top-down, bottom-up approach. That will take time to develop, but it should be the ultimate outcome of what community planning is there to achieve.

The Chairperson: I think that the voluntary and community sector's concern is that, if it is not named in the Bill, it could be easily forgotten about and not engaged with. How do we assure the sector that your guidance will be very clear?

Mr Murphy: The guidance will be very clear. It will be statutory guidance, which provides additional weight. There will be a duty on councils to have regard to the guidance, so safeguards are being built in for the community and voluntary sector so that it will be engaged.

Mr Weir: I know that it is never as satisfactory as legislation, but one route that has been used in the past — the Department's intention is very clear on that — is an agreed intervention at Consideration Stage and even for you to raise the issue when you are dealing with other matters. The Minister could give a clear and firm commitment on that.

The Chairperson: At Consideration Stage, the Minister could give an assurance that the sector will be mentioned in the guidance. It has an important role in rolling out or establishing the community plan as well as its implementation.

Mr Murphy: Certainly. We would never have envisaged community planning going ahead without that sort of engagement.

Ms MacHugh: Councils taking over urban regeneration and community development responsibilities will have a vested interest in making sure that the voluntary and community sector is active in helping councils to achieve a set of common goals. There will be a natural fit with all that. Over and above that, there is a statutory link between the community plan and the local development plan, and, in the local development planning process, there is a requirement for community consultation. Taken as a whole, and whether or not the Department produces guidance, which it will do, it would be difficult to envisage how councils would be in a position to ignore the voluntary and community sector or the communities that they represent. The Bill states that local government will have to take into account the views of communities and their representatives. In the round, there will be a clear and distinct role for the voluntary and community sector.

The Chairperson: Are members content with that explanation?

Mr Elliott: That is fair enough, but it will be quite a difficult balance. What community groups say will have to be taken into account, but not everything they propose can be implemented because there are such diverse opinions. It is important to get their views, but I assume that it will then be up to councillors to decide.

Ms MacHugh: Yes.

Mr Murphy: Very much so, Mr Elliott. The guidance will point to the need for effective engagement with the community. I take your point that there can be expectations that things can be done, but councils will have to look at the resources that they and their community planning partners have available. You hear people say that, if you give them feedback on why a certain thing cannot be done, that can help to ameliorate the fact that you are not doing it. Again, we envisage addressing those issues in the guidance or perhaps through additional advice notes. We have to view community planning as a "living process" — a terrible term. We will not get it right first time, but we need a framework to be in place to allow it to develop. Scotland is where it is now after over 10 years. We cannot simply jump straight in halfway through the race.

The Chairperson: Councils have to prioritise according to their resources and work plans.

Ms MacHugh: To finalise: that is another reason why we are not including long lists of organisations, Departments or agencies that absolutely must be involved in every area in all community planning processes. It is about flexibility at a local level. Local democracy needs to step in, and there must be a decision-making process at local level as to where the priorities for the community plan will lie, albeit within the parameters set out in the Bill, subordinate legislation and the guidance. There is no doubt that it is a balancing act.

The Chairperson: You will get wish lists from the community, which sees its own needs. There are so many different needs, and you have to prioritise.

Are members content?

Members indicated assent.

The Chairperson: The next issue is clause 69(2)(a) and the need to link objectives with Programme for Government targets. I am sure that that will be done.

Mr Murphy: That will come through the operation of community planning. I do not think that the Bill can place that direct duty on Departments or statutory bodies. That has to be developed through the operation of community planning and the partnership panel.

The Chairperson: Quite a bit has been said about the realignment of departmental policies and resources through community action plans.

Are members content?

Members indicated assent.

The Chairperson: Another issue with clause 69(2)(a) is the need for a definition of "well-being".

Mr Murphy: Again, Madam Chair, we will address that very clearly in the guidance; we need that. Sometimes, people read the word "well-being" and think purely of health. However, as you can see, it is a much broader issue about quality of life. We will look at ensuring that there is as fulsome and comprehensive a definition as possible of what we mean by social, economic and environmental well-being. We will be developing the guidance in partnership with local government. It will then go out to consultation, so that gives us several opportunities to make sure that the definition is as holistic as possible.

The Chairperson: Can you look elsewhere and borrow a definition of "well-being"?

Mr Murphy: In developing the guidance, we will look at the guidance issued in Scotland, which has been updated over the years, and the guidance in Wales. We will look at other guidance and definitions so that we get as comprehensive and effective a definition as possible of what we mean by "well-being" and what we expect community planning to deliver.

The Chairperson: We have talked about guidance, guidance, guidance. When will the guidance come out?

Ms MacHugh: Initial guidance in the form of the foundation programme is out. That is the starting point, and it is more of a step-by-step guide for local government to consider what it needs to do between now and 2015. Going through that process, we are looking to the experience of local government. We will do that in the coming months and then develop the final guidance, probably towards the end of the autumn of this year. We want it to be in place as soon as possible once the new duties are taken over, but we want to leave enough time to learn from the experience of local government in starting to get its head around it. We are trying to strike a balance between allowing that experience to happen but not leaving it so late that it becomes too tight. The guidance will be developed sometime in the late autumn.

The Chairperson: From May, with the shadow councils, people should be starting to think about this.

Ms MacHugh: That is why it was important to get the foundation programme, as the initial guidance, out. We cannot issue statutory guidance until the councils take over the statutory duties, which will be 1 April 2015. In the meantime, we have the foundation programme, and we want to learn from that. I now have an operational community planning team, which will work closely with each of the new clusters and, in time, all new councils when they are elected to start to look on the ground at how it is rolling out and what lessons we can learn so that we can make the guidance as practical as possible.

