



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Business Improvement Districts Bill:
Clause-by-clause Consideration

4 December 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mrs Judith Cochrane
Mr Michael Copeland
Mr Sammy Douglas
Mr Fra McCann
Mr David McClarty

Witnesses:

Mrs Gail Cheesman	Department for Social Development
Mr Henry McArdle	Department for Social Development
Mr Antony McDaid	Department for Social Development

The Chairperson: We move to the substantive item on the agenda, the Business Improvement Districts Bill. We are in the Committee Stage of the Bill, which commenced on 18 September. The Committee received 14 responses to the Bill. We considered oral evidence from three key stakeholder organisations plus the Department. Given the Committee's consideration of evidence and response from the Department, it was agreed that formal clause-by-clause scrutiny of the Bill may commence today.

Members have set out their interim positions on the clauses, and I remind them that during the clause-by-clause scrutiny, they will be asked to set out their final positions as we work our way through the Bill. By way of process, where the majority of members support an amendment, the Clerk of Bills will take the proposals away and will draft the appropriate wording for consideration at our next meeting. Where members are unable to agree a clause, that must be clearly stated during this clause-by-clause scrutiny session. In such cases, members will be asked to set out their own proposed amendment, if they have one. In that case, the clause in question may be deferred until the next meeting, just to allow for further consideration.

To help the process along this morning, we have departmental officials present. I welcome Henry McArdle, Antony McDaid and Gail Cheesman. You are very welcome and thank you for being here this morning.

The Minister has responded to the issues raised by the Committee last week. Members have copies of his letters before them. There is also a copy of the advice given by the Examiner of Statutory Rules.

We are now able to commence clause-by-clause scrutiny.

I may have to leave to go to the Chamber before 10.30 am. If that is the case, I propose to hand over to Mickey Brady, the Deputy Chairperson. Are members content?

Members indicated assent.

Clause 1 (Arrangements with respect to business improvement districts)

The Chairperson: As members know, clause 1 sets out the arrangements relating to business improvement districts (BIDs) in a district council area. The Committee asked the Minister to provide reassurance that the role and responsibility of district councils will be made clear and unambiguous in the regulations. Are members content with the Minister's response?

Members indicated assent.

The Chairperson: Are there any proposed amendments to clause 1? Have you looked at the response? Are members content with clause 1 as it is?

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

Clause 1 agreed to.

Clause 2 (Joint arrangements)

The Chairperson: This clause allows the Department to make provision through regulation enabling two or more district councils to make BID arrangements. The Committee sought clarification on the arrangements for BIDs that may have already been established in council areas in which the review of public administration (RPA) is subsequently implemented, with the result that councils merge. Are members content with the Minister's response?

Members indicated assent.

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

Clause 2 agreed to.

Clause 3 (Additional contributions and action)

The Chairperson: This clause defines the persons who may make financial contributions or take action that will facilitate the actions specified in BID arrangements taking place. The Committee strongly recommended that the Department establishes a fund to support the development of BID proposals, as is the case in Scotland. The Committee also recommended that the Department reviews the work of BID academies, and how they contribute to the development of BID expertise and provide support for the development of BIDs, with a view to establishing such an academy here.

Are members content with the Minister's response?

Members indicated assent.

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

Clause 3 agreed to.

Clause 4 (Duty to comply with arrangements)

The Chairperson: Clause 4 provides a duty on a district council to comply with arrangements. The Committee sought assurances from the Minister that the regulations will be transparent and unambiguous. Again, you have the Minister's response in the letter.

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

Clause 4 agreed to.

Clause 5 (BID proposals)

The Chairperson: Clause 5 establishes that BID arrangements will come into force only when they are approved by a ballot. The Committee sought assurances that residents will be consulted as part of the BID proposal. Are members content with the Minister's response?

