



Northern Ireland  
Assembly

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**Planning Bill: Planning functions and  
local development plans**

20 January 2011

**NORTHERN IRELAND ASSEMBLY**

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ENVIRONMENT**

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**Members present for all or part of the proceedings:**

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

**Witnesses:**

Ms Suzie Cave	)	Research and Library Services
Dr Ruth McAreavey	)	Queen's University Belfast
Ms Lois Jackson	)	
Ms Irene Kennedy	)	
Mr Angus Kerr	)	Department of the Environment
Mr Peter Mullaney	)	
Ms Maggie Smith	)	

**The Chairperson (Mr Boylan):**

We welcome back Suzie Cave from the Assembly Research and Library Services. I also welcome Dr Ruth McAreavey from Queen's University Belfast. Members have been provided with a copy of today's submissions.

**Ms Suzie Cave (Research and Library Services):**

Today we are going to look at the research paper that deals with the enforcement elements of the Bill. However, before we do that, I will give the Committee a quick recap. Last Thursday, Dr Ken Sterrett took you through the first research paper, which deals with the first two Parts of the Bill. On Tuesday morning, Dr Geraint Ellis looked at the second research paper, which dealt mainly with Parts 3 to 14 of the Bill. That afternoon, he took you through the third research paper, which looked at community involvement as a general theme throughout the Bill.

This morning, we will look at the final research paper. With us is Dr Ruth McAreavey, who is also from Queen's. The paper looks at the remaining parts of the Bill, which deal with implementation, performance and decision-making. Dr McAreavey will take you through the paper, and we can then open the meeting up for discussion.

**Dr Ruth McAreavey (Queen's University Belfast):**

Thank you very much, Suzie. As Suzie said, this is the final paper in a series of four. I will highlight issues of implementation, performance and decision-making while thinking about capacity, delivery and quality as they relate to the Bill.

The delivery mechanism represents the core aspect of the Bill, and, for the Bill to be successful, it is crucial that that mechanism is appropriate and effective. In other words, is the plan for implementation fit for purpose? That is the question that needs to be thought through throughout the Bill.

Some of my colleagues highlighted how the Bill expands our understanding of planning from one of land use to one that encompasses a wider set of issues that affects areas such as social well-being and general quality of life. That will require a paradigm shift, that is, a major sea change, for the many and varied stakeholders with which the Bill will need to engage. Delivery, which is at the heart of effective implementation, is key, and I think that success will be achieved only through an integrated system. Integration across all the stakeholders and institutions that

will be engaged will be a critical aspect of delivery.

I highlighted in the paper other matters that will feed in to those delivery mechanisms. I will discuss those in a bit more detail. I will mention briefly the key stakeholders' buy-in and participation. In a sense, stakeholders will be much more diverse and varied and will encompass a much wider suite of interest groups, simply because of the sea change that the Bill embraces. There are questions in those elements to do with leadership and vision. To create places, we need to think about leadership. Who is going to create the vision? What will success look like? What is it that we are ultimately striving for?

Some attention needs to be paid to the quality of the built environment. Issues of quality are fundamental to communities' well-being. People value quality buildings and a quality built environment, because it creates a sense of community. Therefore, that needs a little more consideration.

Some thought needs to be given to the scheduling of subordinate legislation and of any supplementary guidance that is coming through, because, again, that is at the core of delivery, and it will be at the core of the way the institutions are integrated.

More transparency and clarity in the roles and responsibilities throughout the process of changing the new system will be necessary. I think that particular opportunities are arising with the reform to local government and in the proposed new council responsibilities. Some connections can be made with that. The Bill will engage with an increased number and increased diversity of stakeholders, so it is clear that there will be resource requirements in skills development, education and capacity building.

Therefore, issues of process relating to equality, transparency and impartiality are at the core of delivery and implementation, as are issues to do with the cultural shift that will be needed in

the interest groups. The issue of general understanding and interpretation of what planning is, as well as buy-in from the new interest groups, must be considered. Therefore, a cultural shift in mindsets will be needed. The third issue to consider is practice. What are the delivery mechanisms to support the action?

I suggest that there are a number of barriers that might impede effective delivery. If the establishment of the new organisational structures is not done correctly, it could cause problems. There are issues to consider with what the new relationships are, how collaborations are encouraged and what the framework is for future collaborations. That could perhaps be done in joint council working, for example. There are potential barriers in the adoption of the new functions and powers, as well as in expertise, personnel and the technical aspects of planning. We are dealing with an increasingly complex landscape, and there are increasingly complex issues to consider.

I want to talk about three major themes that cut across the ideas of implementation, performance and delivery mechanisms. As I said at the outset, integration is completely key to the success of the Bill, and issues of governance are related to that. I think that significant opportunities may have been missed in making connections to the emerging functions and activities in councils. Some useful examples might include the idea of the partnership panel and the power of well-being that is proposed in the reform of councils. There are questions about how the Department of the Environment (DOE) can ensure that an overly complex process is avoided and that we achieve an integrated approach to governance structures.

Creating a vision is another area to consider. Who will be in a position to be able to assume a professional leadership role? In England and Scotland, the position of chief planning officer has been created, and that person provides a professional leadership role that complements administrative leadership. Therefore, there is a question about who has the power to provide leadership through a strategic and integrated approach. Is anyone in a position to provide a similar sort of role?

Clearly, stakeholders will be pivotal in helping to adapt to this new, enhanced understanding of what planning is about. Questions may be asked about how to build the capacity and competency of many different stakeholders; how to achieve their buy-in; how to educate stakeholders to understand that they are a part of this wider planning process; and how the Committee and the Department can ensure the advocacy and competency of local communities or, indeed, vulnerable groups, so that they are able to participate fully and extensively in the planning process.

As I move to issues about capacity and transparency, I will ask whether the new operating arrangements have been fully thought through. If we consider departmental intervention and direction, there are questions about the extent of the Department's powers to direct councils to work together. In England and Wales, legislation has provided for joint committee working that gives statutory recognition to that work. Therefore, potential opportunities exist in that area.

There is a degree of vagueness in performance management. Although it is clear enough in development management, the wider activities and responsibilities that are associated with this wider understanding of planning seem to be lacking in clarity and detail. For example, who has the expertise and capacity to evaluate performance? What is the chain of accountability and assessment? Who measures which organisation? There are questions about the de-agentisation of the Planning Service. How will that affect the management and performance of the Department's planning functions?

There is a lot of interest in the scheduling, timing and content of the subordinate legislation and supplementary guidance. A lot of the details about delivery mechanisms and an integrated approach will follow in supplementary subordinate guidance and legislation. Is there a planned timetable for that? What is the form and content of that supporting legislation and guidance?

An increased level of skills will be necessary to implement the Bill. When planning reform was done in England and Wales, it was recognised that there was limited expertise. A planning

delivery grant was introduced to incentivise performance and support capacity. Further powers were awarded to organisations such as Planning Aid to provide assistance and advice on all aspects of planning. That greatly augmented the process and helped to develop the skills and capacity of the wider stakeholders. Therefore, the question is about how the gaps in expertise and skills will be managed through the Bill. What measures will be taken to fill any gaps that may exist? There are also questions of resources to consider, because it is clear that building skills and developing capacity will require more money. Given that we are facing budgetary cuts, these are real issues for implementing the Bill.