The Chairperson: Guidance can be revised.

Ms MacHugh: Absolutely.

The Chairperson: Do you intend to revise it — say, after a few years?

Ms MacHugh: Yes. As Julie and John said, this will be a living, breathing process. I do not think that it will ever just stand still, and we can say, "That's it. We have done community planning".

Ms Broadway: As John said, the opportunity is not only to revisit the guidance but to issue advice notes if specific issues come up.

Mr Boylan: As long as the guidance is in statute, I do not mind. We have seen guidance that was about only interpretation. With regard to social well-being, when tackling deprivation, poverty and social inclusion, is that what we are looking at here?

There are three wards in the small town where I live. Some of the estates are deemed to be affluent because they are connected to a rural ward. In effect, that stops some people from getting onto programmes such as Sure Start, which would support those things. I am using that only as an example. I tried to look at the wards issue in the past, but there may be an opportunity here.

Ms MacHugh: In my experience, some Departments saw neighbourhood renewal as too small a geography, but, for many people in pockets of deprivation, it was too big a geography. So the Department for Social Development (DSD) looked at pockets of deprivation and areas at risk and tried to expand on a defined geographical area. Those very defined geographies will not be in community planning, apart from council boundaries. Even then, there are opportunities for councils to work in clusters on issues that might go across council borders and, indeed, the border. With capacity building, we are working with Co-operation Ireland to see what opportunities there are to consider community planning on a cross-border basis for councils at the border. Issues do not stop because there is a geographical boundary.

Mr Boylan: That is my point. Even though we are getting urban regeneration, which will replace neighbourhood renewal, there are pockets of deprivation in some of the areas that I know. I am sure that, under the general power of competence, you could look at addressing some issues.

Ms MacHugh: Absolutely.

Mr Boylan: I was looking at putting that in the Bill, but if you are saying that the social well-being element will address those three issues and will be clearly defined in statute as well as guidance, I would be content. Perhaps you think that that is strong enough. I will be asking the Committee to support me in bringing those three elements. If you are saying that tackling deprivation, poverty and social inclusion, and so on, is incorporated, I would —

Mr Murphy: It is very much incorporated, Mr Boylan. Community planning in councils will also be, to an extent, overlaid by the strategies and policies being taken forward at a regional level. Although the community plan will be for a council district, it could be made up of a number of thematic plans, or it could look at area plans. It can start to address very specific areas that may not be, as Linda said, picked up in general statistical analysis. A key issue for community planning is starting to get that evidence base, which has been clearly identified in the foundation programme. There is also a link to an area that we will come to later: performance improvement. Issues are starting to be identified through the community plan being factored into a council's improvement plan. There is an issue around fairness, which starts to look at social obligations dealing with deprivation, and so on. Those issues will be covered very clearly in the guidance. We will look to see how community planning can address those.

Mr Boylan: Guidance as in statute?

Mr Murphy: Yes.

Mr Boylan: That is important. It gives you the tool to engage with other statutory agencies to address those issues.

Mr Murphy: I have looked at what is in place in Scotland and Wales. It is not just statutory guidance for a council. We have developed the provision in the Bill. The statutory guidance will also cover the community planning obligations of the statutory bodies.

The Chairperson: I guess that the community plan would have to be thematic. You cannot simply have one large document. You need headings and themes that reflect regional policies and actions.

Mr Eastwood: Clause 69(2)(a) refers to social, economic and environmental well-being. Is that the place to put in equality and good relations in a district? It could say, "Community planning will be an opportunity to promote equality and good relations". I do not mind where it goes.

Mr Murphy: Community planning is a statutory council function. As a public body, a council has to observe its section 75 duties.

Mr Eastwood: There is a difference between observing your section 75 duties and promoting equality and good relations.

Mr Murphy: In some respects, I would again give the answer that I gave to Mr Boylan: the statutory guidance will certainly highlight all the key factors that need to be considered by a council in taking forward community planning.

Mr Eastwood: It is difficult to agree to that until we see the statutory guidance. This is an opportunity to put something in the Bill that talks about equality and good relations. A large part of what we are doing is about trying to foster those principles and ideals. There may be an opportunity to do that in this part of the Bill.

Ms Broadway: Yesterday, we met the Equality Commission. We discussed the issue of promoting equality and good relations and how we could work with the Equality Commission to do that.

Mr Eastwood: Did you come up with anything?

The Chairperson: Is this going to be an amendment or will it be in guidance?

Ms Broadway: It could possibly be in capacity building. That was mentioned.

Ms MacHugh: The Equality Commission said that the new councils would have to be reminded of their equality and good-relations duties and their section 75 duties. This would have to be enshrined in all of the new councils' policies. The commission is now working with the change managers and equality managers in each council and cluster to start their thinking on how they are going to amalgamate policies. If you have two, three or four councils coming together with slightly different policies on a specific issue, they are going to have to not only amalgamate the policies to create one but then equality-proof and screen it. There is quite a big job of work to be done in local government

on equality and good relations. The commission was also particularly interested in ensuring that this was enshrined in the code of conduct for councillors.

Mr Eastwood: It goes without saying that people should act in accordance with the law in this stuff. There is a slight difference in saying that a council, as a corporate body, should promote equality and good relations. There is an opportunity to put that in the Bill. This may not be the exact place in which to put it, but I ask you to consider whether we could put it somewhere in the Bill.

