



Northern Ireland  
Assembly

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**Planning Bill**

1 February 2011

**NORTHERN IRELAND ASSEMBLY**

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**Planning Bill**

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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 John Dallat  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr George Savage  
Mr Peter Weir  
Mr Brian Wilson

**Witnesses:**

Mr Stephen Gallagher	)	
Mr Brian Gorman	)	
Ms Lois Jackson	)	
Ms Irene Kennedy	)	
Mr Angus Kerr	)	Department of the Environment
Ms Catherine McKinney	)	
Ms Sarah Malcolmson	)	
Mr Peter Mullaney	)	
Ms Maggie Smith	)	

**The Chairperson (Mr Boylan):**

We will now commence the informal clause-by-clause scrutiny of the Planning Bill. We aim to get through Parts 1 to 4, which would take us up to clause 129. The Department has responded in writing to the issues that all stakeholders raised on each clause, and I will invite departmental officials to comment on the key issues. I will then ask Committee members whether they feel that they have enough information to reach a position on a clause or whether amendments, further research or information from the Department are required.

I welcome Maggie Smith, Angus Kerr, Catherine McKinney and Irene Kennedy. I ask members to turn to Part 1 to begin the informal clause-by-clause scrutiny. Part 1 is titled “Functions of Department of the Environment with respect to development of land”.

Clause 1 is titled “General functions of Department with respect to development of land”. Organisations told the Committee that clause 1 should be expanded to make it clear that the desired outcome of the Department’s role in planning is the achievement of sustainable development, tackling disadvantage and poverty, and promoting good relations, with amendments to clause 1(2)(b) and (3)(a) to include an obligation to the NI Act relating to equality. Concern was also expressed about the degree of control being retained by the Department and the risk of duplication between the Department and councils. Several respondents wanted to see an overarching land-use strategy for the North that would guide the Department in its decision-making.

If members have no questions about that, I will ask the Department to highlight some of the issues and indicate the direction in which the Department feels that it may need to go after hearing some of the responses.

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

I will start at the beginning. Sustainable development is already dealt with at clause 1(2)(b), which requires the Department to exercise its functions:

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

A number of organisations suggested that “contributing to” should be changed to “securing”. That change would certainly strengthen the clause.

Tackling disadvantage and poverty, promoting inclusion, and so on, cannot really be done through land-use planning. The issues would probably be more effectively tackled through something such as community planning. Those are wider obligations than can really be tackled through land-use planning.

There was a suggestion that a direct reference to section 75 of the Northern Ireland Act 1998 should be included. That is not necessary, because the Department and the councils, as public authorities that carry out functions in Northern Ireland, are all bound by the 1998 Act. They are required by the schedules to the Act and the Equality Commission to have equality schemes, to ensure that every policy is screened for equality implications, and so on. That is already well covered in legislation and in the monitoring that the Equality Commission provides.

Some stakeholders talked about possible duplication and the amount of control that the Department has. The best thing to do may be to repeat what we talked about before: the controls are there as a safeguard. The whole point of the Bill is to ensure that the majority of planning powers go to councils. The councils will draw up their development plans and determine the majority of planning applications. The Department will step in only if a council is unable to fulfil its responsibilities. It is there only as a safeguard.

**The Chairperson:**

You said that you are willing to change “contributing to” to “securing” in subsection (2)(b). Is that correct?

**Ms Smith:**

We need to go to the Minister, but, if that would be helpful, we could suggest that change to him.

**The Chairperson:**

It would certainly strengthen clause 1. We need a link in statute to the community planning element, and that change in wording would certainly strengthen the clause. It is important.

How do you see that link being made? I know that we are talking about two different pieces

of legislation, but we need a commitment from the Department, be that in writing or whatever. That commitment could be achieved via a recommendation from the Committee.

**Ms Smith:**

What you say is absolutely right. The difficulty is that the concepts of community planning and well-being do not yet exist in legislation, so the link needs to be made through local government legislation. If it would be helpful, I am sure that the Minister would be more than happy to write to the Committee on that issue.

**The Chairperson:**

It is about trying to secure that. Inclusive in all that is the equality issue: the involvement of the whole community planning element; land development; local policies; and everything else. We have talked about that already, but it is now about getting it in statute.

**Ms Smith:**

That would be achieved through local government legislation, which would then amend the planning legislation.

**The Chairperson:**

I do not think that the Committee will have any problem with making that recommendation and ensuring that that happens.

**Mr McGlone:**

I am glad, Maggie, that you raised the issues of community planning and general well-being. You said that land-use planning could not address social issues. I am trying to get into my head the practical outworkings of, for example, the designation of industrial land or mixed-use land — we will not get into the simplified planning zones — in indicative areas of high unemployment. You specifically focused on the issue of land use, but I thought that the Bill was meant to move towards spatial planning, rather than land-use planning exclusively. I am far from being an expert. However, in the submissions that the Committee received, it was explained that spatial planning opened up more opportunities and created a more holistic approach to planning. It was also explained that it could be used to address social issues, never mind the community well-

being aspects that were suggested as part of local government reform. Will you explain the difference between land-use planning and spatial planning in helping to address those social issues? There should be input from other Departments, but planning should begin to embrace wider policy issues.

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

That is a good way of looking at the direction in which planning is moving and the direction that the Bill wants to move it in. What we tend to call traditional land-use planning is the type of planning that everyone is used to, and the type that councils and their officials will have worked on for the Department over the years. The Bill will see us move towards a much more proactive and holistic spatial planning approach, which, as Ken Sterrett outlined when he was before the Committee, will provide the opportunity to address socio-economic and traditional land-use planning issues.

As Maggie said, the way in which it will work most effectively is through the community planning format, and the traditional land-use planning aspects of the Bill reflect the spatial aspects of the community plan. When the councils have a full suite of powers — including community planning, regeneration, well-being and planning — they will be able to bring those together in a much more holistic way than the Department can now, because they will be able to take into account issues to do with health, education, regeneration and crime and policing. Whatever flows from that which can be reflected spatially will be done through local development plans, for which the Bill also provides powers

**Mr McGlone:**

You have explained much more articulately than I could have done that we have placed the cart before the horse. Had local government reform been in place, it would have informed, directed and facilitated the changes that could be brought in by planning. We are a context removed and are dealing with something in absentia.

**Mr Kerr:**

As Maggie said, the intention is to link the two.

**Mr McGlone:**

I know that, but if you do not have the context, you cannot deal with the subsequence, and that is also part of our problem. We are speculating about things that might happen and that we think will probably happen, but we are doing them back to front. You could comment on that, although I will not ask you to do so. However, that is the logic of the position that we are in.