If we consider the quality of the built environment, as I said at the outset, individual well-being is very closely correlated with that. Increasingly, the public judge planning outcomes on the quality of the built environment. Therefore, the Bill has a very important role to play in that. However, it has not provided for good design, and insufficient attention has been paid to the design and quality of the built environment.

The Committee may wish to consider some of the issues that were raised in the consultation responses. Those are included in the paper but have not been dealt with fully in the Bill. I talked already about issues of timing and the practicality of the transition. Another issue is the different roles and responsibilities and the potential for power imbalances between the key players. There are questions on quality, standards, probity and accountability in local councils, and some of those issues are under consultation through the reform of local government. However, planning is particularly prone to corruption, and that has certainly been shown to be the case in other jurisdictions. Tightening up issues of probity in the Bill should be an area for consideration.

The issue of balancing and accommodating locally led plans while ensuring a consistent quality approach was also raised in the consultation responses. How will any tension between those be managed while ensuring that local areas are able to articulate their needs and take a lead role?

As I highlighted, another issue that was raised was the resources for the implementation of the Bill. I think that that will be critical.

I mentioned the joint planning committees in England and Wales. That is a good example of practice elsewhere that may help to inform the implementation and delivery mechanism here. In England and Wales, communities are also incentivised through measures outside the Planning Act 2008. That may have resonance here, as we are currently consulting on the reform of local government. Most recently, the UK coalition Government's Localism Bill will ensure spending at a local level through the community infrastructure levy. That will directly address issues of resources and ownership by incentivising key stakeholders. Interestingly, that Bill will allow the community the right to challenge when dealing with issues of accountability and transparency. Through that mechanism, therefore, communities can scrutinise the councils' performance.

With regard to supporting organisations, I have already mentioned Planning Aid in England, which is supported directly through planning legislation. Such organisations could have a key role in the process of developing skills and capacity, ensuring stakeholder buy-in and broadening the range of stakeholders that become engaged with the Bill.

The final part of the paper highlights further contentious issues, which relate to collaboration and policy integration. That will be a challenging aspect of the Bill; ensuring this interpretation so that other sectors are engaged. Other sectors, such as health, education and wider social care, feel that they have a legitimate role to play in that planning process.

I have probably said enough already about budgets. With regard to delivery and equality, there is the question of ensuring effective, appropriate community engagement. My colleague Geraint Ellis spoke about that on Tuesday. The question is how the Department will ensure that expectations are fulfilled and that true community engagement has been achieved by local councils. I will stop there. There is a lot to consider.



**The Chairperson:**

There is a lot to consider. On behalf of the Committee, I thank Queen's University for breaking this down. You have concentrated mainly on the new parts and have, obviously, taken into consideration the elements of the legislation. We have a lot of food for thought. There is a short time frame, and we need to look at it. Over the past couple of days, members have gained a better understanding. A big issue for us now is that we are receiving responses to the consultation. They are being mixed in with some of the things that you have highlighted. I will pick up on a few things. You have certainly posed a lot of good questions to the Department on the Committee's behalf. We will forward the research papers. Hopefully, we will get a written response. I will discuss that when the officials come to the table.

Governance is key to this in terms of the other legislation that is coming forward. There is a commitment to have the governance in place before it is rolled out. You mentioned leadership issues. I want to expand on how that works in other areas. There is a serious need for capacity building and training and everything that goes with that. You say that there will be a sea change not only for stakeholders, but for all those involved. Not only will the Bill be a major piece of legislation, but policies that support it and how it rolls out on the ground will be significant. Perhaps you can expand on how it happens elsewhere, what you have learnt, what we can learn from it and what policy we need to bring to it.

**Dr McAreavey:**

We have looked at Scotland and England. From a legislative perspective, Northern Ireland has a chief medical officer. That is a professional leadership role. It is like the old saying: if you do not know where you are going and you do not have a vision, you will end up lost and without direction. Strategic vision, understanding and professional legitimacy are needed. A chief planning officer could fulfil that role: setting a precedent, taking planning in new directions and trying to engage with the range of stakeholders and ensure that there is direction. In the absence of that, it is more of an administrative leadership role. It does not necessarily get the same extent of institutional buy-in. It may not gain the support of other stakeholders in the health and education sectors. The role of chief planning officer could play a major part in strategic direction, engaging across the Departments in order to achieve the cross-sectoral integration and

collaboration that is needed while also having legitimacy in that profession. There are two functions.

**The Chairperson:**

I have had indications back from local councils about performance management. That has been an issue, even in central government with the Planning Service. How can we get that right, and how do we go about the terms of reference and the checks and balances to ensure that that is happening? I firmly believe that there should be a degree of performance management.

Do we also need to look at a review of that whole process after a number of years? Once the legislation and policies are rolling out, do we say that after two or three years we should look at all that? Perhaps you could talk about performance management first, and then a review process.

**Dr McAreavey:**

The Localism Bill has some interesting examples of possible good practice. Obviously, that is in the very early stages, but if we are thinking about performance management then the community right to challenge could give that degree of transparency for councils to be directly and openly accountable to their communities.

Performance management should be ongoing, not a one-off thing that happens with the report filed away but something that becomes part of the process so that there is constancy. One measure used in England and Wales is a test of deliverability. Questions such as “What is the deliverability of this?” and “What is the evidence indicating?” are constantly asked. Those tools can be used as part of an ongoing review of performance.

**The Chairperson:**

I remind members that the research has been done on behalf of the Committee. I know that in some cases members have set only questions in respect of the work of the Committee. We

welcome the three elements that your paper mentions: collaboration and policy integration, budgets and resources, and delivery and equality. Those are key elements that we need to be asking the Department about. You have touched on them broadly, but within that there are a number of questions. I thank you for your paper.

**Mr Kinahan:**

The task that we have ahead of us of trying to get all this in place worries me. Did England and Wales start in a similar manner in that the intention is right, what we are trying to do is right, but they then learned so much over time that they had to keep bringing in reviews and new legislation to get it right? Will the route that we are going down work? There are lots of different things that we have to get in place, including other legislation. Can you see all that falling into place in time? You have given us lots of points to be concerned about, but it looks as though England and Wales had something similar but learned and got it all working in time.

**Dr McAreavey:**

There are areas that can be dealt with now: for example, under what conditions councils will work together creating plans. That can be tightened. There is also room to tighten the line of accountability. England and Wales introduced additional Bills retrospectively. We could avoid going through that process by addressing some of the difficulties that they had: for example, by joint committee working.

**Mr B Wilson:**

We have clear planning rules and regulations, based on fairly rigid criteria. In the Bill, we are talking about involving issues such as social well-being and quality of life. Does that mean that planning decisions will be much more subjective and open to interpretation?

**Dr McAreavey:**

The Bill will introduce a lot more debate about what the community wants to see when it is contributing to statements of community involvement or the local planning process, because it is subjective. However, that does not remove the fact that there are still technical aspects of

planning. The Bill will bring the subjective and objective approaches to planning together. It is much more around collaboration, building agreement and creating place, which obviously engages with a sense of well-being and community.

**Mr B Wilson:**

The legislation appears to discuss the councils' role, but it does not actually state how the councils will fulfil that role. There are no guidelines as to how those decisions should be made within the councils, and perhaps by the chief planning officer. Is there no need for some stricter guidelines?