Ms MacHugh: It is probably part of the social well-being part of the —

Mr Boylan: The next question is going to be about whether we can see the guidelines to see exactly what is coming down the tracks. If not, I would certainly support what Colum said. I touched on some stuff about trying to get it in the Bill.

The Chairperson: As I said to Colum, we have been lobbied about good relations. Maybe this is the time to put something in about equality and fairness to strengthen the Bill. It could include a definition of good community relations and information on what is expected of councils. It is stated in a few places in legislation that they have to promote good community relations, but what does that mean? Maybe we need to put in law or guidance to say what constitutes good community relations. It could clearly say, "This is what they have to observe in order to promote good relations".

Ms Broadway: If we were to take the matter back to the Minister to see whether he, after considering it, could possibly give an assurance that that will be in the guidance, is that —

The Chairperson: OK.

Mr Eastwood: Consider putting it in the Bill first. After you have ruled that out completely, you can then talk about the guidance.

Ms Broadway: Right.

Mr Eastwood: After consideration, we will talk about the guidance.

Mr Boylan: The key word is "statute".

Ms MacHugh: The guidance will be statutory.

The Chairperson: OK. Obviously, there is still a lot to come on stream.

The next issue concerns clause 69, subsection (2)(a)(iii). Should that include the creation of green spaces and wide places? You cannot really name everything.

Ms Broadway: That is more appropriate for guidance.

Ms MacHugh: It strikes me as being something that might be considered in the local development plan. In many respects, that will be the physical manifestation of the community plan. As you are aware, there is a statutory link between the two. The creation or maintenance of green space is something that you will want to look at in an area-based physical planning environment, but it should be linked to the community plan.

The Chairperson: OK. Link the land-use plan with the community plan?

Ms MacHugh: Yes.

The Chairperson: Are members content?

Members indicated assent.

The Chairperson: We will move on. There is a need in subsection (2)(b) for a definition of sustainable development such as that used by the Brundtland commission.

Mr Murphy: As I said earlier, a number of the specific issues raised by respondents will be addressed in the guidance. It is not appropriate to address them in the Bill.

The Chairperson: OK. We will move on. There is a suggestion that subsection (2)(c) should include a reference to the Children and Young People's Strategic Partnership.

Mr Murphy: It is the same again.

The Chairperson: OK.

The next one is also on subsection (2)(c). There is a proposed amendment to emphasise improvement in service provision. The amended clause would read:

"identify actions to be performed and functions to be exercised including those related to the planning, provision and improvement of public services by the council and its community planning partners for the purpose of meeting the objectives identified under paragraphs (a) and (b)."

I think that Community Places suggested that.

Mr Murphy: The legislation already provides that the partners have to take various actions. There is also a link through to a council's performance improvement. So, you have that link between issues identified through the community plan to its performance improvement. It is not appropriate for us to specify that for the other statutory bodies. They have their own accountability mechanisms, and we need to build through that.

The other aspect that we need to consider with that suggestion is that, although service delivery may be an important aspect of community planning, community planning is not just about service delivery. Other actions can be taken that could improve the well-being of an area. If you start to build in those specifications, you can start constraining, rather than assisting, what you want community planning to deliver.

The Chairperson: OK. There are so many; I am just looking at the wording.

There is a suggestion to insert in subsection (2)(c) the words "and agree" after the word "identify". Subsection (2)(c) states: "identify actions to be performed". So, the suggestion is to add those two words so that it reads: "identify and agree actions".

Mr Murphy: I think that agreement on the functions and actions to be taken is implicit in the totality of the later provisions where the Bill talks about consensus.

The Chairperson: OK. Are members content with that?

Members indicated assent.

The Chairperson: The next one is a suggested new paragraph, (2)(d). The suggestion is that it should say:

"Positively plan for renewable and low carbon energy generation in order to improve the environmental, economic and social well-being of the district".

Ms Broadway: Again, I think that that is more appropriate for the guidance. It is another issue that would be —

Ms MacHugh: Again, that is a decision for the council. It will link into, for example, its planning function, and the renewable energy function is related to that as well. The council will have to agree on a common policy on energy, renewable energy, wind farms — all that. That is for the council to determine.

The Chairperson: OK. Are members content?

Members indicated assent.

The Chairperson: The next one is also a suggestion to insert new paragraph, (2)(d), and the wording:

"in co-operation and conjunction with community and voluntary bodies from the outset of the process."

Mr Murphy: As I explained earlier; with the community and voluntary sector, the statutory guidance will provide for that. You need to have space in community planning for the elected members on the council, the statutory bodies and the Departments to be able to look at the issues beforehand and determine at what stage they want to bring in the community and voluntary bodies and representatives of the community because, after all, the elected members of the council are representatives of the community. They have to be given space to take that forward and get it to a stage where they feel comfortable in engaging outside that framework.

The Chairperson: In his deliberations during Consideration Stage, the Minister can emphasise that the community and voluntary sector will have a major role in the establishment of the community plan and its implementation.

Another comment on subsection (3)(b) is that it should include reference to making adequate resources available in partners' financial plans.

Mr Murphy: That comes back to the issue of accountability and the arrangements already in place for the statutory bodies who are responsible to their boards and, ultimately, to Ministers. It is not appropriate for us to specify that. Community planning will see the alignment of the various activities, and the partnership panel provides that political forum to discuss any issues that arise with, perhaps, a particular statutory body's lack of engagement. We are putting the framework there to try to support the delivery of community planning without it being overly prescriptive.

