



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Local Government Bill: Informal Clause-by-  
clause Consideration

11 February 2014

# NORTHERN IRELAND ASSEMBLY

## Committee for the Environment

### Local Government Bill: Informal Clause-by-clause Consideration

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**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  
Mr Ian Milne  
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:** I welcome Linda, John, Mylene and Julie. We finished last time at clause 80, so we will start again at clause 81. We will try to get through this ASAP. It is fairly clear. Members, if you do not need any further information from the officials, we will move on. Clause 81 —

**Mr Boylan:** Chair, just before we start, I asked questions last week about some suggestions. Will the departmental officials comment on when we will see some of that? It was on clause 69 in particular.

**Ms Linda MacHugh (Department of the Environment):** It depends on how long this session goes on for, but, certainly by tomorrow we hope to get you as many of the Minister's proposed amendments as we have to date. There may be one or two that he is still considering, and there could be others that emerge as a result of this session. We will get as many as we have to you tomorrow. That will be the majority of them, unless members want us to put other suggestions or proposals to the Minister as a result of this session.

**The Chairperson:** So we will get them before our next meeting.

**Mr Boylan:** That is fine. Thank you.

**The Chairperson:** Do members have any issues with clause 81? No. We move on to clause 82. There are no issues. Am I moving too fast?

**Mr Boylan:** No. It is grand, Chair.

**The Chairperson:** We are on clause 85. Is everyone OK with it?

*Members indicated assent.*

**Mr Elliott:** Chair, sorry to bring you back just a wee bit, but I have one query on clause 82(1), which states:

*"A council has power to do anything that individuals generally may do."*

I would like an explanation from the officials of what that means.

**Ms Julie Broadway (Department of the Environment):** In general, corporate bodies have powers only that they are provided with in legislation. In general, a person has the power to do anything he or she wants unless there is legislation to prevent him or her from doing it. There is that difference between bodies corporate and individuals. This power will place councils on the same footing as an individual. It would mean that they can do anything they want unless there is a power to prevent them from doing it. It is simply to specify that it is the same sort of power that would apply to an individual.

**Ms MacHugh:** The Department of the Environment (DOE), for example, can do something as a Department only if it has a positive vires to allow it to do so. This will allow councils to do anything they want, provided there is not legislation to stop them. It is quite a wide power.

**Mr Elliott:** Do you see any potential for that being abused? Sorry for labouring this a wee bit, but it is an issue, and I had it marked. How do you see that operating with the call-in mechanism? Do you see a potential for some of the decisions in that power to be called in under your 15%?

**Mr John Murphy (Department of the Environment):** It would depend on what a council is proposing to use the general power of competence for. One of the issues that have come through in the discussions that I have been having with senior officials, which we will put to the Minister, is that a qualified majority vote would apply to the use of the general power because it is such a wide-ranging power for a council. Other than existing legislation that prevents councils from doing something, if they want to use the power, there are no financial restrictions built in. The view is that perhaps it should be subject to the qualified majority vote.

**Mr Elliott:** So there could be issues that would be subject to a qualified majority vote.

**Mr Murphy:** Yes.

**Mr Elliott:** Do you see any issues around the flying of flags from council buildings?

**Mr Eastwood:** I cannot imagine that there would ever be an issue around that.

**Ms MacHugh:** At the moment, councils are able to fly flags. I am not sure that they would need to invoke the general power of competence to allow them to fly flags.

It will be interesting to see what councils use this power for. We have looked at other examples in England and Wales, where it was introduced a couple of years ago, and it has been used to support apprenticeships and further training when councils felt that that was needed or required and the statutory provision was not adequate in their areas.

**Ms Broadway:** Prize schemes for innovation in an area is another example of when it has been used.

**Mr Elliott:** Does that not come into conflict with the relevant Departments?

**Ms MacHugh:** No, unless a Department has something in its legislation that says, "Only we can do this", it will not be an issue. It depends on what councils want to do with it. If a council wants to build

a school, it will have to think very long and hard about whether it wants to do that outside the education system — for example, how teachers are appointed and how exams are dealt with. There are all sorts of issues in and around that. It will work best if whatever the council wants to do is done in conjunction with, and with the blessing of, the Department that would normally do that type of thing.

**Mr Boylan:** If a council undertook to do something that should be the responsibility of a Department, is there a mechanism for joint funding or capital works? In the case of gritting, if a council wants to do that under the general power, there are two ways to finance it: through the rates or by working with a Department to share the burden. Is there a mechanism whereby there is an opportunity for councils to do that?

**Ms MacHugh:** It would need to be by agreement. You could not legislate that a Department would have to co-fund something that a council decided to do. You might see the power being used in conjunction with community planning, whereby something was identified that was not the direct responsibility of anybody, meaning that a council could step in and do it. If there were something that a council would ideally like more of but, because of budgetary constraints, the Department could not fund it all, they could agree a joint approach.