**Dr McAreavey:**

Do you mean individually on planning —

**Mr B Wilson:**

No, I am talking about the legislation. At the moment, councils seem to be totally free to decide how they are going to make decisions on a particular planning application. On that basis, do we not require some guidance on, for example, a separate planning committee, the role of the chief planning officer or the potential conflicts between the chief planning officer and the council?

**Dr McAreavey:**

There is room for more clarity on those different functions and relationships. Ken Sterrett talked about the local plans last week. Individual planning applications will have to relate back to the strategic plans that areas and councils will agree on. There is something in there, but I agree that there is a need for more clarity on the relationships and the issues of probity. That is where connections can be made with local government reform, because that is clearly about governance and accountability.

**Mr W Clarke:**

I think there is a danger that we are sleepwalking through the whole process of delivery. Many senior people in Departments are not taking it on board at all, because they are thinking that they will be getting a pension in a couple of years, so they are not going to give much thought to it because it is not going to impact them. The Bill needs to focus on identifying the personnel in all the Departments who will bring about the change. It might be a senior planning officer who is designated to do that. What are your views on that?

It is a bit like the reform of policing. The main consensus of the Patten reforms was that we wanted good community policing, but when it came to the delivery of that, that is not what happened. There was community policing to a certain extent under neighbourhood teams, but they got it seriously wrong in relation to the amount of resources they put into community policing. It is the same sort of thing; we all know where we want to get to, but how do we deliver that?

I see a role for transitional committees, yet the funding for those committees has been cut. I think there is a job to be done in looking at community strategies and community plans. Resources should be made available now to start doing that work without holding back. You can guarantee that, if England and Wales failed and made serious mistakes, we will certainly fail if we do not learn the lessons of what happened there. It may be a matter not for you but for the Department, and I will probably put the same questions to the officials. We need to up the ante slightly.

**Dr McAreavey:**

I agree that that is where we need the professional leadership of a chief planning officer. In order to achieve the major changes that will be required, the shift in mindset and the cultural change will have to come from the top. You are right. Someone needs to provide that direction and ensure that the institutional capacity is there to deliver, or that is not going to happen. There will be a vacuum of direction, vision and leadership. That is a missing piece of the puzzle which is urgently needed.

**Mr McGlone:**

Thank you for your paper. I read it last night, and a number of things struck me. I will deal with them in no particular order.

Do you have any thoughts on the issues of equality, transparency and implementation? In the course of your research, have you encountered other aspects of local government where safeguards and procedures are inbuilt to insure against and prevent lack of transparency, discrimination or inequality in the implementation and decision-making processes?

I have a number of questions, and I will go through them in order. I do not expect you to have answers on the tip of your tongue, but presumably you have looked at these things as a part of your research.

You mentioned a very important point which is key to all that: the timing, context and detail of the subordinate legislation. We can sign off on a Bill here, but, if there are so many aspects of it that impact in a very substantial and material way on the implementation of it with regard, not exclusively, but particularly to those issues which I have just outlined, we need to get detail and a time frame for that.

A big theme of what you talked about was the quality of the built environment and the well-being issue. You are an academic with a lot more experience of those things than any of us have, including me. Perhaps you can just tease out for me how that quality of the built environment is rolled out. Do you envisage it as based exclusively or mainly upon a series of PPSs from regional government, or do you envisage a role for local government in that? Many of us have concerns about a degree of latitude being offered to local government in its interpretation of policies as given out by regional government.

The well-being issue is a bit like grandma and apple pie. “Well-being” sounds great. I know the general concepts of it that there can be about the place: how communities and housing estates develop and that type of thing. Can you give us any more pragmatic examples of how that concept has been implemented in a meaningful, tangible and beneficial way in other jurisdictions which will give us a flavour of it? This is the sort of stuff that we will be asked about at community and local level.

**The Chairperson:**

If there is any other information, you can supply it in writing.

**Dr McAreavey:**

Yes. I will provide examples of well-being in writing.

As to the quality of the built environment, the Bill is setting a framework for what we mean by quality. Sufficient attention has not been paid to that. It is not accounted for in the Bill. I can give you an example. In English planning law, “sustainable development” was defined to include good design. The Planning and Compulsory Purchase Act 2004 was amended so that in:

“contributing to the achievement of sustainable development”,

a planning body:

“must (in particular) have regard to the desirability of ... achieving good design.”

So it needs to come from the top, from within the Bill, and then be imbedded throughout the process. Again, an important function for a chief planning officer would be to have regard to good design and ensure that that permeates the system and the process.

**Mr McGlone:**

I am not sure where the design guide is, but I think that it is close to completion. I am thinking outside the box. You touched on the sustainability aspect, which is a very important issue. I do not know whether that is intended to be included in the design guide, but it could be a read-across

for us from the Bill to be incorporated in the design guide. Is that an idea?

**Dr McAreavey:**

Yes, but I also think that it needs to be included in the Bill, because that gives it gravitas across the rest of the legislation and supplementary guidance. Your other question on implementation

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**Mr McGlone:**

On implementation, you mentioned the equality and transparency aspects and subordinate legislation.

**Dr McAreavey:**

Sorry, can you remind me of the question?

**Mr McGlone:**

My first question was on the transparency issues and consistency, and the impact that the equality aspects have on that. There may be another model that works exceptionally well in other jurisdictions or local government areas, not necessarily in these islands but somewhere in mainland Europe. I do not expect to have that off the top of your head.

**Dr McAreavey:**

I will come back to you on that.

**Mr McGlone:**

Finally, you will probably repeat what you said earlier, because I picked up on your point. How does subordinate legislation impact on key thematic aspects of the Bill?



**Dr McAreavey:**

It impacts massively, and there needs to be more transparency and clarity around that. There needs to be a clearer idea of what is going to happen around that, including what resources have been allocated for that and all of the issues that I touched on.

**Mr Weir:**

These may be more comments than questions, but you may wish to respond. First, we need to keep in mind what Brian said about some of the issues — some of the wider concepts of well-being, broad community input and seeing what is good for the community in the broader sense. There is almost a differentiation in that a large number of those aspects are particularly significant when you are looking at a more strategic plan for an area, but may be less directly relevant and there may be less room for manoeuvre in the case of an individual planning application. There is a difference between the wider vision side of planning and direct development control. I suspect that that will be more restricted in the case of someone wants to build an extension to their house.

Secondly, you stressed the importance of subordinate legislation, but the problem with looking at the Bill is that a lot of the vital stuff will not be dealt with by legislation at all. That is more to do with where the Committee will make recommendations. A lot of it is about implementation issues. For example, you stressed, quite rightly, the need for capacity building. My guess is that capacity building will not be laid down in the Bill or even under subordinate legislation. It is actually a range of things that will have to be done. Although there is focus on other groups, I suspect that it will be done particularly by councils and councillors. That is probably the biggest single aspect of capacity building, but it goes a lot wider than that. We have to recognise that, whatever recommendations we make, it goes well beyond what is in the legislation or even things that will potentially appear in subordinate legislation.

The third aspect will be very difficult to crack. Clearly, there will be protections in terms of governance, for example. With all aspects of planning, it is a question of where you find yourself on the balance of a necessary tension that has, on the one hand, pure consistency and equality to

ensure that every decision is done exactly the same way. In theory, if that were taken to its extreme, there would simply be a rigid set of policies, applications would be made to one central planning body in Belfast or wherever and there would be no other involvement anywhere. That would give a computer-type, consistent approach. On the flip side of the coin, you want people to have a wee bit of consistency and certainty in that regard, but there has to be a bit of localism and flexibility, which is where the tension will lie.