The Chairperson: That could relate to the next clause, which is about community planning partners. Are members content with that?

Members indicated assent.

The Chairperson: One last comment on subsection (5) is that clarification is required and guidance is needed on how councils are to develop a link between land use plans and community plans. Linda mentioned a bit about that. What is the timescale for that?

Mr Murphy: We are starting to engage with our colleagues in planning to see how that can best be taken forward, and parts of it could also be taken forward during the foundation programme. You start to address the same issues. One thing that was identified in the working group that was looking at planning and community planning was that, in many ways, the area plan and the community plan will be informed by the council's vision for its district. Because of that, you can then have that sort of twin track with the two plans when trying to get that alignment.

The Chairperson: It is very much interrelated.

Ms MacHugh: The Department has now committed resources to working with each statutory transition committee on the land use planning issue because, clearly, there are many local development plans. Some are old and some are new, and maybe a council did not necessarily agree with everything in some of the new ones. So, a lot of work will have to be done to develop a new local development plan for the new council areas, and six senior staff have been identified in the Department to work with the statutory transition committees to start that process at the same time as looking at the foundation programme.

The first stage of community planning and land use planning is to gather evidence and decide your priorities and your vision. Those early stages are so aligned that we see a lot of synergy. I am also aware that DSD has committed resources to work with each transition committee on what an urban regeneration plan might look like. It all has to link in and be aligned because it is like a continuum between the three of them. An awful lot of work will be done in the next 15 or 16 months before community planning fully takes over.

The Chairperson: There will probably be a raft of different plans for the areas that are combined.

Ms MacHugh: The first challenge for everybody will be to look at existing strategies, plans, initiatives and programmes. Belfast council mapped them and there were hundreds for Belfast alone. How do you make sense of that, try to take out the duplication and enhance them rather than add yet another layer? We are all trying to avoid that.

The Chairperson: How many of them have been on the shelves for many years and not touched?

Mr I McCrea: A lot of councils have been doing community planning, whether it was called that or not, for years, and the main difference was that there was no statutory requirement for partners to be involved in it. I am not so sure that it will take 15 or 16 months. Previously, it was difficult to get councils to agree to community plans. For example, Cookstown's priorities will obviously be different to those in Magherafelt and Dungannon, and it is about trying to incorporate that difference. The time will probably be spent on trying to get agreement among councils. Maybe it will not be as difficult as I think. I am wee bit concerned that we do things for the medium term. You said that it will take 15 or 16 months, and that is fine, but a lot of the work is already done. It is just about bringing it together and getting the involvement of partners who, at times, came along because they had an interest and wanted to be there. However, there was no statutory responsibility. Statutory responsibility means that it is not just about a low-level member of staff. That is one of the key things that have to be sorted.

Ms MacHugh: You are quite right: an awful lot of good work has been done in many councils. When we mapped out what was already there, or initiatives that were being undertaken, we found some really good examples of where certain councils had taken a theme — for example, crime or health — and worked with the PSNI, DHSSPS, Investing for Health or the local health trusts. Those were starting to show real outcomes and improvements. The community plan will clearly have to expand that very good work, and, as you said, you start to align the approach in one area and turn that into an approach for the whole area and take into account issues that were maybe not tackled fully and properly or are not currently being tackled. However, councils will now have the ability to do that, take it all into account and address issues such as smaller pockets of deprivation. As we said, it will be an iterative process, and I do not think that the first community plan for any council will, by any means, be its last community plan. I take on board that a lot of work is being done.

Mr Murphy: The foundation programme, when it was being developed, tried to make sure that, if possible, we got the 11 councils up to the same level while, as you say, Mr McCrea, recognising the work that had been done in the various councils under various guises which was really community planning because they had worked in partnership with various bodies.

Mr Boylan: It is a brilliant opportunity to link community plans and area plans. I have some concerns. The vision should be long term, because some area plans are just not fit for purpose at the minute. However, we now have an opportunity for people to get that together. I agree that there is lot of community planning. There has been good work, but it is a very good opportunity for us to start that process now.

The Chairperson: Community Places suggested that the community plan should be published within three years of the start of the new councils. Is there a timescale for the two to be published together?

Mr Murphy: We discussed that with the Minister on Tuesday afternoon. The difficulty is that, if you put a time frame on it, where do you set the time frame? The problem is that, if you set it too tight, you end up with a community plan that is published simply to meet that timetable; whereas, if you provide flexibility — again, I am claiming a lot for the guidance — you can put pointers down as to the movement we expect.

As Mr McCrea said, a lot of councils have already done a lot of good work on this and will be able to build on that work. I do not imagine that the work we are doing with other Departments, and then through engaging with the statutory bodies to start to tie them in, will take significant time. Councillors will want to show that they are using the new partners. From my engagement with the policy development panels and others in local government, I know that they want this. It provides them with a great opportunity to deliver for their local community. So, they are not going to sit back and wait.

Mr Boylan: At different levels.

Ms MacHugh: The other issue is that, if you set a time frame of, say, three years, how often in life do you find that the task in front of you expands to suit the time frame in which you have to do it? It could then be perceived that we have a three-year process ahead of us, but in some areas it could take a lot less time. On balance, it is the Minister's view that it would put a false constraint on councils and that councils will understand that it is in their interests to do it as speedily as possible.

Mr Boylan: I think that clause 69 got a fair hearing. *[Laughter.]*

The Chairperson: The view is that you could have a time frame of no later than three years, and councils could, if they wanted, publish it in the first year. However, the concern is that they could put it on the long finger and delay it. The Minister is not keen to set a time frame.

