



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

Local Government Finance Bill

14 October 2010

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR THE
ENVIRONMENT**

Local Government Finance Bill

14 October 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Roy Beggs
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Ms Julie Broadway)
Mr Dickson Holliday) Department of the Environment
Ms Lizanne Kennedy)
Mr John Small)

The Chairperson (Mr Boylan):

I welcome Julie Broadway from local government branch; John Small, head of local government finance policy; Dickson Holliday, from local government branch, and Lizanne Kennedy, from local government branch. I also welcome Shauna Mageean, the Committee Clerk who is dealing

with the issue on the Committee's behalf.

I refer members to their packs, which contain a letter from the chief local government auditor with his view on the proposed clause relating to reserves. There is also a letter from the Committee to the Department on the issues raised by the local government auditor that, in some cases, expenditure on corporate credit cards for chief executives and directors are being authorised by the respective claimants themselves. Members also have a copy of the Department's input to the clause-by-clause summary of responses, and copies of the draft regulations and guidance that the Department proposes to bring forth under the Bill. Those drafts are subject to full scrutiny and clearance by the Departmental Solicitor's Office and the Minister.

At the outset, I advise Members that it is essential that we decide today whether we require the Department to make any amendments to the Bill, so that it can provide us with sight of the text of the amendments prior to the formal clause-by-clause scrutiny stage, so that we can come to a decision on the clause for inclusion in the Committee report. I say that because I know that, from time-to-time when we are undertaking clause-by-clause scrutiny, we get an odd grunt rather than a direction forward. It is important that we give a clear explanation of what the clause and the amendment means. I refer members to the summary of responses, which details the issues that have been raised on each clause. Members may wish to refer to that document throughout the session.

Clause 1 concerns the duty to make arrangements for proper administration of financial affairs. It provides that there be a clear separation between the chief executive officer and the chief financial officer. Is that correct?

Ms Julie Broadway (Department of the Environment):

The legislation does not say that there should be a definition of roles. It says that an officer has to be designated as a chief financial officer.

The Chairperson:

That is the issue for members. I was going to go through this today, but we are waiting for research papers on the clause. I suggest that we wait until we see the research papers.

The Committee Clerk:

NILGA is doing some research to establish the status quo in the 26 councils and the capacity to, for example, re-designate an existing officer rather than having to recruit someone new. That research will probably not be available for another four weeks.

Mr Weir:

Julie can confirm whether I am right about what is proposed in the legislation. Some people were pushing for direct separation, legally, so that someone different would have to be appointed. Would the legislation allow an arrangement for the CEO to be the chief finance officer if he were designated as such?

Ms Broadway:

Yes, that is the case.

Mr Weir:

It allows a bit of flexibility.

Ms Broadway:

The Department will issue guidance on that. There does not seem to be any consensus view on that. Some people think that having a definite separation of roles is a good idea and others have said that, on a practical basis, ensuring that separation could, particularly given that there are 26 councils, cause difficulties, particularly for the smaller councils.

Mr Weir:

I appreciate that we are waiting on the response, but it may be that the guidance will clarify the situation.

The Chairperson:

Are members content to wait for the research paper?

Members indicated assent.

The Chairperson:

Clause 2 deals with guidance and regulations on accounting practices. I remind members that no issues were raised about it. Julie, will you provide a brief outline of the clause?

Ms Broadway:

Clause 2 requires local government bodies to have regard to guidance that is issued or specified by the Department on accounting practices. In this instance, local government bodies will include councils, committees of a council for which accounts are kept separately, and joint committees of two or more councils.

The Chairperson:

Are members happy with the general content of clause 2?

Members indicated assent.

The Chairperson:

Clause 3 is about the consideration of estimated expenditure of the annual budget.

Ms Broadway:

This will require a council to approve estimates, authorise expenditure and fix the amount to be raised by rates for the coming financial year.

The Chairperson:

No issues were raised on that. Are members content with the clause?

Members indicated assent.

The Chairperson:

Clause 4 deals with the requirement of the chief financial officer to submit a report on the robustness of estimates.

Ms Broadway:

It also requires councils to take that report into account when considering the estimates for the next year. I know that some comments have made been about that, so I will pass over to John.

Mr John Small (Department of the Environment):

One of the consultees raised the question of robustness of the estimates, and we hope and expect that the adherence of councils to the regulations and guidance on financial management, which includes regular financial checks, will result in that robustness. The guidance that we issue, the prudential code for capital finances in local authorities, provides guidance on estimates and on the factors that should be considered when completing financial reports.