**Mr Murphy:** The partnership panel would provide the mechanism for those discussions.

**The Chairperson:** We have heard of examples in other jurisdictions involving bank loans and mortgage loans. So you can be quite imaginative.

**Ms Broadway:** We have researched examples of where it has been used in other jurisdictions. If the Committee would like, we can send you a short paper briefly giving those examples. We have that paper already drafted.

**The Chairperson:** Are members content?

*Members indicated assent.*

**The Chairperson:** We move to clause 85, which deals with powers to make supplemental provision. The Department has agreed to consider how this might best be drafted for inclusion in the Bill.

**Ms Broadway:** Yes.

**The Chairperson:** That is using the super affirmative not negative procedure?

**Ms Broadway:** That is right.

**The Chairperson:** Are members content?

*Members indicated assent.*

**The Chairperson:** We will move on to clause 87(2). We have a paper on the super affirmative procedure.

**Ms Broadway:** It is about how the super affirmative procedure will work in practice.

**The Chairperson:** Clause 87(2): members commented on the need to include "the economy", as stipulated by the Local Government (Best Value) Act (Northern Ireland) 2002. There is a comment that there is no consideration of cost or value for money. The departmental response is:

*"These provisions replace the Local Government (Best Value) Act (NI) 2002 and place the focus on improving performance".*

Are members content with that? Belfast City Council stressed very strongly that it worked to the Best Value Act all the time on many issues. Are members content with that explanation?

*Members indicated assent.*

**The Chairperson:** Under the same clause, Linda, I would like you to explain a bit more about performance indicators. The Equality Commission said:

*"performance indicators should encourage councils to have measures relating to equality and good relations".*

The Department states that this will be considered in guidance. Would it not be better to put it in the Bill, or would that be difficult?

**Ms MacHugh:** There are a few issues about putting it in the Bill. Given that equality and good relations are the responsibility of the Office of the First Minister and deputy First Minister (OFMDFM), at minimum, we would need to consult with that Department. I suppose also, with respect to putting it into guidance, it gives more flexibility and allows councils to articulate how they are going to do that much more flexibly.

**Mr Murphy:** *[Inaudible.]*

**The Chairperson:** Speak up a bit, John.

**Mr Murphy:** It is about equity and fairness. It starts to look at the equality duties and social need obligations of councils. To start getting into trying to specify indicators for those issues is very problematic. What do you set them at? Given that councils are already under a statutory duty provided by section 75 of the Northern Ireland Act 1998, we need to be very careful about how far we can go in specifying that in precise terms.

**The Chairperson:** Are members content? Cathal, you are looking —

**Mr Boylan:** It is grand saying that, and I understand. However, it still comes back to the point I made about tackling poverty and deprivation last week. I used the examples of small pockets of deprivation. As long as there is a responsibility on councils to address such issues, they should do so. That is outside the neighbourhood renewal areas and its new form, urban regeneration. There may be a gap there, and I think that we need to consider that.

**Mr Murphy:** That can be addressed in this fashion. In the community planning guidance, there is a clear link between community planning and performance improvement, and we have put a statutory link in here, whereby a council, in developing its strategic objectives, should take them from the community plan. If a council identifies issues of deprivation in the community plan, it can feed through this. However, this is about how a council delivers its services: performance improvement in the delivery of services. You then start to get into the additional issue of what services should be delivered. I know the area that you are pointing to: the functions that are transferring from the Department for Social Development (DSD). However, that will be built into a council's improvement plan, which will link in to their community plan.

**Ms MacHugh:** It will also link to targets that DSD may set for how councils deliver against the urban regeneration and community development framework. That will include tackling social need, which councils will now be expected to deal with rather than DSD.

**Lord Morrow:** Performance indicators are fine, but where do you draw the line on them? If you are going to put in a performance indicator in one discipline, it follows that you put in a performance indicator in them all. Councils should have performance indicators. However, I have a difficulty when it comes to which ones you put in. I agree with what John has said generally. Chair, you talked about putting them in the Bill. Which ones do you put in, and which ones do you leave off?

**The Chairperson:** That was suggested by a stakeholder.

**Lord Morrow:** I find it hard to follow how we would put that in the Bill and not put at least 20 or 30 others in also.

**Ms MacHugh:** We are trying to avoid what happened in Scotland. At one point, when community planning and the performance indicators were first launched there, councils had 600 indicators that they had to track and meet. We really want to avoid that. We are starting to talk to our colleagues in

other Departments to determine what level of targets and performance indicators they want. However, we do not see it being a very long list. It will focus on two or three things that each Department really wants to happen now that functions are transferring.

Equally, a lot of the performance framework is about councils setting performance indicators and targets for themselves and nothing to do with performance measurements that might be set by central government. As this is about local flexibility, there needs to be an ability for each council to say, "Here are our priorities, and here is what we are going to do". Ultimately, they are accountable to ratepayers.