Are members OK with that?

Members indicated assent.

The Chairperson: We move on to clause 70, which deals with community planning partners. As members know, this clause provides a power for the Department by order to specify the bodies or persons to be the community planning partners of a council. There are quite a number of comments and I will start with the first one, which is on subsection (1). The suggestion is that community planning partners should be listed in the Bill to oblige them to participate.

Mr Murphy: We would be faced with a dilemma if they were named in the Bill. We could probably identify a number of the required community planning partners now, but what happens if a new body were set up that we wanted to involve in community planning? We would have to change the primary legislation. That is why we went down the road of subordinate legislation, which gives flexibility to add or remove bodies. For example, you would anticipate including the education and library boards, but if we then move to ESA —

The Chairperson: You will still have to use subordinate legislation. Even now, your thinking must be around DE and others.

Mr Murphy: As I say, using subordinate legislation provides us with greater flexibility to list the bodies and then modify that list as time goes on, either to add or remove bodies or, if a body changes its name, to deal with that rather than changing the primary legislation.

The Chairperson: When are you going to issue the subordinate legislation to name them?

Ms Broadway: That is being worked on at the minute. I think it will be issued around the same time as the guidance.

The Chairperson: In the autumn?

Ms MacHugh: Again, this is an area where we want to listen to local government and hear who it feels it needs at the table. We will also talk to Departments and their agencies. It is not likely to be the Departments that are named; it may be their agencies and bodies. It is really the delivery arms that we want. So, it might not be the Department of Health, but it would be the health trusts. That is the level that we want to work at.

Ms Broadway: Over the next few months the Department will engage with potential statutory partners to explain what all of this will mean and the duty placed on them when they are named in the legislation.

The Chairperson: Will you be asking people from the community and voluntary sector who they believe should be on it? They would be the users or receivers of services.

Ms MacHugh: We would certainly ask them for their views.

The Chairperson: I mean the public.

Ms MacHugh: We will consult widely on all of this, but to come to a position where we have a document that we want to consult on we would clearly have to talk to all stakeholders, including the voluntary and community sector. We have also, as a Department, contracted with Community Places.

One of its prime roles is to look at assisting local government with developing its links to communities and the voluntary and community sector, and defining the role of that sector in all of this. Through that mechanism we will also be looking for views.

The Chairperson: OK. I think they certainly have been working on it for some time.

Mr Elliott: On that point, is that not getting back to what I asked earlier about the groups? Surely, it would be very difficult, even in subordinate legislation, to name a number of groups.

Ms MacHugh: We will not name voluntary and community groups. We will seek their views about which statutory agencies —

Mr Elliott: Who are you actually going to name under it?

Mr Murphy: It will be the statutory bodies that are delivering services or taking actions.

Mr Elliott: That is fine.

Ms MacHugh: We will just seek views from the voluntary and community sector about what the bodies should be.

The Chairperson: It will be the arm's-length bodies like the Arts Council or the Sports Council, rather than the Department.

Ms MacHugh: The Housing Executive, for example, or its successor.

Mr Boylan: Do not put it down just yet. *[Laughter.]*

The Chairperson: Ian has to leave in 10 minutes, and it is near to 2.00 pm anyway, so we will finish when Ian goes, I am afraid. See how important you are, Ian.

The Committee Clerk: Are there any other members who are not at Committee meetings and could come back for 10 or 15 minutes?

Mr Weir: I could stay a little bit longer than 10 minutes, but I would need to be away and then I will be tied up for the rest of the afternoon.

Mr Elliott: If it is only an informal session, can we not operate with four? We do not have decisions to make.

Mr Weir: My understanding is that a quorum is four where there is no decision. The only issue, from my point of view, is that I need to go at 2.00 pm.

Mr Elliott: I need to do so as well.

The Chairperson: A majority of people will have to go at 2.00 pm. So, will we just go on until 2.00 pm?

The Committee Clerk: No, we cannot go on until 2.00 pm. We have to stop when Ian leaves.

The Chairperson: If we are not making decisions —

The Committee Clerk: We are sort of saying that we are broadly content with clauses. Is that a decision or not?

Mr Weir: My understanding is that we are talking through the issues, but no decision is being taken at all.

The Committee Clerk: That is OK then.

The Chairperson: There you are, Ian. You are relieved.

Mr I McCrea: You are more relieved than I am.

The Chairperson: OK, we will move on. The next suggestion is that it should be compulsory for senior representatives to attend meetings. That is Ian's point, really. Is that not right? Where is that? It is clause 70(1). I do not quite understand. Do they mean that we have to keep it on the face of the Bill to say that they must be senior representatives?

Mr Murphy: Again, Madam Chair, you are back to accountability. It is up to the statutory body to ensure that it has appropriate representation. It may not always be necessary for the chief executive to be there. Once bodies have signed up to particular actions, they can delegate that activity to some of their directors. We have to bear it in mind that we are talking about 11 councils, and expecting chief executives or senior officials from the various bodies to be there. Those are things that we can start to address in the guidance and in our engagement with statutory bodies to emphasise the need for appropriate representation at those community planning partnership meetings.

Ms Broadway: It could also be dealt with at the partnership panel, with the parent Departments of those arm's-length bodies able to discuss the importance of ensuring that suitable people are appointed.

The Chairperson: Various groups have reiterated that the people selected must have clout. They must be senior enough to be able to make decisions and have the influence to get things done and not be people who just sit there and say nothing.