For example, there may be some communities that say that their major problem is a lack of housing and that they need additional building. On the flip side of the coin, there may be other areas and other councils that feel that the most important thing is the protection of the environment, and they do not want any additional building lines or additional bits within that but want to go a slightly different route. There will be those tensions. If everything is absolutely consistent and there is equality across the board, there will not be a one-size-fits-all solution.

There is a tension between ensuring that somebody as an applicant has a consistent and equal approach and that localism and flexibility. In the broader sense, irrespective of whether it is councils or the Planning Service doing it, trying to get that balance absolutely right will always be a very difficult thing to do. You need to bear both those issues in mind when looking at how you design a structure. I suppose that is more of a comment than a question.

**Dr McAreavey:**

I agree that there is that tension between ensuring a strategic approach with degrees of consistency and also paying attention to issues of localism. There is going to be a bit of tension. However, the beauty of this approach to planning is that it does provide for local approaches. It is about engaging with the community and ensuring that there is a locally based approach. That just reinforces the importance of having a wide breadth of stakeholder buy-in, so that education, health and other interest groups are part and parcel of the process.

Your second point was about subordinate legislation and capacity building. I agree that there

is going to be a lot of detail in supplementary guidance, but I also think that there is potential for the Bill to be a bit more direct about the type of organisations and the type of resources that it might provide to other agencies, as is the case in England and Wales.

**Mr Weir:**

Again, I question whether that will be directly in the Bill. Obviously we are going to have to produce a report, and it strikes me that there may or may not be a whole load of amendments. It is too early to tell at this stage. However, it strikes me that, irrespective of that, there will be a chunk of stuff that we will have to put in as general recommendations on how it is implemented and brought about, which will fall outside the direct wording of any piece of legislation. That is the point that I was making.

**The Chairperson:**

You mentioned flexibility, and I think that is key. We will have rigid policies, but we certainly need an element of flexibility.

**Mr Buchanan:**

Collaboration and policy integration are challenging and interesting concepts, but it is about getting agreement from the various bodies on locally based solutions. Are there any models of that type of collaborative working in England or Wales that point to the effectiveness of it and which we could obviously tap into?

**Dr McAreavey:**

Do you mean across sectors?

**Mr Buchanan:**

Yes.

**Dr McAreavey:**

That is about to happen here if community planning goes through. Councils are charged with engaging with their communities through the reform of local government. There are certainly examples of cross-sectoral working through other partnerships in Northern Ireland, but also in England, Wales and Scotland, where strategic partnerships have come together and worked through strategic issues. We could provide more on that.

**Mr Kinahan:**

I want to ask a little supplementary question. You said that we need someone with vision. Do you think that we need to have someone with vision in each council as well? I get the impression that we will need to have someone to direct matters from councils, given that we are to have local plans.

**Dr McAreavey:**

Yes, we need someone to feed in to the chief planning officer. There needs to be strategic vision from the councils.

**The Chairperson:**

Thank you very much. No doubt we will be in touch.

Gentlemen, we move on to the departmental briefing on the Planning Bill. I welcome Maggie Smith, Irene Kennedy, Angus Kerr, Peter Mullaney and Lois Jackson.

Maggie, you have heard all the research briefings. We have a series of questions to ask. We do not propose to go over all the questions that the research team at Queen's University put together, but you will have a chance to respond to them in writing. You have heard some of the key elements.

The Committee has been receiving more responses, and it is key that members take them all on board. We may consider breaking them down and writing to you for responses. I will open up the meeting to you so that you can give your presentation.

I have to nip out for a couple of minutes — I will be back soon — so while I am out, another member will take over the role of Chairperson.

**Ms Maggie Smith (Department of the Environment):**

Thank you very much, Chairperson. The Committee asked us to look at the provisions of the Bill that remain to be discussed, and members should have a copy of our speaking note.

There are a number of remaining provisions. Irene will use the speaking note, which members have a copy of, to highlight those, and we have tried to include in that the issues that you raised at the previous meeting and that we said we would return to today. We have also given the Committee a table that includes some further provisions and gives a little summary of each. If members want to ask questions about those, we are more than happy to answer, but in view of the time constraint, we felt that that might be the most efficient way of giving you the information. If there are further questions, we will be happy to come back to answer those. We will do whatever suits the Committee.

I will ask Irene to go through the speaking note.

**Ms Irene Kennedy (Department of the Environment):**

At our 13 January and 18 January presentations on the Planning Bill, we briefed the Committee on the new local development plan, development management, enforcement and community involvement provisions that are in the Bill. As Maggie outlined, today's presentation considers additional departmental oversight, audit and intervention powers. It also highlights any remaining new or significant amendments that will be brought forward by the Bill. As Maggie

indicated, a list of other minor amendments is attached in members' papers. We propose to pick up on any other points that were raised at Tuesday's briefing.

I will begin by outlining the Department's new audit role, which is in Part 10 of the Bill at clauses 203 to 206.

Members appreciate that a key way to demonstrate the effectiveness and integrity of the planning system is through governance and performance management arrangements. The role of audit, inspection, performance management and monitoring will be critical in ensuring that planning functions are carried out, and are seen to be carried out, in a clear, fair and consistent manner and that best practice is applied across the new district councils. Those functions will also be important in providing a quality assurance service for the councils.

The Planning Service created its own audit team to examine the handling of planning applications, application of policy, development plan process and so on to identify areas where advice, guidance or clarification is needed to ensure best practice. As a unitary authority, the Planning Service did not need the audit or assessment functions to be legislatively based.

To enable audit and assessment work to continue in an effective and consistent way following the transfer of planning functions to councils, it is considered necessary to obtain the legislative cover through the Planning Bill. Those powers are planning specific and are in addition to other local government audit powers.

Part 10, therefore, will introduce new powers for the Department or other appointed persons to assess councils' performance in carrying out some or all their planning functions and to assess their decision-making on planning applications. Recommendations for improvement will be published. If a council does not implement the recommendations, the Department may issue a direction requiring it to do so.

As part of the Department's oversight role, it is proposed that a small number of functions transferring to councils will require confirmation by the Department before they take effect. That approach is in line with what happens in other jurisdictions.

A council may issue a completion notice under clause 63 requiring a development that has a time-bound permission and that has been commenced to be finished within a specified time. Such orders will require confirmation by the Department under clause 64. The Department will also be able to modify the notice if it thinks fit. In addition, the Department will retain the power at clause 65 to issue completion notices but only after consultation with the relevant council.

Council orders made under clause 67 revoking or modifying permissions require confirmation by the Department under clause 69 before they can take effect in cases where the proposed council order has been opposed. The Department will be able to modify the orders if required. The Department will also retain the power at clause 71 to revoke or modify planning permission but, again, only after consultation with the relevant council.

Likewise, discontinuance orders made by councils under clause 72 will have to be confirmed by the Department under powers made available by clause 73. Again, the Department will retain the power at clause 74 to issue discontinuance notices but only after consultation with the relevant council.

Safeguards have been built in to the provisions governing additional planning controls in Part 4 of the Bill. That Part provides the powers for specialist planning functions for buildings of special architectural or historic interest. Those are listed buildings, conservation areas, hazardous substances, tree preservation orders, review of old mineral permissions and control of advertisements.