Mr Copeland: It is just a thought, and it is rooted in Castlereagh Borough Council's submission and considered view of clause 5, which states:

"BID proposals ... must include a statement of whether any of the costs incurred in developing the BID proposals, or holding of the ballot are to be recovered through BID levy."

The council's thoughts were that the statement should provide that it would be preferred if BID proposals must detail the cost incurred in developing the BID proposal, holding the ballot and delivering the BID proposal, and what costs are to be recovered from the BID levy. It is only through provision of that information that a district council would be in a position to review the potential for an improved business environment and local economic growth.

The Chairperson: Henry, do you or your colleagues wish to comment?

Mr Henry McArdle (Department for Social Development): Sorry, I did not catch that point.

Mr Copeland: Do you want me to read it again?

Mr McArdle: Yes.

Mr Copeland: I apologise for arriving late. Clause 12(5), "Imposition and — "

Mr McArdle: Sorry, are we talking about clause 12?

Mr Copeland: I am sorry. I have read the figure 5 wrongly. The comment refers to clause 12(5). I will raise the issue later.

The Chairperson: OK, Michael. The core of clause 5 is that there may be residents in a BID area, and the question on behalf of the Committee was whether those residents would have a say in the proposal by being formally consulted? That was also linked to people asking whether proposals would have to fit in with the existing framework of the time. Under RPA, there may well be community planning, area-based planning, decisions taken, and so on. I take it that BIDs under this legislation will have to comply with all of that.

Mr McArdle: Yes, they will have to fit in with all of that.

The Chairperson: Will that be clarified anywhere in regulations or is this just reassurance?

Mr McArdle: Although it may not be in the legislation, we are saying that a BID will not get approval from a council unless it is satisfied that they properly consulted on it. We are suggesting that we will set out in the guidance the sort of consultation that would be appropriate. In areas where there is a clear residential population, consultation with the community would be essential before a BID proposal would get the go ahead.

The Chairperson: All that would come back at some point to, for example, a Committee such as this?

Mr McArdle: Yes.

The Chairperson: OK, thank you for that.

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

Clause 5 agreed to.

Clause 6 (Entitlement to vote in ballot)

The Chairperson: This clause sets out the entitlement to vote in a BID ballot and how it is to be determined. I think we considered that members of residents' groups should be included on the BID company board. I think the Department had a view about a possible departmental amendment to subsection (3). Henry, do you or one of your colleagues want to address that?

Mrs Gail Cheesman (Department for Social Development): Following questions from Committee members about whether charity shops would have to pay the levy, and queries about exemptions, we are proposing at subsection (3) to make it more explicit that any exemptions to paying rates will not automatically exempt anybody from having to pay the BID levy. There is a reference in subsection (3) to "chargeable to rates", and we will work with the Office of the Legislative Counsel to try to make it more explicit that no automatic exemptions are carried over from the rates bill into the BID levy. That is to tighten up on that and to try to prevent any confusion, if the Committee is content.

The Chairperson: Are members content with that explanation? Obviously, the Department will bring an amendment forward: am I right?

Mr F McCann: I think it was widened, when we were talking last week, to include not only charity shops but government buildings. I take it that it will mean all those buildings or offices.

Mr McArdle: If a building is chargeable to rates, if there is a rates liability — forget about any exemptions — that building will be included. It will then be up to the BID proposers to determine what, if any, exemptions there are. There may not be any, but they will determine whether they are full or partial exemptions, depending on the circumstances. It would be up to the BID proposers to determine that.

Mr F McCann: I take it that it will be on a "per building" basis. In some places, there may be three or four businesses in a building. So, is it "per building" and not "per business"?

Mr McArdle: No. It is per business.

Mr F McCann: How would that work if there were multiple businesses in a building? Will it be divided according to the rateable value of each business?

Mr Antony McDaid (Department for Social Development): Each business has its own variable value and entitlement to vote, so they would be entitled to vote on the BID.

The Chairperson: Are members content with clause 6, subject to the amendment from the Department?