Ms MacHugh: The fact that the community plan will include targets and outputs that are expected from all partners, not just the councils, is one way to ensure that, when an agency or statutory body commits to the plan, a genuine commitment is made. If that commitment is not met effectively, that needs to be highlighted, and, should that be the case, I think that that will be discussed at the partnership panel.

The Chairperson: I think that a word of assurance from the Minister would be useful.

Mr Weir: The Minister is going to have to give a very long speech. *[Laughter.]*

Mr I McCrea: I think that it is one of those things. With the PSNI, for example, I do not think that anybody expects the Chief Constable to come to certain meetings, but the other side of that is that there is no point sending a police constable — and no disrespect to any police constable — if an inspector or chief inspector is the person who, as the district commander, would make the decisions. Therefore, the appointments need to be senior people who are able to ensure that things that are agreed and targets that are set are achieved. It should not just be someone who nods as though everything is OK —

Mr Boylan: It has to be someone suitably qualified.

Mr I McCrea: — and they go back.

Ms Broadway: A suitable person who is able to make a decision and implement that decision.

Mr Boylan: Then the agency will come back and say no. *[Laughter.]*

The Chairperson: The next comment is that Departments should be included. I think that this is the same issue, so we can leave it for the guidance. Are members content?

Members indicated assent.

Mr Boylan: I have a quick question just on that point: people are obviously getting a feel for the statutory agencies that we are talking about; have any responses come from those agencies — say the Housing Executive — on this?

Mr Murphy: I met some Housing Executive staff recently to update them, and, from that conversation, I learned that the individuals, without committing their organisation to anything, clearly see themselves having a role in the process.

Ms MacHugh: Other Departments, such as DARD, Justice and Health have been talking to us proactively about links to community planning. Justice has identified the need to align what happens in the policing and community safety partnerships with the community planning partnerships and to find a way to ensure that they do not overlap.

Mr Boylan: I asked, because I can only see a list of the people who have responded, and they are key people who will play a big role, but it is grand.

Mr I McCrea: Maybe you can find out what happens in community safety partnerships and tell the rest of us. *[Laughter.]*

The Chairperson: The thing is that community planning is good for Departments as well.

Ms MacHugh: Exactly.

The Chairperson: Community planning can help Departments to deliver their remit.

Ms MacHugh: The people in the Health Department who deal with investing in health and health promotion have seen the health benefits that have come from mini-community planning-type projects with local councils. I keep saying that, if we are saying that the only way this will work is by absolutely pinning everything tightly into legislation, then it will not work. This has to be a coalition of the willing, and I think it will really start to get teeth when agencies see that this is an effective way for them to deliver on their commitments.

The Chairperson: Talking of consultation fatigue, the public, and things just going round in circles and going to different departmental consultations; with this, you can concentrate things in one place and get them done.

We will move to the next comment, which says that there are no sanctions for non-participation by statutory bodies. It is very difficult to place a sanction in legislation. Again, as John said, there is the issue of accountability.

The next comment relates to clause 70, subsection (3)(c), and the need for clarification of who the Department may consider appropriate. Again, I think that guidance would cover that.

Ms Broadway: That is just to cover all. It means that it covers us for naming anyone in the subordinate legislation.

The Chairperson: The next recommendation suggests adding the words, "including community and voluntary bodies". The guidance will cover that.

There is a suggestion to insert new subsection (5) which would state:

"The Department may by order modify subsection (1) above by adding a reference to any eligible body."

Ms Broadway: I think that it is the link to the suggestion that we name the bodies in the legislation, and then you have a provision to allow you to amend it. I think that it is appropriate for us to name them in the subordinate legislation rather than in the legislation. Therefore, we would not need that. The RSPB requested that.

Ms MacHugh: All of that apart, we have subsection (3)(c), which allows the Department to specify:

"such other bodies and persons as the Department considers appropriate".

I am sorry, that is in the consultation.

Julie is right. It is only because they want us to name everybody in the Bill and then also provide ourselves with the ability to change or add to that list.

The Chairperson: OK. This is just to widen it out a bit. Do they want it to say, "any eligible group"? The word "eligible" is then going to be argued about. What do you mean by "eligible"?

Ms Broadway: Exactly.

The Chairperson: Who determines eligibility?

Are members content with that?

Members indicated assent.

The Chairperson: We will move on to clause 71, which specifies that once a council and its community planning partners have reached consensus on the community plan objectives and actions, the council must produce a document, known as the community plan, capturing that consensus.

The first recommendation relates to subsection (4)(a) suggesting that it should read, "a specific time frame" — we talked about that — instead of "as soon as is reasonably practicable" by the council. One organisation said three months. Do you think that that is good enough?

Ms Broadway: Yes.

The Chairperson: OK. Are members content with that?

Members indicated assent.

The Chairperson: With regard to subsection 4(c), there should be a specific timetable for engagement, say one year and, for agreeing plans, say a further two years. Again, is that being too rigid?

Are members content with that?

Members indicated assent.

The Chairperson: We have a suggestion to amend subsection (4)(a) to read:

"must be produced as soon as is reasonably practicable after community planning for the district has reached the stage described in subsection (2) and no later than within three years of the formation of the new councils".

Mr Boylan: Chair, to save us a wee bit of time, and if you don't mind; is it possible for you to just read out the clause and reference point as opposed to reading out all of the description, because we all have it here? If you say 71 —

The Chairperson: Yes, sure. OK, quite right. I am happy with that, rather than me droning on.