**Lord Morrow:** That is a good performance indicator.

**Ms MacHugh:** Every four years or so, yes.

**The Chairperson:** Yes, when you get your results. You may get a slap on the face. *[Laughter.]* Are members happy with clause 87(2)(e)? A suggestion has been made that words such as "sustainability" may be current buzzwords.

*Members indicated assent.*

**The Chairperson:** Clause 88(1) states:

*"For each financial year, a council must set itself objectives for improving the exercise of its functions during that year".*

It was suggested that objectives should be set for a longer period — say, three years. The departmental response is that a council's corporate plan may cover a longer time frame, with the improvement plan representing actions to be taken over a single year. It was also asked whether a council's setting itself objectives should be independently verified. Are members content with the explanations?

*Members indicated assent.*

**The Chairperson:** Clauses 88(3)(a) to 88(3)(g): I will let members read the explanations themselves. Does anybody have any issues with the explanations, or are you happy?

*Members indicated assent.*

**The Chairperson:** Clause 89(1)(d): are members content?

*Members indicated assent.*

**The Chairperson:** Clause 89(2): are members content?

*Members indicated assent.*

**The Chairperson:** Good. Clause 90: are members content?

*Members indicated assent.*

**The Chairperson:** Clause 90(b): are members happy with the explanation?

*Members indicated assent.*

**The Chairperson:** Clause 90(c) is the same thing really.

*Members indicated assent.*

**The Chairperson:** On clause 90(2), the suggestion is the insertion of a new clause. Are members content with the explanation?

*Members indicated assent.*

**The Chairperson:** On clause 92(1), a suggestion is the need for sanctions for underperformance.

**Lord Morrow:** We talked earlier about the best sanction: the four-year rule.

**The Chairperson:** Are members content and happy with all the responses from the Department?

*Members indicated assent.*

**The Chairperson:** Are members content with clause 92(2)?

*Members indicated assent.*

**The Chairperson:** OK. An amendment has been suggested to clause 92(2)(c):

*"such other persons or bodies, including community and voluntary bodies".*

Do we need to put that in the Bill to specify that we want community and voluntary bodies to be named?

**Mr Elliott:** Once you put that in the Bill, it will more restrictive. I think that the way it is worded now is better.

**The Chairperson:** Bodies could include community and voluntary bodies.

**Mr Elliott:** It would be a bad council if it did not consult with them.

**The Chairperson:** You said, Linda, that consultees will be chosen in accordance with the Northern Ireland Civil Service guidance. What guidance is that?

**Mr Murphy:** Guidance is issued by OFMDFM on all the bodies that Departments should consult as a minimum. Departments will also then have regard to the equality schemes of the other bodies because each Department will have its own stakeholders. OFMDFM guidance is issued on a regular basis and updated, and that will specify the individuals who must receive copies.

**The Chairperson:** Are members content with that?

*Members indicated assent.*

**The Chairperson:** We will move on to clause 92(3). I would maybe support the suggested amendment to omit "at least one" and make the clause read:

*"In deciding whether to specify performance indicators and standards, and in deciding them, the Department must aim to promote improvement of the exercise of the functions of councils generally and in particular".*

We could just put in "in particular" rather than saying "at least one" and then naming all seven categories. It seems a bit minimal to say "at least one".

**Mr Murphy:** The difficulty is that you are providing the flexibility and wanting a council to look at at least one, but you are providing it with flexibility, and it may want to look at all seven on a particular issue. However, councils may look at some issues whereby only service quality needs to be looked at with improvement or fairness. If a clause names all seven, it can be very restrictive to the way in which a council approaches its improvement duty.

**The Chairperson:** It does not say that we should include all of them. It says:

*"in particular in terms of the following"*

The Bill says "at least one", so councils can just do one.

**Ms MacHugh:** It depends because some of the functions that councils deliver might not be relevant. With registering your dog, for example, there are maybe not so many sustainability issues. If you were tying them into improving the service of dog licensing but you had to meet all those conditions, your strategic effectiveness would maybe not be an issue, but service quality and service availability clearly is. You could consider fairness in looking at, for example, reduced fees for certain categories of citizen, but not all those would apply to the licensing of dogs. That may be where we need the flexibility. In some things, all of these will apply, but for some services, they will not.

**Lord Morrow:** Chair, I think that the way it is — "at least one" — is fine and is actually more encouraging. It prompts that whole discussion and debate around that. I am quite content with the way it is. I think that it gets the message over admirably.

**The Chairperson:** It does seem to be quite a small number, one out of seven.

**Lord Morrow:** It does not say that.

**Mr Weir:** I think that it would be a stronger case if it said "one of the following", but it is saying "at least one".