**The Chairperson:**

That is why I mentioned the need for a commitment. The Committee is scrutinising the Bill, as it agreed to do. However, the reorganisation of local government is key to community planning, governance and spatial planning. Maggie, the Committee needs that commitment before the whole process is finished, either in writing or in some other format that is acceptable to members. You indicated that that is the way that the Minister wants to go.

**Ms Smith:**

Yes; that sequence of events was agreed by the Executive. The Minister also made a statement in the Assembly, and I am confident that he is happy to put that commitment on record.

**The Chairperson:**

The Committee needs that confidence, because the public and the councils do not have much confidence in the process. However, it is about the responses from councils and how we ensure that there is a commitment from the Assembly. Mr McGlone spoke about putting the cart before the horse, and that is being said in councils at present. Nevertheless, we have received a commitment that the Bill will not go anywhere until the reorganisation takes place.

**Ms Smith:**

Yes.

**The Chairperson:**

Mr McGlone, have you any other points to raise?

**Mr McGlone:**

That has probably clarified and distilled it for me. We will talk about the equality issues later on.

**Mr W Clarke:**

My questions, which are probably along the same lines, concern using the Bill's overarching framework to drive sustainable development. However, there is also the well-being aspect to consider. Although you say that the community plan will deal with that, I imagine that the issue would feature in everybody's community plan. That is why I want to see spatial planning and well-being covered in the Bill. The Bill should be thinking forcibly about sustainable development — not just land use but how the planning process can make people's lives better. I do not think that that should be done in the community plan. The Bill needs to show that that is what we are endeavouring to do through our planning system.

When planning to develop a large area for housing, the first decision should be on the infrastructure — for example, public transport — required to get to those houses. There is also the issue of carbon reduction in building and getting to those homes, and the services, such as crèches, that need to be provided to help mothers. All that should be rolled out from government. It should not come through a community plan. Certainly, there should be a community plan, but government should, first and foremost, consider people's well-being, not simply bricks and mortar.

**Mr Kerr:**

The power of well-being that will establish the principles to which you refer, not just for the planning functions that councils will have but for all their functions, and even through community planning and stretching beyond that to some extent, will come about through the consultation exercise, which is ongoing for the local government Bill. Work is continuing to ensure that that is got right. Once that legislation is in place, it will apply to the wider work of councils, including planning work.

**Mr W Clarke:**

It is a bit difficult to consider the Planning Bill while the reform of local government is going on at the same time, and that is exactly what stakeholders are saying. They want to know the point of the consultation. All the groups are saying that they do not believe that sustainable development and well-being are strong enough in the Bill, yet the Department just responds that it



will be dealt with later under a different piece of legislation. Do you know where I am coming from? Are you saying that those people are wrong?

**Ms Smith:**

We are not saying that they are wrong. The Planning Bill will deal with the planning system, but the local government Bill will be much wider in dealing with the responsibilities of local government, including the new power of well-being. There is already a duty on every Department to promote sustainable development.

**Mr W Clarke:**

It is paying lip service to sustainable development.

**Ms Smith:**

Clause 1(2)(b) of the Planning Bill states that there is:

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

Therefore, it actually strengthens sustainability in the planning system. However, that is not the only place where sustainable development is mentioned in respect of planning. It is also an underpinning principle in the regional development strategy (RDS). Everything that councils do in respect of development plans will also have to fit in with the regional development strategy. There is also a planning policy statement about the general principles of planning, which contains a section on sustainable development. As we roll out that work on planning reform, we will look again at the general principles of PPS 1, and we will pay particular attention to the section on sustainable development.

To some extent, the Bill is restrictive because only so much can be done through legislation. The duty is in the Bill, but that is only part of the picture. The regional development strategy and the other work that we will do on PPS 1 mean a flexible way of doing things. There is a real opportunity in PPS 1 to get into the issues and to discuss sustainable development in a much more practical way.

**Mr W Clarke:**

That take us back to an amendment to clause 1(2)(b) to remove the word “contributing” and

replaced it with “securing sustainable development”. That is important.

**Ms Smith:**

We can look at that and talk to the Minister about it.

**The Chairperson:**

Therefore, clause 1(2)(b) would read:

“with the objective of securing sustainable development.”

Why can we not go on to include the words:

“well-being, tackling disadvantage and poverty, and promoting social inclusion and equality of opportunity.”?

**Ms Smith:**

That is to do with the limitations of the planning system. Sustainable development in the planning system will cover economic, social and environmental issues.

**The Chairperson:**

I will put it another way. Can we connect that to community planning in some way?

**Ms Smith:**

We cannot in this case, but we will ask the Minister to spell that connection out to you in writing because it brings us back to the local government legislation.

**The Chairperson:**

Just for clarity, are you saying that we cannot include well-being, tackling disadvantage and poverty, and promoting social inclusion and equality in this clause of the Bill?

**Ms Smith:**

Those areas will be covered in the social aspects of sustainable development. The whole power of well-being will be teased out in the local government Bill. That is a result of the consultation that is going on at the moment.

**The Chairperson:**

I will finish on this point. You know where we are trying to go with this issue. We are trying to

get a connection with the local government Bill. Is there anything that we can write into that clause to make reference to that?

**Ms Smith:**

If we strengthen the reference to sustainable development, it will go towards what you are trying to do, and that will come back round again in the local government Bill.

**Mr Kinahan:**

I am concerned that we are trying to put too much into the Bill and that we will make it more complicated. I can see why we may wish to link sustainable development, equality, and everything else, but we could stymie the Bill if we make reference to those things.

**The Chairperson:**

I am trying to make it inclusive. We should look towards achieving that; there is no harm in that. If we are going to look at the whole principle of conforming with the RDS and planning policy statements, we need to look at the sustainable element. However, we are more concerned about the main issues that we have mentioned.

**Ms Smith:**

In this Bill, the legislative link is through the local government. We can also make the link in guidance to this Bill. That will also make the link back to local government legislation and the power of well-being.

**The Chairperson:**

Maggie, I hope we can have confidence in that. The Minister will finish his shift in March, and then it is up to someone else. We need a commitment and full support for this Committee.

**Ms Smith:**

Yes, but the Minister is not acting on his own. All of this is being done with the agreement of the Executive.

**The Chairperson:**

I know, but it is the role of the Environment Committee to scrutinise the Bill as closely as possible in the time frame that is granted to us.

**Mr McGlone:**

Let me return to the issue of sustainability. The way it is worded at the moment is like grandma and apple pie. It is wonderful to have it in there and all that type of stuff. Who makes sure that it happens and what benchmark of activity or standard, whatever you want to call them, is applied and by whom? It is a great concept and, no matter where you go, “sustainability” is the word. It seems to pop up in all sorts of document. What I am trying to do is give some sort of practical effect to what that means and who makes sure that it happens.