Mr Boylan: No, no. It is grand.

The Chairperson: We move on to clause 72. There were no comments on that clause.

We move to clause 73. We all have the table. I will ask Linda to respond to the first comment regarding a new clause.

The Committee Clerk: They do not have the table.

The Chairperson: I am sorry. They do not have our table. We have our table.

Mr Murphy: We have a table, which is similar to your table, Madam Chair.

The Chairperson: The suggestion is to insert a new paragraph, 2(a)(iii) which would state:

"report on means of consultation with the persons listed in 76(2) including a summary of the outcomes of consultation".

Mr Murphy: Again, we are back to starting to straitjacket councils into having to report on how they consulted. The guidance will point to the need for engagement. Why do you then put that additional burden on them to report back on how they conducted that consultation? There are various means of engaging that we will point to in the guidance.

The Chairperson: OK, fair enough. Are members content?

Members indicated assent.

The Chairperson: The next comment is on subsection (5) stating that clarification is needed on the phrase "a degree of consensus".

Mr Murphy: You are never going to get total agreement. You have to put a point where the majority of the bodies around the community planning partnership table say, "Yes, we are content that we move forward with this", rather than trying to be overly prescriptive.

The Chairperson: Majority vote; is that right, Peter?

Mr Boylan: To be fair, that was part of the process from the start.

The Chairperson: Yes. The next recommendation is to amend subsection (6) to read:

"The council must, as soon as is reasonably practicable after becoming subject to the duty under subsection (4) and within six months, publish an amended community plan."

Ms MacHugh: It is back to timescales for complaints.

Mr Murphy: It is back to timescales, Madam Chair.

The Chairperson: Yes, within six months, which, again, is really too rigid. Are we happy to move on?

Members indicated assent.

The Chairperson: OK. We are on to clause 74, subsections (1) and (3). The comment is that there is a need to include the monitoring of outcomes and how community planning performance will be assessed without that. Then again, Belfast City Council said that there is great difficulty in assessing long-term outcomes in particular.

Mr Murphy: Exactly. You will have the link to a council's performance improvement plan but you will monitor the outcomes. This aspect of monitoring will be covered in the guidance to provide that additional framework.

The Chairperson: OK, are members happy with that?

Members indicated assent.

The Chairperson: The next recommendation states:

"Amend clause 74(3)(a) to read progress towards meeting the community plan objectives and outcomes for its district."

I think that is the same thing on outcomes.

OK, we move to clause 75. The suggestion is that it should be amended to include Departments. That will be in the guidance and subordinate legislation.

Mr Murphy: Yes, that is right.

The Chairperson: OK, we then move to clause 76, subsection (1). The suggested amendment is that it should read:

"councils and its community planning partners MUST SEEK the participation of and encourage people (including children and young people) to express their views and ensure that their views are taken into account."

I think that the concern is that the wording is a bit too woolly and too vague as it stands.

Mr Murphy: The difficulty is that you cannot always force people to engage. We are trying to say that councils must arrange to engage with the community, but it is difficult to go beyond that. There will be individuals or sections of the community who may not want to be involved in the process. If you bring this amendment forward, it will start to straitjacket the council's flexibility to move on, having attempted and put in place arrangements to try to engage. If a council does not get a response, it must be able to move on with the process.

Ms Broadway: It also means that you are naming particular groups when you might miss important ones, so it may be better to do this in guidance and by encouraging how and with whom engagement should take place. I would put it in the guidance rather than specifically name people in the Bill.

The Chairperson: It is not saying that they should be named; it is just stating that the wording should be made stronger. The concern, I think from Community Places, is that the Bill should simply ensure that "arrangements are made" so that the persons mentioned in subsection (2) have the opportunity to express an interest. They are concerned that just having it on the website is not proactive enough in seeking participation.

Mr Murphy: To come back to that issue, though: how far do you go in trying to seek participation of groups?

The Chairperson: OK.

Mr Murphy: Some groups will want to get involved and will come forward, but others may be more reticent. To say to a council that it has to seek engagement may act as a barrier, perhaps, to developing that engagement.

Mr Elliott: What is the mechanism if some group does not believe that it has had a reasonable opportunity to respond or be consulted? Is there a complaints' mechanism for them?

The Chairperson: Sometimes, groups do not even know when consultation takes place. Say, you have a website that states that consultation is taking place but people do not have access to that website or their first language may not be English or they are in disability groups.

Mr Murphy: What we would be looking at, to deal with this point and then come back to Mr Elliott's point, is that Scotland issued advice notes on engagement with the community. So, it is not just an advert in the paper or a notice in the council's website; you start to get into local meetings and using social media. A whole range of approaches can be developed. The issue of groups who feel they have not been consulted should, I suppose, be taken up by their elected representatives on the council, the Assembly or the various representative bodies out there.

Mr Weir: I take on board what has been said about how far you can go in seeking people's views, and I appreciate that the wording is not far off what is needed. However, is any tweaking needed so that this is not seen as an absolute process of box-ticking? Should it show that something is being done to show that, legally, reasonable arrangements are being made to avoid a judicial review-type implication?

Ms Broadway: We can certainly take that suggested amendment to the Minister and come back next time.

The Chairperson: We need stronger wording.

Mr Weir: I think that it is a question of finding a bit of a tweak that could cover that.

Ms Broadway: We will look at that.

The Chairperson: OK. Thank you. The next comment raised was that subsection 1 should be stronger and should be amended to read:

"councils and its community planning partners MUST SEEK ... participation".