**The Chairperson:** OK. Are members content with that?

*Members indicated assent.*

**The Chairperson:** Clause 93: are there any issues there?

*Members indicated dissent.*

**The Chairperson:** OK. Moving on to clause 95. There are quite a number of comments from the local government auditor, John and Linda, particularly a suggestion that we amend 31 October to 30 November in clause 95 (3)(a) to facilitate the local government auditor in the preparation of financial accounts for councils. Your explanation is that it is important that performance improvement information is published as early as possible and that delay will weaken the accountability aspect. She is saying that it is very tight for them.

**Mr Murphy:** I think that the issue there is that, although it looks as if the auditor has a month to prepare for the report, certain aspects that will be going into the report can be looked at at an earlier stage in the year. Her role is to ensure that councils are following the process, and some of the process happens at the start of the year. In other words, the setting of targets for the council etc is done earlier, so the auditor can be looking at that stage. I do not see that as being a particular issue for the auditor.

**Mr Weir:** Does that mean that the local government auditor is suggesting that change in the dates?

**The Chairperson:** I think that that suggestion was from the local government auditor.

**Mr Weir:** It strikes me that a month is not an enormous amount of difference. I know that these are almost consequential amendments for the next stage as well, but, if we are getting professional expert advice saying that it would be difficult to meet 31 October but that 30 November would be doable, she is the expert on this. It would seem to be a reasonably sensible amendment. I think that it would be a different kettle of fish if she was saying that instead of 31 October, it should be 28 February or something, but if the auditor feels that a delay of a month is needed, then I am inclined to lean towards that advice.

**The Chairperson:** Yes, Louise Mason was saying that it was really tight for them.

**Mr Murphy:** In terms of clause 35, that is actually the date for the council to publish its improvement plan for setting its targets. It is suggesting a date for it, and we are saying that it should be as early as possible prior to the start of the financial year. The auditor is talking about moving the date for the report, which is in a later clause, from November through to January, so that would mean moving it quite a bit.



**The Chairperson:** Yes. The auditor has made a few suggestions. At clause 95(5)(a), she says that it would be preferable if a specific date was stipulated, preferably a date that is early in the financial year, such as 30 April or 31 May. I think that 30 April may be a bit too soon, but 31 May would give them two months.

**Mr Murphy:** That is it: there is an element of trying to balance this to allow the council the time it needs to gather information and decide on the targets etc that it wishes to set itself.

**Ms MacHugh:** The other factor that we are trying to look at as well is to plan it all so that they are not getting their financial audit and their performance audit at exactly the same time. That is for both councils and the auditor, although, in the auditor's case, it is likely to be a different team of people. There are issues around the timing of audits in local government and overlaying this, which is a new thing.

**The Chairperson:** What about amending, as suggested, from 31 October to 30 November? Is it going to cause problems? It is under clause 95(3)(a).

**Mr Murphy:** Under clause 95(3)(a), they are looking to bring the date for the publication of a report by the council forward from 31 October to 31 May. It becomes very tight for a council at the end of the financial year to start gathering the information and then produce a report on how well it has performed against its targets in that preceding year. That is why we set the date of 31 October: to allow the council the time to gather the information, assess how it has performed against the targets it has set itself and the Department has set, and then to produce a report. Doing it by 31 May really only gives you two months into the financial year to produce that. Among the other issues that a council faces at that time of the year, that would put an additional burden on the councils.

**The Chairperson:** Are members content with that?

**Mr Weir:** I am still inclined to go with the dates that the auditor suggested. Obviously, from that point of view, we can consider it when we go through the final clause-by-clause.

**The Chairperson:** Does the Committee want the Department to consider an amendment?

**Ms MacHugh:** We can have another look at the dates, and maybe go back to the local government auditor as well.

**Mr Boylan:** I would support that.

**Ms MacHugh:** We can see whether we can make some sort of compromise that is workable for councils and the local government auditor.

**The Chairperson:** OK? We move on to clause 96. I think one thing I may want to pursue is the NIAO concerns that, once the new arrangements are embedded, it will be unnecessary for the auditor to report in full separately on each council each year. Exception reporting may become more appropriate. Risk management is better.

**Ms MacHugh:** This is something that we have discussed with the Minister. We accept this risk-based approach. However, to effectively manage a risk-based approach, you need to get baselines. So, certainly for the first few years, the Department and the Minister will want to see these being done in every council every year. However, he has agreed to an amendment that will allow us to vary the regularity of the performance audits by subordinate legislation at some point in the future. We can review it after maybe two or three years in conjunction with the auditor. That would give us the ability to relax that at that point if it were felt that that was appropriate at that point.

**The Chairperson:** So, there will be a review in two or three years?

**Ms MacHugh:** Yes.

**The Chairperson:** Where is that set? Where do you specify that the review will take place?

**Ms Broadway:** The Minister can give an undertaking that he will carry out that review. He has said that, if we put in that enabling power, he, at some date in the future, will consider when we should make the necessary subordinate legislation.