The listing of buildings of special architectural or historic interest will remain a departmental

function. However, the Department must consult with the appropriate council before compiling or amending any list. Councils will determine the vast majority of listed building consent applications and will be required to consult the Department and to notify it under clause 88, which deals with applications for listed building consent, thereby giving the Department the opportunity to call in, under clause 87, certain applications if it considers that appropriate. Furthermore, orders by councils to revoke or modify listed building consent under clause 97 will require confirmation by the Department under clause 98 before they can take effect.

Council orders to revoke or modify hazardous substances consent will also require departmental confirmation under clause 112. An additional requirement has been placed on councils to have regard to the advice of the Health and Safety Executive when determining applications for hazardous substances consent. It will be possible to require councils to delay granting hazardous substances consent in specified instances, such as cases where they are minded to grant consent against the advice of the Health and Safety Executive. That would give the Health and Safety Executive time to consider a request for a departmental call-in. The power to make the necessary regulations to enable that is in clause 108.

The Department will retain the power to discharge certain additional planning controls in the rare event that it should be required. Thus, the Department will still be able to modify or revoke listed building consent under clause 100, designate conservation areas under clause 103, apply tree preservation orders under clause 123 and create or revoke areas of special control for the display of advertisements under clause 129. There will, however, be a requirement for the Department to consult the relevant council before exercising those powers.

Finally, the Department will be able to call in certain applications from councils for its own determination if it considers that appropriate, although it is expected that such powers will be used sparingly. We discussed call-in powers for planning applications at the previous Committee meeting. Powers of call-in are also in the Bill at clause 87, which deals with listed building consent applications, clause 113, which deals with hazardous substances consent applications, and in paragraph 13 of schedule 2 and paragraph 10 of schedule 3, where reviews of old mineral



permission are dealt with.

I will turn now to other provisions in the Bill that will add new powers or make significant amendments to existing powers. The powers relating to simplified planning zones, in clauses 33 to 38, will be largely unchanged. However, I shall take this opportunity to provide some details, because members have expressed interest in them. A simplified planning zone is a tool for stimulating and encouraging economic growth, investment and job creation. It achieves that by granting blanket planning permission for particular types of development, often industrial or commercial. Any conforming development proposed in the zone will not require a separate planning application, thereby ensuring speed and certainty for firms that wish to locate there. Clauses 33 to 38 will transfer the powers to make or alter a simplified planning zone to councils. Those powers can be modified when necessary to reflect the two-tiered planning system.

A statutory provision will be introduced at clause 66 to provide a simple and quick mechanism for allowing non-material amendments to be made to planning permission. Recent case law has been interpreted by many as restricting the potential for developers and planning authorities to agree even the most minor changes to a planning permission. The proposed change will ensure that there is a legal basis for doing so. The Department will be required to prescribe the form and manner of applications, as well as the notification and representation arrangements.

Councils will have to make planning applications in the same way as other applicants for planning permission. Clause 78 will enable councils to grant planning permission for their own development, for a development carried out jointly with another person and for a development that is to be carried out on council-owned land. Similar provisions will apply to listed buildings and hazardous substances consent applications, and that is dealt with at clauses 106 and 119.

If we move on to conservation areas, members may wish to note that clause 103 specifies that special attention be paid to the desirability of enhancing the character or appearance of a conservation area where there is an opportunity to do so. There may be instances where a

development by a Crown body is of such public importance and urgency that the planning application needs to be determined more quickly than permitted by councils' processing procedures. Clause 209 will provide for the direct submission of such applications to the Department. Clause 210 will cover a similar procedure for urgent works to a listed building on Crown land.

On financial provisions, clause 219 will provide the Department with the powers that it needs to make regulations to allow fees and charges to be set for the various planning functions. The principal amendment here will be to extend fees and charges to take account of councils' actions. Clause 219(8)(b) will allow the Department to make the necessary regulations to give councils the ability to set their own fees. That said, the Minister's current intention is that DOE should set fees centrally for the first three years and then review the situation. New financial powers will be taken under clauses 222 and 223 to provide a measure of additional financial support to councils. Clause 222 will provide discretionary power to allow a statutory undertaker or another council to contribute to a council's costs in certain circumstances. Finally, clause 223 will allow Departments to contribute to a council's compensation costs in cases where the liability arises from planning decisions made on behalf of a particular Department.

A number of amendments are made to the legislation dealing with public inquiries and related clauses. Those amendments will be made under clauses 227 to 230. The amendments relating to existing provisions of articles 123A and 123B of the Planning (Northern Ireland) Order 1991 result mainly from the recent devolution of policing and justice powers to the Department of Justice. Clause 227 will continue the general rule that any inquiry or independent examination required to be held under the Bill must be held in public and that documentary evidence relating to it must be open to public inspection. However, it will provide an exception to that general rule in instances where certain categories of sensitive information are involved. In such cases, it will enable the Secretary of State or the Department of Justice to direct that access to that information be restricted. Clause 230 contains procedures for the certification by the Secretary of State or, in certain cases, the Department of Justice, of applications for planning permission or other consents or approvals, under what will be the Planning Act, where first, consideration may raise issues of national security or matters relating to the security of Crown or other properties and, where secondly, the public disclosure of that information would be contrary to the national or public interest.

Various other provisions of the Bill ensure that a public local inquiry will be held in circumstances where an application has been certified under that clause. Holding such an inquiry will enable a direction to be made under clause 227 restricting access to certain information at that inquiry and could lead to the appointment of someone to represent the interests of any person who, as a result of the direction, is prevented from inspecting or hearing evidence to which the direction relates.

That completes the Department's briefing on the remaining new provisions in the Bill. We welcome any questions that members may have.

**The Chairperson:**

Are you positive about that, Irene? Has the Minister agreed those minor amendments?

**Ms I Kennedy:**

Yes, they are in the Bill as it stands. We thought that we would focus on the more significant elements.

**The Chairperson:**

As I said at the outset, responses are now coming in and we are looking at them. We said that the consultation was on the principle. However, we are now down to the detail, and the key elements will be the subordinate legislation, the guidelines, the recommendations that will come from the Committee and any amendments. I want to touch on a few points about this morning's briefing. You have the paper from Queen's University and the Research and Library Services team and will be responding in writing to the questions. Obviously, we will have more questions.

We heard this morning about the power of well-being, which I know is also a governance

issue. Could something about that be put into the Bill or into subordinate legislation, or, indeed, into policy or guidelines? We want to touch on the quality of the built environment. That subject keeps raising its head, especially where capacity building and placing resources are concerned.

Preparing the stakeholders is the other issue to consider. It is all about a change of mindset for everybody and about everybody being inclusive. We spoke at the previous meeting about active engagement, and that subject raised its head again today. I have to go in a couple of minutes, so Mr McGlone will take over. However, perhaps you could touch on those issues. Where would you like to start?

**Ms Smith:**

We will start with the quality of the built environment. The researcher is correct in saying that the quality of the built environment is not mentioned in the Bill.

I go back to Mr Weir's point that not everything is necessarily a matter for the Bill; indeed, Mr McGlone mentioned the design guide. When talking about influencing the quality of the built environment, I should say that it is important to bear in mind that different people and councils will have different views about how they want the quality of their built environment to be. That is the sort of thing that councils would probably want to bring out through policy. They would also have the option of writing their own design guides if they wanted.