The Bill requires councils to give regard to the reports and ensure that budgets include sufficient reserves to cover all significant identified risks and allow for unidentified risks. The combination of following that guidance and the designation of the chief financial officer should produce estimates of sufficient robustness.

The Chairperson:

Are members happy with the general content of the clause?

Members indicated assent.

The Chairperson:

Clause 5, which relates to the in-year review, states that a council shall keep its financial position under review. I remind members that no issues were raised in respect of this clause.

Ms Broadway:

As you said, Chairperson, clause 5 requires a council to keep its financial position under review during the financial year.

The Chairperson:

Are members happy with the general content of the clause?

Members indicated assent.

The Chairperson:

Clause 6 requires the maintenance of reserves. I remind members that one respondent asked that the regulation provide sufficient flexibility and the potential to accumulate adequate reserves to achieve medium and longer-term strategic objectives.

Ms Broadway:

I will give the background to clause 6 and then pass over to John to deal with that specific query. Clause 6 allows the Department to make regulation in respect of reserves. It requires the chief financial officer to report to the council on the adequacy of its financial reserves for the year. It also requires the council to give regard to the report in its consideration of estimates for the next year. The Department does not plan to place controls on reserves at present. Regulations in respect of reserves will be made only in exceptional circumstances, when a council does not act prudently and disregards its chief financial officer's advice on the adequacy of reserves.

Mr Small:

You have stolen my thunder. *[Laughter.]* As Julie said, the inclusion of clause 6 provides a power for the Department to act only in extremis, when a council is perceived to be acting improperly. The approach to reserves and the closely related matter of capital investment is set out in the prudential code for local authorities. Reserves will also be the subject of departmental guidance.

Mr McGlone:

Will this legislation be a case of shutting the door after the horse has bolted? You talked about acting in extremis. What do you see as the anticipated sequence of events if, for example, someone throws a bit of a bender, or a rogue council uses funds improperly or makes an improper expenditure?

The Chairperson:

May I seek a clarification first, Mr McGlone? Clause 6 relates to clause 7. Are we talking about both? Is there a crossover?

Ms Broadway:

Yes.

Mr Small:

Either the local government auditor or a whistleblower would alert the Department to something improper. We could then ask the local government auditor to do an extraordinary audit. That would be done and issued in a very short time. I agree that there is a hint of “after the horse has bolted”. However, it is a wee bit like a burglar: you cannot stop him until he has actually burgled.

Mr McGlone:

I will take your analogy a stage further. If you see a burglar breaking a window and going into a house, you know that he is about to burgle even if he has not come out yet.

Mr Small:

The only real information that we could get is from a whistleblower, a councillor, the chief financial officer or the local government auditor.

Mr McGlone:

I need to tie this down in my own mind. Say, for example, a case comes before a council. A member, or members, will have seen that an improper expenditure is about to be made, or that a decision was taken one night to spend money on a certain project; a holiday to Tenerife perhaps, to take it to the absolute. What is the procedure in such a case? From what you have told me, this legislation will kick in after the expenditure has been committed and the project has been undertaken. I am just trying to get the picture clear in my head.

Mr Small:

In that scenario, the act of burglary would not have been committed, because one would only have broken the window. We would get the local government auditor to examine what is happening within three days. We would then be able to restrict borrowing limits and impose controls on reserves. The local government auditor also has powers.

Mr McGlone:

I know all that. I am sorry for labouring the point. If an issue comes before a council, there could be a split, with a minority saying that there is an irregular or improper use of public funds. However, a decision could be taken by a majority of the council in favour of it. If something is irregular and improper and is drawn to your attention, or to the attention of the local government auditor the following morning, what provision does this legislation make for that situation?

Mr Small:

It does not add significantly to the existing position where the local government auditor can call the council to account for damages. It provides us with a broader ability to impose control on reserves and impose a borrowing limit. That is for the future.

Mr McGlone:

So, the Bill presents no opportunity to prevent the intent to do damage; it only waits until the damage is done.

The Chairperson:

For example, at the moment, there is the district fund and there is a certain percentage involved. It is good practice to have that. Clauses 6 and 7 will apply together, so one can specify a minimum level. It is correct that for any council going outside that level, the door will be bolted after the event. If a council goes over the threshold of 5%, 6% or 7%, you will be coming in after the event.