**The Chairperson:** So, we need the Minister to say that during Consideration Stage?

**Mr Murphy:** Yes.

**The Chairperson:** OK. Are members content with that?

*Members indicated assent.*

**The Chairperson:** We move on to clause 98(3).

**Ms MacHugh:** That is back to the dates.

**Ms Broadway:** We will look at all the dates throughout that.

**The Chairperson:** Are members happy with that?

*Members indicated assent.*

**The Chairperson:** We move on to clause 100(1) and clause 100(3)(a). The comment was made that there is need for flexibility in the audit reporting mechanism and that "must" should be amended to "may" for a more proportionate approach.

**Ms MacHugh:** That was a request from the local government auditor because the auditor wanted to stipulate when she would perform those. Our proposal is that we will look at it through an enabling power, so that the Minister will determine, at a future date, in conjunction with the auditor and after consultation with local government, when those improvement reports will be performed.

**The Chairperson:** Are members content with that?

*Members indicated assent.*

**The Chairperson:** I think that the NIAO is quite concerned about all the new functions that it will have to perform.

We move on to clause 101(4): amend "may direct" to "may request". Are members content with that?

*Members indicated assent.*

**The Chairperson:** Next, clause 103(3). The comment was that it is a bit top-down.

**Ms MacHugh:** It is intended that the provision would be used only in extremis, if a council was fundamentally failing to perform the function for which that Department had both policy and legislative responsibility.

**The Chairperson:** Are members content with that?

*Members indicated assent.*

**The Chairperson:** Clause 106: the partnership panel. Is this the one where we have the legal advice? No? It is not? OK.

**Ms Broadway:** The Minister has agreed to bring forward an amendment to clause 106 to make it clear that each of the 11 new councils will nominate to the partnership panel. There were concerns that, because of the way it is worded, the Department would appoint. In practice, that is not exactly how it would happen. We would appoint, but based on the nominations that councils put forward.

**The Chairperson:** Are members content with that?

*Members indicated assent.*

**The Chairperson:** Clause 106(3)(a) — are there any issues there?

**Ms MacHugh:** That is where the amendment would come in. It would then read: "councillors nominated by their councils".

**The Chairperson:** Content with that?

**Mr Boylan:** That covers the points in clause 106.

*Members indicated assent.*

**The Chairperson:** We move on to clause 106(4). That is covered by the same thing.

Part 14 is the control of councils by Northern Ireland Departments. The word "control" should be changed in the title; NILGA was not too happy about that word.

**Ms Broadway:** Yes, well, we can look to change that. Those are exactly the same provisions as currently exist in the 1972 Act. The only difference is that they are now able to be applied by all Departments rather than just DOE, but essentially they are exactly the same provisions. In the 1972 Act it is called supervision of councils rather than control of councils.

**The Chairperson:** Are members content with that? A bit of give and take.

*Members indicated assent.*

**The Chairperson:** Clause 107, members?

*Members indicated assent.*

**The Chairperson:** Clause 108 is on inquiries and investigations. Consideration by a partnership panel in terms of appeal against a finding of failure. Are members content with that?

**Lord Morrow:** So, if a council feels hard done by, it has no means of redressing that.

**The Chairperson:** Yes.

**Lord Morrow:** Is that fair in this modern society in which we live, where everybody is equal — some more equal than others?

**The Chairperson:** What mechanism would there be to deal with that, if there is an appeal mechanism on that?

**Ms Broadway:** Again, those are provisions of last resort. It is only where a Department feels that it needs to carry out an inquiry because a council is maybe not carrying out a statutory duty that it has.

**Ms MacHugh:** There would be a number of stages before you reach that point. To start at the very beginning, councils will be provided with money and targets. Departments will have to monitor that. If they feel that councils are not performing their function and are failing the ratepayer — the taxpayer as well, in this case — then there would be various interventions, including instructing and directing. It is only as a matter of last resort that they would ask for a full inquiry.

**The Chairperson:** I think that is only fair. As you said, that is really the last step — the last resort.

**Lord Morrow:** Yes, Chair, I hear that, and I think I understand it when it is said, but, when I read it, it says that councils will have no form of appeal. Just suppose you put a dot after "appeal". How does it read?

**The Chairperson:** Yes, but it has been through a whole process.

**Lord Morrow:** Yes, I understand that.

**The Chairperson:** Ultimately, they have to be accountable for what they do for the ratepayer.

**Lord Morrow:** They might want to appeal it on behalf of the ratepayer. After all, they are custodians of their money, but they are now being told that they have no form of appeal.

**Mr Boylan:** Are we then saying that there will be a series of interventions that will give the council enough to rectify the situation? Is that what we are saying? Are we then saying that that is clearly outlined?

**Ms Broadway:** That is something that can be worked through with the partnership panel.

**Mr Boylan:** Obviously there is going to be one councillor member on the partnership panel.

**Ms Broadway:** OK. Is guidance needed for Departments in relation to that?

**The Chairperson:** It is important that there is that power for the Department to call in an inquiry or investigation for a failing council if there have been ongoing interventions to no good. If not, how do you hold the council to account?