For example, is it by way of mentioning, “plus conditions of approval”? Is it by way of some sort of directive or collaboration with OFMDFM? That office is about to close down its sustainability unit. I am trying to find out who informs and establishes the criteria by which sustainability is implemented and given effect to on the ground. Have you any ideas on that? I am sure that you have thought about that because it is in the Bill. I want to establish how it actually happens.

**Mr Kerr:**

That has been an issue. There is a sense of motherhood and apple pie with sustainable development and in many ways that has been a problem, and a criticism that we have faced for a number of years, because that duty has been in place.

In the Bill, we have tried to give it a more concrete element, so that people can see it implemented through the planning process, through a number of measures. One is to bring in the plan-led system so that development management decisions on applications are made on the basis of the plan, and then to introduce a sustainability appraisal of the plan. So every plan prepared by a council will need to have a sustainability appraisal, looking through the detail to see whether aspects are sustainable: if an aspect is not sustainable, why is it not sustainable; is there anything we can do to make it more sustainable, or less unsustainable, and so forth. We develop that to the independent examination, where one of the key criteria in assessing the plan that the Planning

Appeals Commission or the independent examiners will look at is sustainability. We hope that what comes out at the end is a much more sustainable, much better plan than some of those we have made in lots of ways. That will then inform the decisions that are made with the whole sustainable development ethos.

**Mr McGlone:**

Who sets the standards by which the people in council perform? If I understand you correctly, the local development plan will be determined as sustainable or unsustainable. Who sets the benchmark for each council? Presumably, you are looking for absolute consistency right across the whole of the North, in the 26 or 11 council areas, as it may be.

Who informs and sets the standard of sustainability if it moves to independent review or independent oversight? That is where I am coming from, Angus.

**Mr Kerr:**

That will be dealt with in guidance provided by DOE on what is meant by “sustainability”, what should be addressed in sustainability appraisals and the levels which a plan is expected to get to in its different aspects, housing, environment and all that, in relation to sustainable development. That will be assessed independently, by guidance on the one hand and plan on the other, to see whether it meets the standard. It will be different in each area, because what is sustainable in Belfast differs from what is sustainable in Omagh, Enniskillen and Derry.

It sometimes concerns me when I hear too much about standardising it, because the approach will be different for different areas. That is generally how we will want to see it working.

**Mr McGlone:**

I am no expert on it, but I realise that there has to be some degree of consistency in any policies. You mentioned guidelines. Chairperson, with your permission I will explore that further. Is that on the Department’s to-do list? Is it being developed?

**Mr Kerr:**

We are working on guidance. There is best practice, with sustainability appraisals in particular,

around the different jurisdictions, because they have been introduced in all jurisdictions in these islands. We are looking at that and seeing how that can be “Northern Irelandised” for ourselves.

**The Chairperson:**

Maggie, you said that the powers in relation to the equality obligations in the NI Act were strong enough. There has been a suggestion to include something at clause 1(3)(a). Do you feel that another form of words, perhaps, could be put in there to strengthen it? Should we be content with your response on the equality issue?

**Ms Smith:**

With regard to equality, I always go back section 75, because everybody is bound by that. There is a machinery through section 75 that makes sure that public authorities fulfil their duties. You cannot get any stronger than that.

**The Chairperson:**

I agree with you. That is the case, as long as the checks and balances are in place and the minorities are protected.

**Ms Smith:**

The councils, as public authorities, also have section 76. They are bound by section 75 to promote equality and good relations, and section 76 prevents them from discriminating or aiding discrimination. They are also bound by the full raft of anti-discrimination legislation. All of that is already there.

**Mr McGlone:**

Are we moving to the equality impact assessment?

**The Chairperson:**

Yes.

**Mr Kinahan:**

Changing horses, given what I said before about trying to add too much, should we be looking at

the reference to the green new deal? I know that it is part of sustainable development, but it is part of the question of whether we should leave it to come in under guidance.

**Ms Smith:**

That would be solely for guidance.

**The Chairperson:**

Are you happy with that, Mr Kinahan?

**Mr Kinahan:**

Yes.

**The Chairperson:**

Now that we have a quorum, I refer members to tab 1A. You have been provided with departmental replies to Queen's University research papers on development, management, planning, control, enforcement and community involvement.

Are members content to note those documents and incorporate them into the final Committee report?

*Members indicated assent.*

**The Chairperson:**

I advise members that they have been provided with a copy of the equality impact and human rights assessment on the reform of the planning system. Mr McGlone wanted to talk about that issue.

**Mr McGlone:**

I have read this, and it is very general. I am no expert; I do not claim to be an expert on any form of law, let alone equality law. However, look at table 2, for example, where, principally, this comes from. To be realistic about it, we all know that the real concerns are around religious beliefs and political opinions. On page 27, it is stated:

“These anxieties should be duly acknowledged in any emerging proposals.”

That is about as anodyne a statement as I have heard from anybody. I cannot overemphasise this point: where I am coming from and where my party is coming from is that equality must be at the core of local government, especially if we are going to hand back powers and, crucially, powers of planning. I would like the Committee to obtain further advice on those matters from someone who specialises in the field of equality legislation.

**The Chairperson:**

Maggie, would you like to respond on that?

**Ms Smith:**

Your concern was that the requirement was very general. An equality impact assessment tends to be as detailed as the level of policy. An assessment was carried out on planning reform, which is a big body of work that has resulted in the policy that is now being articulated through the Bill. As we have all mentioned a number of times, the Bill is set at a general level. It is about general principles and the handing over of power. Therefore, the equality issues that relate specifically to the policy of handing over power are quite general. The methodology of the equality impact assessment was to focus on how the policy might impact on different groups; for example, between men and women. One can only consider the impact of handing planning powers over to councils at a very general level. It is only when you get further down — when councils get the powers, start to exercise them and the policy and practice becomes more detailed — that you can look at the equality issues in much more detail.

**Mr McGlone:**

That is precisely the point. I hear what you are saying, but people have got to understand where we are coming from. There are major concerns in the community, and I am here to articulate them. Local government must treat everybody with equality, transparency and openness, and any potential that might exist to revert back to 40-odd years ago must be circumvented now. We must not wait until it happens. That is, essentially, where I am coming from. I know that somebody somewhere in the Civil Service has done a general assessment, but this matter goes to the heart of where we have come from, almost 50 years ago. This time, therefore, we want to make sure that we do it right, in the interests of the equality of every citizen in the North. It was



for that reason that I was suggesting that the Committee might commission some sort of support or help. I do not have anyone in mind, but someone who specialises in the field should assist us, because, if it is not going to be done at departmental level, we would be doing the general community a big favour if we did it.