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

Clause 6 agreed to.

Clause 7 (Approval in ballot)

The Chairperson: This clause sets out the four conditions that must be satisfied before a BID ballot can be regarded as approved. The Committee, if I remember correctly from last week, had no comment on this clause and was content. I do not think the Department has anything to add.

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

Clause 7 agreed to.

Clause 8 (Approval in ballot – alternative conditions)

The Chairperson: Clause 8 allows those who have drawn up a ballot to set alternative conditions, such as a higher margin of net annual values, or numbers of votes cast, or both, before a BID ballot can be taken as approved. Members had no comment on that. Does that deal with the issue of the 25% approval?

Mr McArdle: Clause 8 talks about alternative conditions that may be set by the BID proposers. The BID proposer could suggest that the limit could be above 25%. The flexibility in all these circumstances is with the BID proposer. We are suggesting a minimum of 25%. We had the discussion about what Scotland and England do and we think this is a fair compromise.

The Chairperson: Fair enough. Thank you for that, Henry.

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

Clause 8 agreed to.

Clause 9 (Power of veto)

The Chairperson: This clause confers the right on district councils to veto a BID proposal. It also provides that the circumstances under which that can happen can be prescribed by the Department. The Committee sought assurances that the prescribed circumstances referred to in the clause are unambiguous, particularly given that clause 10 relates to an appeal against the veto. Are members content with the Minister's response?

Members indicated assent.

The Chairperson: As that is agreed, then, obviously, it indicates that the Committee accepts clause 9 as drafted.

Clause 10 (Appeal against veto)

The Chairperson: Clause 10 allows an eligible ratepayer who was entitled to vote in the BID ballot to appeal to the Department against a district council's decision to veto BID proposals. The Committee sought assurances that the consultation process would be detailed and the regulations transparent and unambiguous. Are members content with the Minister's response?

Members indicated assent.

The Chairperson: Then I will indicate that the Committee accepts clause 10 as drafted.

Clause 11 (Commencement of BID arrangements)

The Chairperson: Clause 11 provides for the BID arrangements to come into force on the day detailed in the BID proposals. That has an implication for the BID company assuming that role and why it is councils that have responsibility for that in the Bill. Are members content with the Minister's response?

Members indicated assent.

The Chairperson: Then I formally indicate that the Committee accepts clause 11 as drafted.

Clause 12 (Imposition and amount of BID levy)

The Chairperson: This clause establishes that a BID levy can be raised only —

Mr Copeland: Castlereagh Borough Council, through its economic development subcommittee, asked — and I believe it was notified to the Committee Clerk on 29 August — about the imposition and amount of the BID levy. They referred to clause 12(5), which states that BID proposals:

"must include a statement of whether any of the costs incurred in developing the BID proposals, or holding of the ballot are to be recovered through BID levy".

The council feels that rather than a statement being provided, it would be preferred if the BID proposals read:

"must detail the costs incurred in developing the BID proposal, holding the ballot and delivering the BID proposal and what costs are to be recovered from the BID levy".

The raison d'être for that is:

"Only through provision of this information will District Council's be in a position to review the potential for an improved business environment and local economic growth."

arising from the establishment of a BID.

Mr McArdle: We looked at that suggestion when it first came to the Department. We responded to it in our detailed response to the Committee. We are effectively saying that the wording is in line with what is happening in other jurisdictions. By and large, we think that it serves the same purpose. Clause 12(5) says that the proposals:

"must include a statement of whether any of the costs incurred in developing the BID proposals, or holding of the ballot are to be recovered through BID levy."

As far as we are concerned, it is, by and large, the same thing except that there has been an elaboration of what we are saying. The effect is still the same. We said at that stage that we did not see any point in accepting that suggestion.

Mr McDaid: The information supplied to the council will detail the business plan, which will contain details of the services that they will look to carry out as a result of the BID and how much it would cost. A lot of financial information will be provided to the council.