**Mr Boylan:** May I ask a question? Obviously there could be a challenge in relation to the interventions if the council thought that it was actually —

**Mr Murphy:** Yes.

**Mr Boylan:** Put that in. Is that in, or is that an opportunity?

**Ms Broadway:** It is not there at the minute.

**Mr Boylan:** Not just to go back to them, but them having the opportunity to respond.

**Ms MacHugh:** As it stands, the legislation does not actually state that councils will have no right of appeal. I think that is the inference that North Down Borough Council has taken from it.

So, we are not saying that they have no right of appeal, but neither are we positively putting a right of appeal in. It is maybe something that we could give some thought to and discuss with the Minister.

**Mr Boylan:** At least there is a level of challenge at some point, even if it is through the intervention.

**The Chairperson:** Lord Morrow, you are saying really that, if the council is not content with the findings of the investigation, there should be an appeal against the findings of such an investigation. Is that what you are saying?

**Lord Morrow:** Yes, and I am happy with what Linda has said here, if they take it away and have another look at it. Maybe it is the wording. It is the wording that caught my eye, and it struck a chord, a negative one, with me.

**Ms MacHugh:** That is fine.

**The Chairperson:** Content?

*Members indicated assent.*

**The Chairperson:** We move to the next one, clause 110(1).

**Lord Morrow:** We are getting the hang of it now.

**The Chairperson:** You have the table in front of you, so I do not need to read it out. Are members content with this one?

*Members indicated assent.*

**The Chairperson:** OK. We move to clause 114, which deals with transitional rate relief in consequence of changes in local government districts. Is there a departmental amendment to come? DFP officials advised that this is the case in their briefing of the Finance and Personnel Committee.

**Ms MacHugh:** Yes, and that is one of the amendments that we will provide you with tomorrow. Really, it is to allow DFP to vary rates bills to take account of the relief that will be applied at bill level for any ratepayer who experiences excessive increases as a result of the rates convergence issue, which I am sure that you are aware of. It is an enabling mechanism. The scheme is being jointly developed by DFP and DOE, and it will not be able to be finalised until we know exactly what the scale of the convergence issues is, once all the rates are struck for 2015-16. We will be doing some modelling once all the rates are struck for this coming year, because that is the nearest baseline that we will have. So, there is quite a bit of work to do to decide how best to use what is a commitment of up to £30 million from the Executive. This is the enabling provision for that.

**The Chairperson:** Members, I remind you that we got the Hansard report from when the DFP officials talked to the Committee for Finance and Personnel. Over three or four years, a discount will be given to ratepayers who may see a drastic increase. There will be a graduated system. Are members content with that?

*Members indicated assent.*

**The Chairperson:** The next one is 120(1), which deals with insurance against accidents to councillors. Are members content?

*Members indicated assent.*

**The Chairperson:** Clause 121 is on schemes for transfer of assets and liabilities. Content?

*Members indicated assent.*

**Ms Broadway:** We will table an amendment to clause 121, because, as the Bill stands, it does not cover the transfer of Armagh County Museum.

**Mr Boylan:** Luckily, I did not say anything on that clause. I was just reading through it.

**The Chairperson:** Do you want to buy it?

**Ms Broadway:** There will be an amendment to clarify that that museum will transfer to the new Armagh, Banbridge and Craigavon —

**Mr Weir:** Is it the only gap? Is everything else covered?

**Ms Broadway:** Yes.

**The Chairperson:** Why has it been left out?

**Ms MacHugh:** Its status was unclear. DCAL finally confirmed that it is not part of the Department; it is a subsidiary of an arm's-length body. Therefore, because of the distance from the Department, the clauses drafted did not cover the museum. That is why it will be stipulated. We got very clear instructions from DSD about the need to include the Housing Executive because it is also an arm's-length body of a Department; it is not a Department in and of itself. Having clarified the museum's status with DCAL, we had to make provision for it.

**Mr Boylan:** Armagh was only discovered in 1973.

**The Chairperson:** We will move on to clause 122, which relates to compensation for loss of office or diminution of emoluments. What does that mean?

**Ms MacHugh:** Basically, anybody who is detrimentally affected. If, for example, a member of staff currently works five miles from home but, because of the reorganisation, will work 10 miles from home, they will get a mileage allowance for a period.

**The Chairperson:** What about travelling time?

**Mr Weir:** Is that not a bit 'Dr Who'?

**Ms MacHugh:** It is so that terms and conditions are protected as far as possible when people move from one council or one employer to another. It is a legal term, and that is what it involves.

**The Chairperson:** Would they be given only mileage? Would they not be given travelling time?

**Ms MacHugh:** To be honest, I am not entirely sure, but I can find out.

**The Chairperson:** Five miles is neither here nor there, but it could be 10 or 15 miles.

**Ms MacHugh:** Those issues will need to be consulted on through the local government reform joint forum. It is doing work on location and relocation and how that will all work out. Therefore, the exact terms and conditions of what might happen will be agreed through that forum.