**Mr Kinahan:**

I know exactly where you are coming from, but I am nervous. I shall use an example of something that happened in Templepatrick. Through Sustrans, we were going to get new bicycle routes and lanes, but one person decided to object because he did not want the bumps. Because we had to listen to him, that was the end of the whole thing. How do we find the balance? I see that we need the assessment to be general, but we need to be able to make it specific when it gets to the right level, so that people are protected.

**Mr McGlone:**

We need, for want of a better word, a more informed view of this.

**The Chairperson:**

Yes. Certainly, we need to invite somebody along to look at the document to make sure that we are doing the right thing. I understand where you are coming from. We need a briefing from somebody.

**Mr McGlone:**

We need advice from someone who deals with and knows about this type of stuff. I do not know enough about it. Although a general policy overview is a requirement for the Department, we really want to do things right, rather than skimming over an equality impact assessment that simply says that things are good at this stage.

**The Chairperson:**

To be fair, there is a lot of good legislation in place. In this case, however, it is right that the Committee should invite someone to speak to us, if members are agreed.

**Ms Smith:**

This equality impact assessment is the one that goes with the planning reform policy. In the same way that the policy is at the top level, this is a top-level EQIA. However, as it progresses, every policy underneath planning reform will have to be looked at against the requirements of an EQIA. This is the first step, and, as we burrow further, as more work is done and the policies become more detailed, there will be much more detailed equality impact assessments.

**Mr McGlone:**

If we can inform the ripple effect, so much the better.

**The Chairperson:**

Are members content to note those documents and incorporate them into the final Committee report?

*Members indicated assent.*

**The Chairperson:**

I advise members that the Examiner of Statutory Rules report on the delegated powers of the Bill has been incorporated into the Committee's tables to be addressed by the Department under the relevant clauses. Are members content to note that document and incorporate it into the final Committee report?

*Members indicated assent.*

**The Chairperson:**

I advise members that the Committee received an email and a paper on the development contributions from the Federation of Housing Associations. Its representatives had hoped to present the paper at last Thursday's stakeholder event, but were unable to attend. Are members content to note those documents and incorporate them into the final Committee report?

*Members indicated assent.*

**The Chairperson:**

I advise members that papers have been received from the ministerial advisory group on simplified planning zones and business improvement districts as requested by the Committee last week. Members may wish to consider that response in connection with clause 75. Are members content to note those documents and incorporate them into the final Committee report?

*Members indicated assent.*

**The Chairperson:**

I advise members that the Committee has been provided with a research paper following up on issues raised during the Queen's University research briefings. It provides more information on the community infrastructure levy, the introduction of a chief planning officer, performance management, the English Localism Bill, community planning, and engagement with stakeholders. Are members content to note that document and incorporate it into the final Committee report?

*Members indicated assent.*

**The Chairperson:**

I advise members that the Royal Society for the Protection of Birds (RSPB) and Community Places have submitted supplementary papers clarifying the issues that they raised during their oral evidence sessions at the stakeholder event. The RSPB paper provides more information on sustainable development, climate change, local development plans, a community infrastructure levy and limited third-party right of appeal. Accordingly, the paper includes suggested amendments to clauses 1, 5, 8, 9, 38, 53, 58, 75 and 77.

The Community Places paper provides additional commentary on the appointment of independent examiners, which is dealt with in clause 10; a community infrastructure levy, and limited third-party appeals. The paper suggests how amendments may be made to the Bill in connection with those issues.

Members may wish to consider those documents as we go through the clauses. RSPB has also provided information on the Localism Bill. Are members content to incorporate those documents

into the final Committee report?

*Members indicated assent.*

**The Chairperson:**

We will move on to clause 2, entitled “Preparation of statement of community involvement by Department”. I remind members that clause 2 was generally welcomed, but it was suggested that it should specify a time frame for the publication of a statement of community involvement and include greater detail on the key elements of its engagement process. Respondents also wanted clause 2 to include a requirement to monitor the impact and effectiveness of the statement of community involvement in relation to section 75 groups.

I will hand over to Maggie and the team. How can you assist the Committee and the community in dealing with the issues surrounding the statement of community involvement?

**Ms Smith:**

Because there is no firm date for transfer, we suggest that placing a time limit on the statement of community involvement is not the best option.

**Mr Weir:**

Perhaps I am pre-empting you, but if the problem is not knowing the transfer date, is one option to tie in the production of that with a condition-led transfer?

**Ms Smith:**

We would be happy to look at that. Stakeholders have raised a number of issues about what community involvement is, and we have tried to clarify that for your report. You talked about the monitoring of the statement of community involvement, and you mentioned section 75. If monitoring is considered, we suggest that it should be monitoring in general rather than with reference particularly to section 75, because that monitoring will be done anyway.

**The Chairperson:**

Sorry, Maggie?

**Ms Smith:**

You may want to think about monitoring in general, rather than limiting it to the monitoring with respect to section 75. You may also want to think about reviews and updating, because that is needed.

**The Chairperson:**

Yes. Clearly, the review and monitoring process is a key element. The statement was the issue. It is about participation and everything else. That was one of the key elements, and it is about how we propose to address that. Will you indicate exactly what you mean by “community”? We still have not covered that. Does it include everybody? This may be the last opportunity in the informal clause-by-clause scrutiny, so we need to get it right. It should be about participation as opposed to consultation and engagement.

**Ms Smith:**

Absolutely. The Bill, so that it does not become too detailed, requires that the statement be produced. We are also looking at the subordinate measures that would provide the detail on all of that. It is very important to make sure that the statement is taken seriously by everybody, that it is implemented properly, and that the involvement and engagement are appropriate for the communities and are meaningful. Those subordinate measures are being prepared at the moment and that is listed in the memorandum of delegated powers that we submitted to you. We are thinking about minima that councils would be expected to develop for themselves.

**Mr McGlone:**

I know that this will sound like a bit of an odd question, but are we getting to the definition of what “community” is? I listened very carefully to Professor Greg Lloyd the other day. He was very interesting. He had definitions of, I think, three headline areas: place, intent and interest. How do you expand on that? How far do you go with community consultation, or how far do you define it? How long is a piece of string?

**Ms Smith:**

Yes. The Bill tries to leave the definition of “community” as open as possible so that it is very inclusive. Existing legislation defines “community” in a way that suggests that it is only people

who live in the area. It refers specifically to people's interest in development in the area in which they live.

What is now proposed is wording that refers to people who have an interest in development in the area. That could be people who live in the area, but it could also be those who work, own property, invest or use services in the area. Leaving it open like that allows for a better understanding of the importance that areas have for communities and individuals.