Departmental policies already relate to the quality of the built environment. I am thinking about general issues that we included in the planning policy statements (PPS) that refer to the building itself and how it sits in its context. Therefore, that policy framework is in place, and councils themselves would have the option to develop their ideas within that general policy framework.

**The Chairperson:**

What about the other matters that I raised?

*(The Deputy Chairperson [Mr McGlone] in the Chair)*

**Ms Smith:**

We talked at the previous meeting about the capacity building pilot studies that are being undertaken. We see those as being absolutely central to the building of capacity. The pilot studies will allow councillors, council employees, the Planning Service, staff and others who will be involved in the new system to work together to test out the arrangements. The studies will also allow those people to think about how they will work together and how the new powers will impact on the way that they operate in their daily lives. The studies will also allow them to develop an understanding of their new responsibilities and to practise the outworkings of those new responsibilities without having the powers devolved but to the extent that, by the time that the powers are transferred to councils, everyone who is involved will understand what they mean and how they will work together to implement them.

The plan is to start the first pilot studies very early in the new financial year, and by April 2012, there should be a pilot study at some stage of progress in every council area. Clearly, each of the new council structures will have its own culture and character. Therefore, there will be differences, and that will help one council to learn from another.

Those pilot studies are crucial. Alongside those studies, it is important that individual councillors and employees have opportunities for training and capacity building. The Department is in conversation with the Royal Institution of Chartered Surveyors (RICS), the Royal Town Planning Institute (RTPI) and the Northern Ireland Local Government Association (NILGA) about capacity building.

**The Deputy Chairperson:**

Thank you, Maggie. Sustainability is a pretty big issue. I do not think that any Department can

afford to ignore it or even to delegate it sideways.

**Ms Smith:**

No.

**The Deputy Chairperson:**

Could you put a bit more meat on the bones of that and how it relates to the Bill?

**Ms Smith:**

Would you like us to talk about sustainability now or to finish answering the Chairperson's questions?

**The Deputy Chairperson:**

I am sorry; I did not realise that you had a few more questions to answer.

**Ms Smith:**

Would you like me to answer the Chairperson's questions first?

**The Deputy Chairperson:**

Yes. Perhaps we had better park that matter until he comes back.

**Ms Smith:**

Would you like us to talk about sustainability now?

**The Deputy Chairperson:**

Yes, please.

**Mr Angus Kerr (Department of the Environment):**

We have been asked to look at sustainability and to prepare comments on the requirements in the Bill for sustainable development. I will start with the context for the sustainable development duty. There is a general duty on all Northern Ireland Departments to contribute to the achievement of sustainable development. That was brought in by a piece of legislation from the Office of the First Minister and deputy First Minister (OFMDFM), namely, section 25 of the Northern Ireland (Miscellaneous Provisions) Act 2006.

In addition, Northern Ireland has relatively recently published a sustainable development strategy entitled ‘Everyone’s Involved: Sustainable Development Strategy’. Along with the general duty on Departments, that was developed as a high-level enabling document designed to provide a framework that can support and inform decisions and actions taken by individuals, groups and organisations in progressing the sustainability agenda in Northern Ireland. That will apply, notwithstanding what is in the Bill.

**The Deputy Chairperson:**

Therefore, are you reliant entirely on another Department to inform the Bill?

**Mr Kerr:**

No. We are just saying that that is the context and that that strategy is there, so that duty exists. In the Bill, however, we are directly addressing that duty for planning. Therefore, it is like copper-fastening the duty that exists already in that other legislation.

Clause 1(2)(b) should ensure that the Department fulfils its role in exercising its function under planning:

“with the objective of contributing to the achievement of sustainable development.”

Therefore, there is a duty in the Bill that will be on the Department after the transfer of functions. That means that all the planning functions that remain with the Department are, in a sense, caught by that clause. In carrying out that duty, the Department must also have regard to policies and guidance issued by the Office of the First Minister and deputy First Minister and the Department for Regional Development (DRD).

Similarly for councils, clause 5(1) requires any person who exercises any function with local development plans to do so:

“with the objective of contributing to the achievement of sustainable development”.

That person must have regard to the policies and guidance when preparing their local development plan. That also applies to any independent examiner during the independent examination process. We believe that those requirements will ensure that all relevant authorities take sustainable development properly into account in the decision-making process and in the exercising of their planning functions.

Clauses 8 and 9 require councils to prepare to a sustainability appraisal to assess the environmental, social and economic effects of their local development plan. That appraisal should run throughout the development plan process and should assess the policies, provisions and proposals of the plan, as well as the extent to which they meet sustainable development objectives. Detailed guidance will be prepared for councils about what the form and content of sustainability appraisals should be.

**The Deputy Chairperson:**

When is that detailed guidance likely to be issued? Is there a time frame for that?

**Mr Kerr:**

It should be in place before councils take on that responsibility.



**The Deputy Chairperson:**

I would hope so.

**Mr Kerr:**

Work is ongoing in parallel with what we are doing on the Bill.

**The Deputy Chairperson:**

Is sustainable development guidance, or whatever you call it, being prepared at the moment?

**Mr Kerr:**

Yes, work on it is ongoing, but it is in its early stages.

**The Deputy Chairperson:**

Does that mean that it is still in its infancy?

**Mr Kerr:**

Yes. It is building on guidance that is in the other jurisdictions.

**The Deputy Chairperson:**

Maggie, if I picked up your point correctly, you touched on design guides and the option of councils developing their own design guides. To my mind, that would create utter chaos, because people in one district council area would look down the road and ask why some people in another council area can get bay windows, hip roofs or whatever, yet, a couple of miles up the road, they cannot get them. Will you expand on that thematic aspect of design guides? What aspects of design guides is the Department thinking of individual councils having, and what leeway would they have to develop their own?

**Ms Smith:**

The point that I was making, and perhaps I did not make it clearly enough, was that the detail of the quality of the built environment will come forward in policy. As you know, policies in the PPSs, for example, refer to the quality of a building in its setting and how it fits in with that. That policy framework would be there on a regional basis, that is, on a Northern Ireland-wide basis. Councils would then reflect that framework as policies in their development plans. If they wished, they would also have the option of producing design guides.

**The Deputy Chairperson:**

Where does consistency, that old chestnut that pops up time and again, fit in?

**Ms Smith:**

When the powers are transferred, councils will have the latitude in their development plans to expand or to put their own flavour on the policies that operate in their areas as they would wish to so that they can implement their plans. There will be differences between councils, because they will interpret things in different ways. They will have different priorities, and the communities in their respective districts will want different things reflected in the plan. Therefore, there will be some distinctiveness between the different plans.

**Mr Kinahan:**

I am afraid that I have quite a few little questions arising from what you said. You said that the Department will have an oversight role. My concern is about speed. We do not want arguments between councils and the Department sitting for a long time. There needs to be something to make sure that decisions are taken and there is action. Will a mechanism with a time frame be put in place? I can see things sitting for ages if they do not agree.

My second question is about the power to revoke. If the Department holds the power to revoke, yet we are talking about the community having a say, has the council then got a chance to go back and talk to the community? It would seem strange that we listen to the community, develop a plan, come up with an idea, and the Department says "No, that does not fit in with our overall planning". There needs to be a way to go back to the community when there are no third

party appeals. Will a mechanism be put in place for that?