Mr Copeland: In your view, is that financial information sufficient to meet Castlereagh Borough Council's requirement that the BID proposals:

"must detail the costs incurred in developing the BID proposal holding the ballot and delivering the BID proposals and what costs are to be recovered from the BID levy".

Will that information be there although, perhaps, not in the format that Castlereagh Borough Council was looking for?

Mr McDaid: As Henry said, it sounds very similar; it is just that the wording is slightly different. All that information is available to the council. The council may choose not to recover the costs. It may choose to do the ballot and not charge the BID. All that will be developed in consultation with the council in the first place.

Mr Copeland: I would like the intervention to be noted.

The Chairperson: Fair enough. It will be reported by Hansard in any case. No amendments have been proposed.

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

Clause 12 agreed to.

Clause 13 (Liability and accounting for BID levy)

The Chairperson: Clause 13 provides that BID proposals must specify who is liable for payment of the BID levy, how that liability is to be determined and how levy moneys are to be paid. The Committee sought further clarification on why this responsibility must reside with the council. Are members content with the Minister's response?

Mr Copeland: Thank you again for your indulgence, Chairperson. This is the last observation that I will make on behalf of Castlereagh Borough Council.

Clause 13(4) says:

"Any amount of BID levy for which an eligible ratepayer is liable is to be paid to the district council which made the arrangements."

I am not representing Castlereagh Borough Council here, but I have a fair idea of what it is after. It asks:

"In accordance with your consultation findings and discussions with the Department of Finance and Personnel (DFP) should this be revised to reflect collection by Land and Property Services (LPS)?"

The council goes on to say that it is widely supportive of the Bill and welcomes the flexibility.

Mr McArdle: We are saying that the BID levy has to be paid to the district council. We have stated that the BID levy is considered to be a tax. The BID company cannot collect the tax or issue the bills. The bills will be issued on behalf of the council.

Concerns were raised during the consultation about the role of the district councils. We have to bear in mind that councils in the rest of the UK do all this. They issue bills and collect them. The councils raised concerns because they felt that they did not have any expertise in this matter. We discussed and agreed with DFP and Land and Property Services that they would carry out a role in issuing bills if requested by a council. Councils can use that service, which will be available from Land and Property Services, but they can make their own arrangements if they want to do so. That is why clause 13(4) is worded in this way.

Mr Copeland: Will there be an associated cost to the council arising from the service provided by Land and Property Services?

Mr McArdle: There is a potential for costs in all of this. Experience differs across the rest of the UK. Some councils charge a fee and others do not. Some councils provide the service free as part of their contribution towards the BID. However, there is provision in the legislation for a fee to be charged. Land and Property Services will charge a fee.

Mr Copeland: I can only accept what the officer said. I again ask that the comments of the council are noted.

The Chairperson: OK, Michael.

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

Clause 13 agreed to.

Clause 14 (BID Revenue Account)

The Chairperson: No comments were made about clause 14.

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

Clause 14 agreed to.

Clause 15 (Administration of BID levy etc.)

The Chairperson: The Committee made no comment on clause 15 either.

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

Clause 15 agreed to.

Clause 16 (Duration of BID arrangements etc.)

The Chairperson: The Committee made no comment on clause 16 and had nothing further to add.

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

Clause 16 agreed to.

Clause 17 (Regulations about ballots)

The Chairperson: The Committee made no comment on clause 17 either.

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

Clause 17 agreed to.

Clause 18 (Power to make further provision)

The Chairperson: Clause 18 will allow the Department to make consequential and transitional provisions where necessary. We sought further clarification on whether any provisions made under that clause would be consulted on. Are members content with the Minister's response on that?

Members indicated assent.

The Chairperson: I formally indicate that the Committee accepts clause 18, as drafted.