**The Chairperson:**

Clearly, at the operating end of that will be an element of neighbour notification to ensure that the community is fully involved. I know that that is not in the Bill but it needs to be incorporated as one way to ensure that as many people as possible are involved.

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

There could be a range of methods to involve the community. The statement will set that out across broad areas, not just development and control.

**Mr Dallat:**

I have not been here for a while so I am out of my depth. Is there any obligation or opportunity in the Bill to check the facts of community planning evidence? I could make a case for multi-storey flats in Shaftesbury Square or for putting hundreds of houses on a golf course. Is that not a problem that you have to consider? Is there any opportunity to ensure that evidence provided to the Department can be substantiated and is not a parcel of lies?

**Mr Kerr:**

Once planning powers move over to councils, the councils will be in the same situation as planners in the Department with regard to assessing information that comes in with, for example, a planning application or a development plan against policy provisions in place at the time. Due diligence must be exercised to ascertain exactly what is being said and whether it is factually correct. There is nothing in the Bill that specifically addresses that issue. I suppose it will be the same situation for councils as it is now for the Department.

**Mr Dallat:**

Precisely. To be honest, my thoughts are probably based on over 30 years' experience on councils, where creative planning has been the order of the day. In recent years, social housing suddenly became a vital element in any planning application, which, of course, never materialised. However, that is only one example.

I suspect that if planning goes back to councils we will get the lobbyists who will be prepared to make any kind of claim in defence of a planning application. Unfortunately, the third-party objectors, who really have no rights, do not have the resources or money to do the sort of work that was done by, say, Dundonald Greenbelt Association, to give just one example.

Community planning could be very positive but I suspect that there are also inherent dangers. I know of no other area of law where I can concoct the most outrageous claims and lies and it is not a criminal offence. If I worked and claimed the dole I would be in court. However, you can submit evidence in defence of multi-million-pound planning applications that is absolute lies from beginning to end and there is nothing in the Bill that will make that a criminal offence. Are we missing an opportunity to ensure that when public relations companies, politicians or whoever put pen to paper they are under some obligation to check that those claims are true?

**Mr Kerr:**

I forgot to mention that the pre-application consultation process will assist the Bill with a lot of that. It gives an opportunity for developers and the local community to come together for major or regionally significant planning applications and tease out a lot of those issues. If there is one group claiming one thing, a developer claiming another and a third group claiming something else, those issues can be sorted out at that point, when everyone is around the table and has a chance to say that they do not think that a claim is accurate, or the real situation is X or Y. To some extent, therefore, the consultation process will address some of your concerns.

**Ms Smith:**

It is worth adding that the purpose of this Bill is the transfer of powers. It is only a part of the jigsaw. It is a very crucial part, but there are others, such as the regional development strategy and the planning policy. The local plan has to be made within that policy framework. There are

the issues that Angus Kerr mentioned, which are addressed in the Bill. When an application is being looked at, it must be considered in the context of the plan, the pre-application consultation, the policies and all the other material considerations.

As part of the preparation for the transfer of powers, we will be doing work with councils. A lot of it will involve making sure that councillors understand their role in planning decisions and that those decisions have to be made on sound planning grounds.

**Mr Dallat:**

That is very useful. I raise the issue because I know of no other element of government where there is more corruption than in planning. If I were on income support, I would see in big writing on every page the warning that benefit fraud is a criminal offence, you may go to jail, and so on. Yet there is nothing for planning.

I am not talking about subjective evidence on issues such as whether a development will enhance an area. I am talking about claims that are total lies. There is nothing here to inhibit that. That is one element of government services that people do not trust and have severe doubts about. It is something that needs to be cleaned up.

I have listened carefully to Maggie, and I do not understand this all that well, but I think that before we could consider passing this over to councils, that should be pretty well addressed. We must not go back to the past, when things happened that should not have happened. Such things might have nothing to do with section 75; they might have a lot more to do with money in the bank or the National Asset Management Agency (NAMA) or wherever they are at the moment.

**The Chairperson:**

I do not think that that falls under this Bill, but it is a valid point. We have spoken over the last number of days about community involvement. We talked today about the statement of community involvement and the community plan. Those are key to front-loading the system. I would like to see those in place.

Have members any other comments?



**Mr Savage:**

I have read through this plan regarding the developments and changes that you want to make to the planning system. I live in a rural area where there have been many planning applications, especially where there has been a change in the ownership of land. Some people were happy with the way things were, but then the premises changed hands and younger people came on board and wanted to streamline things and make changes. However, they cannot do it. I have seen examples of that in a number of places in Craigavon. It is all right if there is a business plan, but if people do not have a business plan, how do they get one? That is one of the biggest problems that I see. There might be half a dozen applications by genuine people who want to build new homes, but they cannot get it done because they do not have a business plan. That is a big drawback, and I do not want to give the nod to something that will come back to haunt us. I cannot see where there could be a breakthrough on that matter; perhaps you can show me where it could be.

The easiest thing for planners to do is refuse plans. I often find myself acting as the middleman, trying to come up with some form of compromise between planners and applicants. The key point is how we do that and how we can find a satisfactory way of keeping both sides happy. The applicants own their properties and they just want to enhance and modernise them. There is a big responsibility on everyone, because once this goes through it will not be easily changed at the stroke of a pen. Everyone must come out of this smelling of roses.

**Ms Smith:**

The points that you made —

**Mr Savage:**

I am very fond of PPS 21 —

**The Chairperson:**

I do not think that all members are in favour of PPS 21, but I think that it is a good policy. Mr Savage referred to a policy statement, which the Committee can look at in the round.

**Ms Smith:**

Yes; what he referred to are policy issues, which cannot be addressed through the Bill.

**The Chairperson:**

The Committee takes those views on board and we will look at that matter. That concludes the Committee's informal clause-by-clause consideration of Part 1 of the Bill, which relates to general functions of the Department and the statement of community involvement.

We now move to Part 2, which relates to local development plans. Clause 3 relates to a survey of the district. I remind members that most respondents wanted the survey of the district to be expanded to include issues of well-being, climate change, natural resource management, good relations and community planning. Many respondents were also concerned about the legacy of current area plans and how those would be integrated. Local authorities were concerned about the requirement in clause 3(4) to keep matters relating to neighbouring districts under review and the potential impact of that, in the form of competitiveness between neighbouring councils. Concerns were also raised about the involvement and support of agencies such as NIEA, Roads Service and Rivers Agency in the preparation of local development plans. Maggie, would you like to comment on those concerns?

**Ms Smith:**

I will ask Angus to pick up on those points.