**Mr Weir:** I can understand how mileage would be specially catered for by a TUPE-type situation. However, from a practical point of view, I do not think that there could be travelling time. People are not paid on the basis of distance from their place of work. They may get mileage to cover it, but, ultimately, people have the opportunity to choose where they live and, to some extent, where they work.

**The Chairperson:** They may have been in a job for years and have to move house to be closer to work.

**Mr Weir:** I appreciate that. However, there is a distinction between distance and mileage. Nobody gets paid for simply coming into work and their journey time.

**The Chairperson:** We do.

**Mr Weir:** The distinction there is getting paid for the mileage that you cover. As far as I am aware, nobody is paid for the time that it takes them to get into work. That is a different issue.

**The Chairperson:** What if they are forced to move office?

**Mr Weir:** I am not sure how that works. However, I think that it is catered for reasonably by saying that, if they have to travel additional miles, they can get paid for the additional miles.

**The Chairperson:** OK. If we are happy with that, we will move on.

**Ms MacHugh:** Sorry, just before you move on, this is another clause to which we will put forward an amendment, and we have discussed this with the Minister. Again, it is because of the slightly different approaches that some Departments are taking to what they are passing to councils. DSD, for example, initially, and as agreed by the Executive, was transferring functions. Now, it is conferring powers, and it is taking through its own legislation to do so. Therefore, we have had to expand on this clause to ensure that any statutory provision for local government reform is covered. Anybody affected by any statutory provision, not just the provisions of this Bill, will be covered by this clause. So there will be a slightly technical amendment, which will come to you tomorrow.

**The Chairperson:** Are members content with that?

*Members indicated assent.*

**The Chairperson:** We will move on to clause 123.

**Ms Broadway:** Clause 123 creates a new clause to tidy up the issue that Linda just mentioned, namely to cover all the statutory provisions that will transfer functions or convey powers to councils. It is a redraft to ensure that everything that the Executive agreed would be transferred is covered by the transfer schemes and the transitional provisions.

**The Chairperson:** We will move on to 124, which is on interpretation. That will be defined in the standing order specifying the criteria for call-in. Are members content with that?

**Mr Boylan:** Chair, I have a point on the interpretation. As new amendments are being put forward, they will have to be tagged and covered under interpretation.

**Ms Broadway:** We will look at all the amendments and check the interpretation. With the last couple that we talked about — 121 and 123 — there will be consequential amendments to the interpretation section to cover what is being taken forward there.

**The Chairperson:** We move on to clause 125(4), which is about a change to affirmative procedure. You will prepare an amendment for that, is that right?

**Ms Broadway:** Yes.

**The Chairperson:** The next issue is super-affirmative procedure, which you also agreed to amend. Are members content with that?

*Members indicated assent.*

**The Chairperson:** We move on to clause 125(6). Are members content with that?

*Members indicated assent.*

**The Chairperson:** Clause 126 is on minor and consequential amendments and repeals. Provision is in the usual form according to the Department. Are members happy?

*Members indicated assent.*

**The Chairperson:** Clause 127 is commencement. Are members happy with that?

*Members indicated assent.*

**The Chairperson:** We still have 12 schedules to come, folks. I must say that I have not paid a lot of attention to the schedules, though I do not think that there are many issues with them. Schedule 1 is on qualifications. Are members content?

*Members indicated assent.*

**The Chairperson:** Schedule 3 is on positions of responsibility. Are members content?

*Members indicated assent.*

**The Chairperson:** Do members have issues with any of the 12 schedules?

**Mr Weir:** I have just noticed the wording in schedule 3:

*"absent from the district of the council".*

Obviously, this is a replication of the original wording. However, how would it be interpreted? Presumably, it is meant to mean "absent from meetings". This wording seems slightly archaic, which could be slightly confusing.

**Ms Broadway:** We will look at whether we can modify the wording.

**Mr Boylan:** I do not see any other issues. I am content.

**The Chairperson:** Peter, are you content?

**Mr Weir:** I am.

**The Chairperson:** So this is a re-enactment of the 1972 Act.

**Mr Weir:** The notes on schedule 4 refer to the political balance of individual committees. Is there a danger in not looking at the whole council? Most committees will be of a certain size, so does that mean that some parties or individuals may simply be excluded from all of them? What happens in the Assembly, for example, is that representation is worked out across the full range of the 12 departmental Committees by reference to representation in the whole Assembly. I do not have the wording of the schedule before me, but, if you are talking about the quota greatest remainder process for each individual committee, does that mean that independent members pretty much would not get on to any committees?