My next question is about the Department/council relationship with regard to compensation. Again, I can see that getting bogged down, with a council saying that it is the Department's fault and the Department saying that is a council's fault. Again, that needs a time frame, or will an arbitration system be put in place?

Lastly, we have heard endless talk about legislation, guidance or policy. Can the Committee have a list of all the different things that we need to be sure of what is coming up behind or with the Bill, whether legislation, guidance or policy?

**Ms Smith:**

I will answer the last point first. We sent to the Committee a long memorandum that sets out all the subordinate legislation that will be coming forward. It explains what a particular part of the primary legislation does, and then identifies what the subordinate legislation will be. We also gave the Committee a timetable that shows the rate at which we will be progressing the secondary legislation, and when we will be consulting on it.

**Mr Kinahan:**

Have I just missed that or has it not got to us yet?

**The Committee Clerk:**

It is in the master file.

**Mr Kinahan:**

OK, thank you.

**Ms Smith:**

If you need more details we will be more than happy to provide those.

**The Deputy Chairperson:**

OK. Are there further issues with regard to those questions?

**Ms I Kennedy:**

Yes. The oversight powers will be used very sparingly and very rarely, looking at the experience of other jurisdictions, if we can find such experiences. The Department will intervene in only a handful of the types of cases that you mentioned. So, nothing in the Bill refers to time frames. However, these cases are so rare that you would not necessarily expect to see that. It is not a regular occurrence or process, so there is no need to put in those checks and balances. Such cases will be very rare and individual, and there will be discussion between the Department and a council about how best to take them forward.

**Mr Kinahan:**

So, you do not see an arbitration scheme as necessary.

**Ms I Kennedy:**

No, not at this point. These will be such rare and exceptional cases that it will not be necessary.

**Mr Kinahan:**

I hope that you are right.

**Ms Smith:**

In the way that the legislation is drafted, you can see how the Department can intervene. We refer to “directions”. The councils will be carrying out their responsibilities under the Act once they have the powers. However, the safety net has to be there. We all need to recognise the possibility of such cases occurring. That is why the legislation refers to “directions” because if such issues arise the response will be to that particular case.

**The Deputy Chairperson:**

I was reading through some stuff from the Planning Appeals Commission. I am trying to get my head around where that might be the case. Say, for example, that the Department calls in an individual — a person, the agreed person or whatever they call it — to look at the call-in power. If there is any potential conflict with the Department doing that in circumstances where it could be — say, for example, that a person raised an issue and it was referred back for call-in powers, and the council may not have interpreted departmental policy correctly. Does the Department's appointing the person who will be looking into what is its own policy lead to a conflict of interest? I picked up on something in papers from the PAC last night that referred to that. I think that it was making a case for its absolute independence in such cases and in what circumstances there would be a need for the Department to appoint a body other than the PAC to look at such issues.

**Ms Smith:**

The Bill provides for the Department to appoint an independent person to carry out an independent inquiry. The purpose of that is to assist in situations in which a large volume of work needs to be done and the PAC does not have the resources to cope with it.

The situation that I always think of is when the development plans start to come through. We will have 11 councils producing 11 development plans, albeit according to their own timetables. However, we expect those timetables to be roughly similar. It would be a terrible shame if we got to the stage when those plans were coming through for inquiry and we did not have the capacity to take them through that process. You would have to have a queuing system. This provision allows the possibility of appointing a properly qualified independent person to carry out that inquiry. That is not replacing the PAC. The PAC is there and it is clear in the Bill that its functions continue. It is a backup for the PAC.

**The Deputy Chairperson:**

The PAC's advice seems to be that the independent examiner may not be binding on the Minister.

**Ms Smith:**

That is correct.

**The Deputy Chairperson:**

Where does that leave us?

**Ms Smith:**

The PAC makes recommendations to the Minister.

**The Deputy Chairperson:**

So there is no change from the existing situation.

**Ms Smith:**

There is no change.

**Mr W Clarke:**

I want to touch on the pilot schemes and building capacity. What criteria will be used to decide what areas will have pilot schemes? I can clearly see that the areas that begin their pilot schemes later will be at a disadvantage. Why is the rationale not to set them up everywhere, why are you going for maybe one or two areas, and how will you decide on those areas?

**Ms Smith:**

The pilot projects are really for the benefit of the councils. There is an open invitation to councils to become involved. Preliminary conversations are going on with councils, but it is not our intention to hold back the development of pilot projects. We are willing to work with councils as they are ready to engage in pilot schemes.

**Mr W Clarke:**

So there is nothing holding councils back.

**Ms Smith:**

No.

**Mr W Clarke:**

Should there not be a directive from the Department to councils saying: “Set up your pilot schemes under the transitional committees, and start that work now”, rather than waiting for people to come to the table?

**Ms Smith:**

We are talking to various councils that are interested in becoming involved in the pilot schemes at different stages during the year. It is a partnership.

**Mr W Clarke:**

But you know where I am coming from, Maggie. The Department should be telling councils quite clearly that they need to be setting up pilot schemes in their areas and be involved in them, rather than telling councils to come to the table when they are ready.

**Ms Smith:**

We are certainly encouraging councils to come forward.

**Mr W Clarke:**

Different councils and councillors have different views on planning. Planning for some councils means infrastructure, and for some councillors it is a couple of replacement dwellings in their townland. You need to bring those people to the table now. You cannot sit back. There will be a culture shock on councils. I declare an interest as a councillor. There will be a major shock to the system, and the sooner that that work is started the better.

Bringing the community on board probably fits neatly into that. What measures and resources

will be put in place for people from deprived backgrounds? Will that tie in, for example, with neighbourhood renewal? How will the Department ensure that those people have a voice? In my experience of the planning process, the articulate, the middle classes and the retired middle classes are competent with regard to planning and can make their voices heard. People from deprived backgrounds are reluctant or maybe have more pressing issues. What will the Department put in place for them?

**Mr Kerr:**

The statement of community involvement is maybe the key to that. That is a new provision that enables councils to address the issues of hard-to-reach groups. It will also contain the information that councils need about how to reach section 75 groups under their equality obligations. That is an opportunity that is not there at the moment for councils to say up front who it is appropriate to involve and how some of those groups are reached, and then to put down for everyone to see how they are inclusive and include the widest community possible so that those issues do not arise. It tends to be the same well-resourced people coming forward on lots of planning issues. Hopefully, when the local development plan comes forward it will have the widest possible consensus from all those groups.

**Mr W Clarke:**

I appreciate that. What I am getting at is whether resources will be provided to an organisation to take those views forward — the likes of Planning Aid? Will those resources be made available to those groups?

**Ms Smith:**

The statement of community involvement will be the statement of the individual council, and that council will set out in that statement how it will do its consultation. As part of that, the expectation will be that the council will detail how it will get to different sections of the community. It is the councils' responsibility to —

**Mr W Clarke:**

So the councils will have to get the resources.



**Ms Smith:**

Yes. It is councils' responsibility to engage with their own communities, and "community" is described in a very wide way. Certainly, section 75 underpins that whole process.

**Mr W Clarke:**

That has more implications for councils. We will raise that with NILGA and hear its response. Again, councils will require more financial resources to deliver that, but we will come back to that.

Danny touched on the stuff about the Department intervening in tree preservation orders and suchlike. When or why will that happen? Is it because certain councils may not designate conservation areas, townscape character or tree preservation orders?