**Mr Kerr:**

The first issue was about expanding survey powers to include additional issues. As we said earlier, issues such as community planning and well-being would be most appropriately addressed through consultation and any future local government reform Bill. There is a facility in clause 3 to allow additional matters to be taken on board in the surveys. The clause was designed to cover the key issues and to allow councils the facility to cover other areas if they wish to do so. It was designed in that way, so as not to be too prescriptive. In addition, there is a power for the Department to direct that councils add on additional survey issues if that is felt necessary.

When the powers are transferred, councils will immediately have the power to undertake

surveys and to carry out the preparation of their new plans. Any work that has been done by the Department can be taken on by councils if they so wish, but councils have the ball in their court at that stage, so they can decide whether they will take that work forward.

The other issue that was raised was neighbouring districts. The clause allows councils to keep under review matters in neighbouring council areas that impact on their areas, should they need to. We feel that that is an appropriate power for new councils to have. Quite often, when a local development plan is being prepared, what goes on in one council area is very relevant to what is going on in an adjacent council area. For example, commuting patterns would need to be taken into account. Therefore, we feel that that is appropriate. That covers the key issues.

**The Chairperson:**

There is a concern about the role of agencies and the support of agencies.

**Mr Kerr:**

There is a concern about their ability to buy in to and assist with the process. That is allowed for throughout the development plan process. Key agencies will be consulted and involved throughout, and they will have every opportunity to have input, including at the final stage of independent examination. Therefore, there should be an opportunity for that to happen.

**The Chairperson:**

With regard to the issue of neighbouring districts, could we incorporate a strategy involving joint plans?

**Mr Kerr:**

The provisions relate only to the survey powers of the councils. As you will know, there are additional provisions in the Bill for councils to come together and jointly prepare a plan. If they were to do that, it is likely that they would share the responsibility for the survey, but the issues that they would be surveying are covered in clause 3. Therefore, it is an interrelated point.

**The Chairperson:**

The key point is about districts looking at what neighbouring districts want and possibly

burdening their ratepayers and everything else. That argument has come up, but we can also look at the joint plan element.

**Mr Kerr:**

Yes.

**The Chairperson:**

Clause 3(2)(f) states:

“such other matters as may be prescribed or as the Department (in a particular case) may direct.”

Could the Department direct on matters such as climate change?

**Mr Kerr:**

Yes, it would be possible for the council to look at those issues if it felt that it was important and it would also be possible for the Department to prescribe that.

**Mr Kinahan:**

I am concerned about the time frame. There is a lot of detail in the Bill. Are councils prepared for this? They will have to start this work the moment Bill is passed. Do you think that they can have everything in place by the end of the financial year?

Clause 3(2)(f) will allow the Department to add a whole lot of other matters to what councils need to survey. Will there be guidance on that for councils? I am concerned about councils needing resources and whether we need some form of pilot scheme. There is so much information that could be asked for in surveys, so, until you give councils a tight definition, the process will be open-ended.

**Mr Kerr:**

That is an important point. Part of our thinking was to avoid overburdening councils with long, prescriptive lists of tasks that they must do within certain tight timescales. The idea was to give the basics, which can then be built up in guidance. The level of detail that councils go into in some of those areas will vary, because some factors will be more important to their local development plan than others, and that is an important point. The concept of proportionality

means that you must make sure that the work that you do is proportionate to the outcomes that you are seeking, based on the importance of the issue in the area and the impact that it will have on the final local development plan document. So, it will be focused on that, and it is very much not a provision that requires everything to be surveyed, as that would involve a lot of work and be of questionable value.

**Mr Kinahan:**

Nevertheless, we need some guidance at the beginning.

**Mr Dallat:**

My apologies for coming in at the tail end of this. Will the Bill deal with all aspects of planning, including the regeneration of derelict areas?

**Mr Kerr:**

If a council is concerned about an area where regeneration is an issue, that would be covered by clause 3(2)(a).

**Mr Dallat:**

You and I know that, in every community, there are areas that are in danger of becoming derelict. They are in every town. Will the Bill oblige or put an onus on councils to monitor that, so that we do not have the situation that exists in most towns, where whole streets and areas are boarded up, vandalised or set on fire? The whole concept of renewal should be continuous, which is what happens in some American towns.

In addition, what is in the Bill to make sure that history does not repeat itself? Although it may be far too far back for you to remember, I am thinking about large parts of England, such as Corby in Northamptonshire, which appeared to have all the necessary features but, at the end of the day, had nothing. Even today, despite people's best efforts, it is still not a community.

**Mr Kerr:**

On your first point, the onus is clearly on councils to keep under review matters that might be expected to affect developments and their planning, and councils must do that if, as you said,

there is a particular issue in an area or a community.

The second point, on whether history is repeating itself, is addressed in the Bill in a wider sense, although maybe not so much in that clause. It goes back to our conversation about the new spatial and holistic approach to planning, which is based on community planning and will take proper account of all issues that build and shape communities. In its widest sense, that is addressed in the Bill.

**Mr Dallat:**

Thank you for that. I need to be convinced that those two aspects of planning will be delivered and that the onus will be on councils to be proactive, so that, instead of continuing to be dictated to by third parties such as developers, they have some ownership of the area that they manage. However, I am not convinced that the Bill in its present form is strong enough to address that. The public need to be convinced that it will make a real and genuine change to how planning works and will be driven by the needs of the community rather than the speculators. As we know, they do not even have to build anything. Many of them are managing derelict sites. That may not be the case so much at the moment, but that was the practice for a long time; they filled the attic full of art treasures by just buying derelict buildings and leaving them there. I hope that you appreciate what I am saying. I would be full of enthusiasm if I could be convinced that those two aspects of planning will be delivered.

**Mr W Clarke:**

Sorry, Chairperson; I have been popping in and out of the meeting. Was the point about including climate change at clause 3(2)(a) dealt with? Is it a good opportunity to put climate change in there?

**Mr Kerr:**

That is not meant to be an exhaustive list of absolutely every single issue that needs to be kept under review to inform the development plan. Councils can address an issue such as climate change if they feel that it is important for the planning of their areas. The Bill provides an opportunity for them to do that and for us in the Department to prescribe that that is necessary.

**The Chairperson:**

That is under clause 3(2)(f).

**Mr Kerr:**

It is under clause 3(2)(e) and clause 3(2)(f), because clause 3(2)(e) gives councils that opportunity.

**Mr W Clarke:**

Mitigating the impact of climate change is not an ordinary issue. This Bill is to see us through the next 20 or 30 years; maybe longer. There needs to be a greater focus on climate change. The words “mitigating the impact of climate change” need to be in the Bill.