Clause 19 (Further provision as to regulations)

The Chairperson: Clause 19 provides that any regulations made in the Bill, other than the regulations listed under clause 19(3), are subject to the negative resolution procedure in the Assembly. I advise members that the Examiner of Statutory Rules has suggested that the Committee may wish to consider whether clause 19 should be amended so that regulations made under clauses 6(3) and 17(2)(b) on the eligibility of ratepayers to hold ballots are subject to draft affirmative procedure rather than negative resolution. Is the Department prepared to accept that?

Mr McArdle: We are content with that.

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

Clause 19 agreed to.

Clause 20 (Crown application)

The Chairperson: Clause 20 provides that the Bill applies to the Crown. I advise members that the Committee made no comment on clause 20. Are members content with clause 20, as drafted?

Mr Campbell: I am definitely content with that one.

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

Clause 20 agreed to.

Clause 21 (Interpretation)

The Chairperson: Clause 21 provides the definition of terms used in the Bill. I do not think that there was anything further to add on that.

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

Clause 21 agreed to.

Clause 22 (Short title)

The Chairperson: Clause 22 provides that the new legislation shall be known as the Business Improvement Districts Act (Northern Ireland) 2012. Members made no comment on clause 22.

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

Clause 22 agreed to.

Long title agreed to.

The Chairperson: I advise members that that concludes the formal clause-by-clause scrutiny of the Bill. On Thursday, the Committee will consider a draft Committee Bill report.

Mr F McCann: I do not know whether I can do this on Thursday, but we have talked about property owners not being included in the legislation. If there is a row of shops and people are living between the shops, and the businesses decide that there is much-needed work to be done to a range of shops, can landlords, or those who own living accommodation between the businesses, take part? It would be crazy if faults were found across a number of businesses and that the only people to get work done were those who owned those businesses.

Mr McArdle: We can clarify that. If there is a row of shops and there are tenants in some shops and none in others, but there are landlords —

Mr F McCann: I am talking about people in living accommodation.

Mr McArdle: Do you mean residential?

Mr F McCann: Yes.

Mr McArdle: I am sorry. No. This is about business initiatives and business improvement districts. Residents will be consulted as part of the process, but they will not be asked to pay a levy or to vote.

Mr F McCann: What I am saying is that, say for talk's sake, much-needed work was done to the whole block and there were residents living between businesses, it would be easier if work was also done to the living accommodation. Can the people who live there buy into the work that may take place?

Mr McDaid: Yes, on a voluntary basis. However, that would not be formal.

Mr F McCann: It would be cheaper to buy into that than it would be to pay individually.

Mr McArdle: It would. I gave you the example of the Clarkston business improvement district. As I said, there is a big street in Clarkston with rows of shops on either side, but there are also residential properties. The whole community bought into that BID, and the residents in those properties have benefited from the improvements in the area. They did not stop the improvements and start them again when they went past the houses. They included everything in the proposal.

However, it would be up to the BID proposers. They will put their money in, and it will be up to them how they spend their money and determine whether they should include the residential properties in their proposals. To my mind, it would be daft not to include them, but it would be up to the BID proposers.

Mrs Cheesman: If anyone makes a voluntary contribution, they would not be entitled to a vote. It would only be those who are —

The Chairperson: You would presume that if someone is prepared to make a voluntary contribution, they would be satisfied with the result.

Mrs Cheesman: Yes.

The Chairperson: I think the point being made is that you could have a row of shops, with residential properties, whether it is a front door to a flat above. You see that in Stranmillis and in places such as that. You would presume that if someone was going to do work in that block, they would not leave a door —

Mr McArdle: No. They would not leave that.

Mr F McCann: You would like to think that they would not.

The Chairperson: The question we were asking is whether people, on a voluntary basis —

Mr F McCann: Buy into it.

The Chairperson: — can subscribe, and the answer is yes.

Mr McArdle: Yes.

The Chairperson: OK. We completed that in quick time.