**Ms I Kennedy:**

Very rarely is a case made to the Department when a tree preservation order is needed in a particular area. Those powers provide for consultation with councils, so the Department will consult with a council in the first instance, and the council itself may well decide to place a tree preservation order on an area. This is just a failsafe — an additional reserved power, in line with other jurisdictions, for exceptional cases. We do not envisage those cases happening very often.

**Mr W Clarke:**

A point was made about examples of good practice elsewhere. The research people said there was major flaws in planning reform in England and Wales. Did the Department take that on board and looked at best practice there and in Europe? I think that the Chairperson spoke about that as well.

**Ms I Kennedy:**

Yes, we looked at how planning operates elsewhere. Planning has been evolving over many years and is one of those areas of policy that constantly changes, reflects and moves on. The Bill will set the framework now, but it will obviously be reviewed for many years to come.

**Mr W Clarke:**

I am not saying that England and Wales are the benchmark. There are good practice models throughout Europe, especially with regard to sustainable development and good planning, particularly in Austria and Germany.

**The Deputy Chairperson:**

There is one interesting aspect of the Bill, and maybe you can explain it to me. Clause 1(3) states that:

“the Department must have regard to ... policies and guidance issued by ... the Department for Regional Development”.

The regional development strategy automatically springs to mind. However, clause 8(5) states that:

“In preparing a plan strategy, the council must take account of ... the regional development strategy”.

Will you explain the difference in the emphasis of the wording in that the Department “must have regard to, whereas a council “must take account of”? There has to be some reason for that nuance. When these things wind up judicially reviewed, those nuances can mean an awful lot.

**Mr Kerr:**

Absolutely. The reference in clause 1(3) is a duty in relation to the Department for the functions that the Department retains. The other is a duty on a council for what it needs to take into account when preparing its plan. They are slightly different because one is in relation to what the Department has to take account of when preparing PPSs or other policy and guidance, and the other is what councils take into account when preparing a local development plan.

**The Deputy Chairperson:**

The problem, Angus, is that the Bill does not say, as you just said, that the Department “takes it into account”. It says “must have regard to”, whereas it states that councils “must take account of”. Those sorts of things can be challenged. Why are there two forms of wording rather than consistency of vocabulary, and what is the subsequent interpretation of that likely to lead to?

**Mr Kerr:**

The legal view is not definitive in these areas. We took legal advice on the differences between the general conformity of “have regard to” and “take account of”. All the jurisdictions in these islands have slightly different approaches to that.

The advice we were given was that “have regard to” and “take account of” are broadly similar. In our negotiations with the Department for Regional Development we discussed how the regional development strategy in particular should be taken into account by councils. The preference was that “must take account of” was slightly clearer about what was required with the regional development strategy. In other words, it put the onus on councils to demonstrate evidentially how they actively took the regional development strategy and other policy and guidance into account. The “have regard to” requirement does not convey that as clearly, although they are similar legally in terms of the requirement.

**The Deputy Chairperson:**

I am just puzzled as to why they are not similar wording.

**Mr Weir:**

I can understand, legally and logically, that “have regard to” and “take account of” are more or less the same thing. In light of what the Deputy Chairperson said, would it not make sense to use one or the other consistently? I understand that if you wanted to convey a slightly different meaning elsewhere, you might want to use a completely different phrase. However, you should simply use one of those phrases consistently. That seems to be a drafting issue.

**Ms Smith:**

We will be happy to suggest that to the Minister if you want that drafting changed.

*(The Chairperson [Mr Boylan] in the Chair)*

**Mr Weir:**

In your absence, a couple of points that you raised were not answered because you were out of the room.

**The Chairperson:**

Do you want to pick up on those, or do I need to repeat them?

**Ms Smith:**

We talked about the quality of building, capacity building, pilot schemes and the involvement of the RICS and RTPI. You also asked about stakeholders, and we touched on that a little. The statement of community involvement makes it very clear that the people who councils have to engage with are the people in the community. That is the broadly defined community that we talked about last time, not just the people who live in the area but the people who work and invest there. They all have an interest.

This is not about a council communicating with only community groups or organisations. It is about a council communicating with its public. That is an important point. It is also worth saying, expanding that point slightly, that the vision that a council is engaging on with the public will, of course, be set out in the first plan document, which is the plan strategy.

**The Chairperson:**

What about that minor matter of resources?

**Ms Smith:**

Resources in terms of stakeholders?

**The Chairperson:**

No, resources in terms of capacity building and the whole lot. Obviously, that issue is raising its head. The likes of NILGA are responding today or tomorrow. We have given respondents until tomorrow to respond. We are going through this process but also trying to go through the responses. The issue of resources keeps raising its head, and we certainly need to look at that. Is there, as I mentioned earlier, an opportunity to review the whole process to see how it goes through the transitional period and rolls out? Will there be a mechanism checking to see how it is all going? Will that be built in?

**Ms Smith:**

The pilot projects were introduced to make the transfer and the transition as smooth as possible. We can work out before any powers transfer to the councils exactly how the arrangement will work for each council. It is about councillors, council employees, the people in the Department who will transfer to the councils, and everybody else who is involved working together to test the arrangements, come to a greater understanding of the arrangements and figure out how they will work together in a particular council area, so that when we come to the day when the powers transfer everybody will know and understand their roles.

**The Chairperson:**

So there will be a review.

**Ms Smith:**

No, I am talking about —

**The Chairperson:**

No, that is OK.

**Ms Smith:**

You asked about transition.

**The Chairperson:**

We will put in a recommendation.

**Mr Kinahan:**

Will there be guidance for councils on how to consult the public? As I said in the Chamber the other day, through master plans and everything else councils seem to have a set way of doing things. If that fails, they do not review it. I am concerned that we are not good at consulting people. We have to keep looking at new ways and new ideas.

**Mr Kerr:**

That is absolutely right. There will be guidance, and it should focus on best practice. To some extent, it is not necessarily the case that the Department has all the best practice. A lot of work that already goes on at council level is often put up to us as the proper way to consult.

**Mr Kinahan:**

You will keep reviewing that.

**Mr Kerr:**

Yes.

**Mr Weir:**

Presumably, if you are setting out guidance, in one phrase it should be guidance on consultation that makes a floor rather than a ceiling.

**Mr Kerr:**

Exactly.

**Ms Smith:**

Yes.

**Mr Kerr:**

There should be flexibility for local councils to consult in the way that they see as appropriate, rather than a one-size-fits-all for every council.

**The Chairperson:**

We are out of quorum again.

**Mr Weir:**

I think that Alastair will be back shortly.

**The Chairperson:**

I will have to put it to members when they come back in, but we have discussed the research paper and the questions that it raised. We will also have certain questions by the time we are finished with all the responses, and we will send those to the Department. We thank you for going through this part of the Bill. I think that Committee members are getting a better understanding of the legislation. Most of what we discussed over the four days has been the new elements of the Bill, and we need to discuss the existing elements.

Thank you very much, and no doubt we will be calling you again.

**Ms Smith:**

Thank you, Chairperson, and the Committee members for the time that you have given to us. We will send you Angus's notes on sustainable development, because they were not in the pack that we sent last night. We will get back to you very quickly on the responses to the research questions. If there is anything else that we can do, we will be more than happy.

**The Chairperson:**

OK. Thank you very much.