**Mr Kerr:**

We will address climate change through the revision of PPS 1 in the near future.

**Mr W Clarke:**

I understand that a new policy is coming out and there are loads of —

**The Chairperson:**

Excuse me for just a moment. You are saying that that general principle is fine. However, Mr Clarke is asking whether we can incorporate a reference to climate change in clause 3(2)(e) or clause 3(2)(f). You are saying that you cannot have an exhaustive list.

**Mr Kerr:**

Yes. One option is to list absolutely everything under clause 3(2). However, we have a general list that would cover issues such as climate change and many others that are relevant to the development planning of a council area.

**The Chairperson:**

You are looking at putting that in PPS 1.

**Ms Smith:**

Yes, there is a commitment that PPS 1 will deal with climate change. Climate change is an interesting issue in this respect because it is complex. To put a reference to it in the Bill could potentially introduce something that could be difficult for councils to comply with because there are definitional issues about climate change. For example, what exactly do we mean by climate change and how is it measured?

A more effective way to deal with climate change is through PPS 1, where there is the opportunity to be more discursive and set out exactly what we are talking about.

The provisions dealing with survey allow them to take the appropriate measurement for climate change. We are looking at the physical, social, environmental, economic characteristics of the area, and so on. There are huge opportunities for councils to collect data or make a survey, should they wish to do so. The flexibility exists; then we can discuss what climate change is through PPS 1.

**Mr W Clarke:**

Climate change and its impact on planning are widely recognised. I am not going to be the dog in the manger about the issue, but Governments throughout the world recognise the impact of climate change. If we are introducing a new piece of planning legislation, climate change should be on the face of the Bill in some form. Adding it to a list does not give credit to the issue we are talking about. All aspects of planning, including spatial planning, transport, flood defences, forestry and carbon sinks, will be affected. It is such an important issue that it should be on the face of the Bill. We will revisit it.

**The Chairperson:**

Climate change would sit well in clause 3(2)(a), where the Bill states that councils must keep under review

“the principal physical, economic, social and environmental characteristics”  
of the council’s district. “Climate change”, with a comma, would sit well in there.

**Mr Kerr:**

The difficulty is what is meant by the phrase “survey climate change”?



**The Chairperson:**

It means sustainability and everything else, and trying to encourage people.

**Mr Weir:**

It could mean just putting a stick in a field.

**The Chairperson:**

It is a serious issue for the Committee. We are developing policy for the future, so we might as well start off on the right track. Climate change is an issue; it has been one in this mandate for the past four years.

**Mr McGlone:**

I am glad that you mentioned this mandate, Chairperson. You and I have sat through extensive inquiries into climate change. However, Angus has put his finger on the matter. How does one define climate change? The Department does not have a stand-alone policy on the matter, and neither do the Executive. Most of this is EU-driven. We should not be sitting here on our own, trying to develop a policy on climate change when no stand-alone policy has been devised either by the Department or the Executive. For us to ask officials who, naturally, have been given no direction by the Department or their political overlords in the Executive as to what climate change means is wrong. It is little wonder that we struggle with this.

**The Chairperson:**

The witnesses need not answer that, but if they wish to respond they can do so.

**Mr Dallat:**

Today in the newspapers, there is a picture of a polar bear sitting on a lump of ice floating down a river. That polar bear knows what climate change is.

**The Chairperson:**

I thought that the previous Minister of the Environment, Mr S Wilson, had dealt with the polar bears during his time.

**Mr Weir:**

The wording of the Bill is

“principal physical, economic, social and environmental characteristics”.

I find it difficult to see how climate change, in the broadest sense, is not already covered. I do not see why there is a specific need for reference to it. Clause 3(2)(a) covers the whole gamut of things. To be brutally honest, if we were to adjust it —

**The Chairperson:**

And then clause 3(2)(f)?

**Mr Weir:**

Clause 3(2)(f) also ensures that it is covered.

**Mr Kinahan:**

It is there.

**Mr Weir:**

It is covered. It does not need to be added in explicitly.

**Mr W Clarke:**

I heard the same arguments from the Department of Agriculture and Rural Development during the Agriculture Committee’s consideration of the Forestry Bill. DARD argued that there was no need for climate change to be on the face of that Bill. However, Committees exist to bring forward legislation, along with Departments, and through the work of the Agriculture Committee, climate change was put on the face of that Bill. As we go through this process, we will get it on the face of this Bill. I think that it is up to the Department to say where climate change should be put on the face of the Bill.

**The Chairperson:**

It was included in the Forestry Bill through the wisdom of the Minister of Agriculture and Rural Development, I may add.

**Mr Kinahan:**

I wonder whether the answer is via a clause that relates us to European legislation, because that is what drives the climate change legislation that we have to follow. It is covered in the Bill, but I sense that the member wants it to be specific.

**Mr W Clarke:**

We can come back to it.

**The Chairperson:**

If the witnesses are saying that the issue is covered in the clause; then some members want it to be included specifically. Will the witnesses come back to us on that point? Do you want to say something more, Patsy?

**Mr McGlone:**

It is on a separate issue.

**The Chairperson:**

Does it concern this clause?

**Mr McGlone:**

Yes. It is about a local policies plan.

**The Chairperson:**

We will deal with that later. Are members content with the explanation of clause 3?

*Members indicated assent.*

**The Chairperson:**

We will move to clause 4, which is entitled: "Statement of community involvement". We talked about some of the relevant issues in the preparation session. I remind members that clause 4 was generally welcomed, but, as with the Department's statement of community involvement, respondents wanted clause 4 to include a requirement for local authorities to monitor the impact

and effectiveness of their statements of community involvement in relation to section 75 groups. They also wanted the Bill to specify a time limit for the publication of the statement. In addition, almost all respondents wanted a statutory link in the Bill between the statement of community involvement and community planning.

Some respondents wanted clause 4 made more specific by amending terms such as “attempt to” with “must”, and “may” with “will”. They also wanted community groups and the public to be given statutory rights of participation in the preparation of local development plans. The Committee wanted the importance of the neighbourhood notification to be recognised.

**Mr Kerr:**

We touched on a number of those issues, to some extent, when we were looking at the Department’s statement of community involvement a couple of clauses back. When it comes to monitoring and time-limiting the statement of community involvement, it is our intention to provide in subordinate legislation more guidance on how the statement process works. At this stage, it is not clear whether we want to go for prescriptive legislative requirements on timescales. We are aware that these are new processes for councils. As soon as time limits and timescale are brought into statute, it can become very difficult for councils to bring those things forward, particularly first time round. We are going to look at that very carefully. We are not saying that we will require councils to prepare statements of community involvement within a certain time.