**Mr Murphy:** There is that potential, yes, unless some of the parties did not take their seats. However, the other side of the coin is that, if you did it from the full council pool, which would create opportunities for independents, how would you then share seats out across the committees? A particular party might hold a certain number of positions across all the committees, so how would you work out the next tier? We might look at that.

**Mr Weir:** There may need to be an adjustment. In the Assembly, there is a reasonable formula. People cannot insist on being a member of a particular Committee, but it means that there is a reasonably fair shake for everybody across the board. I do not have the schedule with me. I may be provided with it, but sometimes there is a danger of having too much information.

Should we not re-examine this, just to make sure that there will not be an unfair consequence? The point is that it may mean that you leave certain committees unbalanced. Presumably, by the same token, if you apply it right across the board, it has a swings-and-roundabouts quality. What you unbalance at one level is probably balanced out in another committee in a similar vein. If there is too much skewing on one Committee, it then balances out on another. I do not have a particular suggestion; I just wonder whether the exact form of words could be looked at again.

**Ms Broadway:** Yes, we could have another look at that.

**Mr Weir:** If it is purely applied to each committee, you are essentially filling the main positions according to the quota. So, if you had relatively uniform committees, such as the Assembly Committees of 11, and eight places on each were filled by the quota system, would the other three places not always be filled by the same parties? It might mean that, if you simply had one committee, it would be proportionate, but, across the board, it would give a big advantage to particular parties.

**Ms Broadway:** We can look at that before Thursday.

**Mr Weir:** I am just trying to look after the Alliance Party.

**The Chairperson:** Peter, I do not understand that at all. I am lost.

Schedule 7 is on meetings and proceedings. There is a need for continuity in committees, with nominated councillors to serve for more than one year. So you are saying is that it will be up to councils to determine that.

Are members happy with that?

*Members indicated assent.*

**The Chairperson:** Schedule 10 is on transfer schemes. Some expressed disappointment that chief executive posts were not viewed internally in line with previous RPA principles. Are members happy with that?

**Mr Weir:** It depends on who you are talking to whether they are content.



**Ms MacHugh:** The Minister wishes to put forward a proposed amendment on the transfer of staff.

**Ms Broadway:** That is to schedule 10, paragraph 2(3)(d).

**Ms MacHugh:** As it stands, if there is a severance scheme in local government and somebody is paid a severance, the Department pays, whereas it is for local government to pay it. So the transferee as opposed to the Department would pay.

**The Chairperson:** Sorry, Linda, will you say that again?

**Ms MacHugh:** It will read, "include provision for the payment of compensation by the transferee". Say, for example, three councils came together, and each had a finance director but there was only one finance director post. The other two may or may not get other positions on the new council. They may end up taking a severance package. In that case, it is for the new council to pay that severance. We are glad that we picked that one up.

**Ms Broadway:** It changes "Northern Ireland department concerned" to "transferee".

**The Chairperson:** Fair enough.

Congratulations, members. We have done this in very good time. It is only 1.55 pm.

**Ms Broadway:** We will put forward two additional clauses: one to put in an enabling power to wind up the staff commission; the other on the transfer of functions grant, an additional grant that we have been working on with DFP.

**Ms MacHugh:** That is the funding mechanism whereby everything that is moving from central government to local government will come with its own budget. That budget will be factored up into a lump sum calculated for each council. An adjustment will then be made in the rating system to allow for that money. It will not be collected, but it is money that DFP will put in and councils will then get that grant. It is a way of embedding it in the rating system as a payment mechanism. It will mean that local government will not have to go to different Departments every year looking for grants. It is an enabling mechanism for that.

**Mr Weir:** Notional buildings.

**Ms MacHugh:** Yes, that is exactly what it will be. It sounds a bit bizarre, but it is just the technical mechanism in the rating system to allow that payment to be made. We are working with DFP on that, and you will get the details.

**The Chairperson:** OK, that is fair enough. Under matters arising, members have a paper on amendments under consideration to be tabled by the Department. The Department is telling us today that there are new ones, so they will all be tabled again on Thursday.

The next item is the departmental reply to Committee queries under the Local Government Bill. Members have papers on a 1998 European Court judgement on council employees being elected or being a councillor and a note on how council staff becoming councillors is dealt with in other European countries. Are members content to note?

*Members indicated assent.*

**The Chairperson:** Are members content that super-affirmative procedure be used for clause 85?

*Members indicated assent.*

**The Chairperson:** Are members content to note the model constitution?

*Members indicated assent.*

**The Chairperson:** Next is the use of co-option to councils. Members have legislation specifying the details of vacation of office in the event of non-attendance. Are members content to note?

*Members indicated assent.*

**The Chairperson:** The summary of the latest draft of the subordinate legislation is tabled. Any comments, members? I do not think that you have had time to read that.

**Mr Boylan:** I have to go, Chair. We are down to our quorum now.

**The Chairperson:** The last one is a research paper on call-in. Are members content to note and put it in our report?

*Members indicated assent.*