That is the same thing. If you are going to look at an amendment, I think that we can move on.

The next comment relates to subsection 2 and it was that trade unions should be included.

Mr Murphy: Again, the guidance will identify the groups; that will include the trade unions.

The Chairperson: OK. The next comment is on subsection 2 again. It is that it should include low-income children, their parents and carers.

Ms MacHugh: It is going to be a very long list.

The Chairperson: There are pages of it.

Ms MacHugh: The difficulty when you try to pinpoint and highlight one particular part of the community is where you stop. The whole purpose of community planning is that all elements of the community should be included, considered and involved. I know that particular interest groups will want their particular interests specified, but where do you stop? You will end up with a list as long as your arm.

The Chairperson: Could you just refer to the section 75 groups?

Mr Murphy: The guidance will point to the broad groups, but I think that we have to put faith in the elected representatives on a council to ensure that groups in the community that they represent are engaged with.

The Chairperson: OK.

Ms MacHugh: What about business groups, faith-based groups and other minority parts of the community? What about old people, women or men?

The Chairperson: If it was section 75-type categories it might be easier to catch them all. That will be for your guidance.

Ms MacHugh: Again, the equality ethos needs to be enshrined in the process from the outset. As I said, we have been working with the Equality Commission to see how that could best be done.

The Chairperson: Councils need to take responsibility and be inclusive of all sections of society.

Ms MacHugh: Yes. They have a duty now and they will certainly have a duty come 2015.

The Chairperson: OK. The next comment was on subsection (2)(e). It was that the words:
"in the opinion of the council"

should be removed, and the phrase:

"including NGOs and local action groups"
be inserted. That is going to be difficult, is it not?

Ms MacHugh: Yes.

The Chairperson: OK. Will we move on?
Members indicated assent.

The Chairperson: We have moved on to clause 77. The first suggestion is to change the word "may" to "must".

Mr Murphy: We are back to the same argument that we had earlier.

The Chairperson: Yes. We discussed that before.

The next comment relates to subsection 2(c). It is that there is a need for guidance to be developed in cooperation with councils and other public sector and community bodies. I am sure that you will do that.

Ms MacHugh: Yes; absolutely.

The Chairperson: The next comment also relates to subsection 2(c). It is that it should include the community and voluntary sector. I am sure that that will also be included in the guidance.

The next comment relates to subsection 3. It is that the wording must be stronger than "must have regard to", but there is no suggestion of what should replace it. I think that that is pretty strong.

Mr Boylan: There may be a misreading there.

The Chairperson: Yes, how much stronger can you get?

We will move on to clause 78. There are four comments on this clause. The first one is to add the Minister of every Northern Ireland Department. You have explained that you cannot do that. Will we move on?

Ms Broadway: We are waiting for legal advice.

The Chairperson: Right, we are waiting for legal advice.

Mr Boylan: Can we change that to the North of Ireland?

Mr Weir: Put that amendment down and see how far you get, Cathal.

The Chairperson: Who is getting the legal advice? Is it the Department or us?

The Committee Clerk: The Committee. We agreed to ask for legal advice.

The Chairperson: When will we get that?

The Committee Clerk: We should have it by the end of this week. Tomorrow.

The Chairperson: OK. The next comment relates to clause 78(a) and it is that the words "aim to" should be removed.

Ms Broadway: The Minister has agreed that. We will table that amendment.

The Chairperson: So, that will read:

"in exercising any function which might affect community planning and encourage community planning".

That will remove the words "aim to".

Ms Broadway: Yes.

The Chairperson: OK. That is good. Well done, Minister. *[Laughter.]* A man to my heart.

Mr Boylan: Somebody must have been very tired when they were writing the Bill.

The Chairperson: The next comment relates to clause 78(b). It is that the clause should be amended to read:

"must have regard to the content of a community plan in relation to the exercise of that department's functions and agree with councils and their community planning partners how the Department can assist in the implementation of the Community Plan."

That would remove the whole subsection. How could we do that? At the moment, it reads:

"have regard to any implications of a community plan for the exercise of that department's functions".

What is your comment on that?

I think that that comment came from Community Places. I think that the idea is to make it stronger.

Mr Murphy: That is the same issue that we had with the statutory powers; even more so. Departments are accountable to their Ministers, who are in turn accountable to the Assembly. We could not start to put constraints on them meeting the Executive's and the Assembly's priorities to promote community planning. We have to try to strike a balance. We have gone further than the corresponding provisions in Scotland and Wales. They only aim to promote and encourage community planning while we have included that very specific provision.

The Chairperson: OK.

Ms Broadway: As Linda said, our permanent secretary has set up meetings with permanent secretaries of other Departments to explain and discuss the importance and the change that the community planning duty will place on them and to stress that they must take account of the community plan for the 11 councils.

The Chairperson: To convince them of the benefits of it.

Ms Broadway: Yes.

The Chairperson: And the potential for benefits.

Ms Broadway: Yes.

The Chairperson: It is 1.58 pm, so we will finish with clause 79. Only one comment was made about clause 79, and it was that there is a need for negotiation with trade unions in relation to staff impacted on by a transfer of functions. I am sure that that is being done anyway.

Ms MacHugh: Yes, in any body set up to operate community planning.

The Chairperson: Do you want me to finish with clause 80?

Mr Boylan: Yes, round numbers.

The Chairperson: No comments were made on clause 80. On Tuesday, we will start with clause 81. Thank you very much.