Ms Broadway:

I understand that. If we become aware that something irregular has happened, the Bill gives us the power to make regulations. The whole purpose of the new financial regime is the implementation of the prudential code and various other guidance that councils and their finance officers will have to follow. The issues will be flagged up through the prudent financial management of councils. If the Committee wishes, we could take that as an example and work up something, which we could present at our next meeting. Would that be helpful?

Mr McGlone:

That would be very useful.

The Chairperson:

Twenty-two councils have acted within the district fund of between 5% and 7%. That seems to be a good practice and seems to work. Has clause 7 been invoked elsewhere?

Ms Broadway:

Do you mean has another jurisdiction made similar regulations?

The Chairperson:

Yes.

Ms Broadway:

No; there has not been a need to.

The Chairperson:

Everything is running so smoothly. The fear for the Committee is that the threshold will be exceeded, by which time it will be too late to act. That is a problem, but it could be argued that each individual council will be responsible for how it manages.

Mr Beggs:

I declare an interest as a councillor on Carrickfergus Borough Council. Mention was made by the Chairperson that four of the 26 councils have gone below the 5% recommendation in the guidance; in fact, one council is at 2.2%. My understanding of that figure is that that council would have to borrow and would incur significant bank costs, because the 5% level is there to show that a council has a monthly cash flow and to allow for eventualities that may occur.

Therefore, is the current system working, if some councils have a district fund balance of as little as 2.2%?

Mr Small:

The key point about what we are intending to do later on through regulations is that this is about guidance. That guidance was worked up in 2009 in collaboration and consultation with councils and their finance officers. That was seen as a sensible point at which to raise concerns about whether the balance was below or above the recommended level. Each council has individual needs, and I am sure that one appreciates that a council's balance may be higher than the recommended level if it is anticipating some additional revenue spend. Similarly, a council may be happy to go marginally below that level for a short period of time before catching up.

Mr Beggs:

To clarify, are you saying that you want to go with the regulations as well as to build in powers should the regulations not work?

Mr Small:

Yes; in case a council is found to be acting improperly.

Ms Lizanne Kennedy (Department of the Environment):

I wish to point out that we are not going with regulations; rather, we are planning to issue guidance on reserves. We are not planning to make regulations.

Ms Broadway:

As well as that, clause 7(3) requires the chief financial officer to report to the council on the reasons for reserves falling below the minimum in any financial year and the actions considered necessary to prevent a recurrence of that shortfall in the following year. They will, therefore, have to report to the council on the issue.

The Chairperson:

We received the following correspondence from the chief local government auditor:

“it seems reasonable for the Department to take the powers proposed by Clause 7 but to wait, until say the outcome of the council's financial year to 31 March 2011 before taking a view as to whether regulations under Clause 6 (requirement to maintain reserves) would be appropriate. As I understand, the Department's letter...(in relation to maintain the 5-7.5% balance on the District Fund) has been positively received...and if this non-statutory guidance proves effective, regulation

may not be required.”

Obviously, that is working at the minute. Does the Department wish to comment further on that?

Mr Small:

No.

The Chairperson:

We will move on to clause 8, which deals with the general fund. No issues were raised under clause 8. Does the Department wish to comment on that?

Ms Broadway:

This clause simply allows for a name change. It replaces the current district fund with a general fund.

The Chairperson:

Are members happy with the general content of that clause?

Members indicated assent.

The Chairperson:

Clause 9 deals with the power to establish other funds as the council considers appropriate. I remind members that a number of respondents held the view that funds established under this power should not be treated as controlled reserves. Does the Department wish to comment on that clause?

Mr Small:

We have clarified that in writing. Through the regulations this year, we are not imposing those kinds of constraints.

The Chairperson:

Are members happy with the general content of that clause?

Members indicated assent.

The Chairperson:

Clause 10 deals with the limitation on application of funds. I advise to members that no issues were raised under that clause. Does the Department wish to comment?

Ms Broadway:

The clause places a limitation on the application of funds so that councils may not apply funds for any purposes not authorised, specifically or generally, in law, and that moneys from trust funds should be applied only as authorised to those specified trusts.

The Chairperson:

Are members happy with the general content of that clause?

Members indicated assent.

The Chairperson:

OK, we will leave it at that. Thanks to you and your team. No doubt we will see you again.