**The Chairperson:**

If we were to build in a two-year review, it would be part of that process.

**Mr Kerr:**

Yes. There will be a requirement to keep the statement of community involvement up to date and relevant, which will be important in a particular area as time goes by. We have covered the issue of the link with community planning.

**The Chairperson:**

It is an important issue. I know that some members were not here at the start of the discussion, but that is clearly a major element. Have we covered neighbourhood notification?

**Mr Kerr:**

Yes, we touched on that earlier.

**The Chairperson:**

That is all part of the jigsaw when it comes to community participation.

**Mr McGlone:**

I raised neighbourhood notification before, as you did, Chairperson. The fact that it is not done in some cases, particularly when it applies to plans involving close proximity to housing, literally drives people bonkers. We went through all that before. Have you developed any process whereby people are required by certain criteria to notify neighbours? I do not know whether you use distance or amenity criteria; whatever it might be. When notification is not given, it definitely causes serious problems among neighbours.

**Mr Kerr:**

Would it be possible to come back to the Committee on neighbour notification when we deal with the plan management aspect of planning applications? Is that possible?

**Mr McGlone:**

That is OK.

**The Chairperson:**

Are the witnesses aware that notification has to be displayed on sites in the South? Has that option been looked at? Obviously, it applies to rural areas only.

**Mr Kerr:**

Councils could suggest such measures through the statement of community involvement.

**The Chairperson:**

Clause 4(3) states:

“The council and the Department must attempt to agree the terms of the statement of community involvement”.

It has been suggested that the words “attempt to” be removed. Has that been considered?

**Mr Kerr:**

Basically, it is anticipated that we will work closely with councils throughout the development plan process. Normally, there will be agreement. However, if that does not happen, there is an opportunity, later in the clause, for the Department to be able to issue a direction to which the council must reply.

**Mr Weir:**

I do not see how legislation can require people to agree something. Ultimately, if there are two sides, how can they be forced to agree? One can encourage them to do so and facilitate agreement.

**The Chairperson:**

I am only asking the question on behalf of respondents who suggested it.

**Mr Weir:**

I understand that. I am not sure that it is possible.

**The Chairperson:**

I am not saying that I am in favour of that: I am simply going through the points and asking questions. Obviously, “may” and “will” have the same effect, then?

**Ms Smith:**

The word “may” gives the Department discretion. If it were changed to “will”, that would mean that if the Department and a council were not in agreement, the Department would have to issue a direction when there might be a better way to deal with matter or the disagreement may be so small that it is not worth it.

**The Chairperson:**

The Committee is very disappointed that councils and the Department will not agree. *[Laughter.]*

Do any other members wish to make a point?

**Mr Kinahan:**

Can we see a statement of community involvement from elsewhere?

**Mr Kerr:**

We have examples from other jurisdictions. We can send one to you.

**The Chairperson:**

Are members happy with the explanation? Are we content?

*Members indicated assent.*

**The Chairperson:**

We will move to clause 5, which deals with sustainable development. I remind members that most respondents want to see stronger commitment to sustainable development by replacing the phrase “contributing to the achievement of” with the word “securing”, and for the phrase “sustainable development” to be well defined. There was also concern about the difference in the Department’s obligation to the regional development strategy and those of local authorities. Some respondents also wanted the clause to commit the Bill to tackle disadvantage and poverty. They suggested that it should include a requirement that complements section 75 of the NI Act, which relates to equality. I know that I have gone over some of those issues already. Would the witnesses like to comment briefly before I ask members if they wish to raise any points?

**Mr Kerr:**

The key point, which we discussed earlier, is that we will look at the issue of securing sustainable development, which will strengthen the Bill.

**The Chairperson:**

Are members content?

*Members indicated assent.*

**The Chairperson:**

Clause 6 concerns local development plans. Almost all respondents wanted to see the introduction of a statutory link between those and community plans. Several also sought clarification on the integration with existing area plans and the relationship with planning policy statements. Will you comment on that, please?

**Mr Kerr:**

We have already touched on the statutory link. That will be handled through the local government reform Bill, and we will write to you about that.

As members are aware, the new planning system will still be set within the context of regional plans, policies and guidance from the point of view of the regional development strategy, planning policy statements and other guidance that the Department may issue. Plans will be expected to take those into account and they will be tested through independent examination.

**The Chairperson:**

I can see a problem, which Mr Savage highlighted earlier. Area plans, the regional development strategy and planning policy statements should outline clearly what can be built and developed in each area. The community will then be involved for the first time, and there could be a wish list, which may involve having to explain what PPS 21 or PPS 16 say. That needs to be shown clearly in guidance. Councils need guidelines because the whole thing needs to be explained. That is an important element.

**Mr Dallat:**

The concept of what constitutes a community bothers me a little bit, because I represent a coastal area, including Portrush, Portstewart, Portballintrae and Castlerock — what is left of it. What is the community? In some parts of Belfast, the population quadruples during the academic year. How can we ensure that outcome will be a balanced community? I could not find that out in the past.



**Mr Kerr:**

As we have discussed, the approach will be to define a community for councils in the broadest sense. Therefore, it will include situations such as those the member has outlined, in which communities change during a period of time because of student populations and that sort of thing. Councils will have to look at the issue of balance when preparing their development plans. That flows down through the regional development strategy. Balanced communities are an issue that should be addressed.

**Mr Dallat:**

I understand that fully. I asked the question because local councils that will inherit planning do not have much passed on to them. Without wanting to be offensive, look about you: places such as Portballintrae are gone, as are Castlerock, Portstewart and other areas. If we are to have this enormous Planning Bill, a lot of people will want something in it that defines to some degree what a balanced community is and how it is achieved. Otherwise, a lot of the material will be of no value because it will be totally wrecked by those who have the resources or desire to make it unbalanced. Communities could get wiped out: churches and schools could close. The few people who remain will be tortured 24 hours a day if the plan is unduly influenced by one element of community.

**Ms Smith:**

The strength of the whole process of developing the plan is that it is the council's plan, and the council has to work with the community. As Angus said, the definition of community is created to be very inclusive. The whole community will have the opportunity to influence that plan, which is drawn up by local councils and local people. Therefore, the vision should reflect the thinking of the council and the community. It gives an element of local control that does not exist at the moment. The reason for putting powers back to councils is to make sure that that local democratic control is there.

**Mr Dallat:**

Will you explain how local councillors will acquire the power to do that, since your Department was not able to do it? There is nothing in the Bill that addresses balanced communities.

**Ms Smith:**

The Bill transfers the planning powers, that is, the powers to work with communities to develop the plan.

**Mr Dallat:**

That is fine. I want to buy this Bill, but, at the moment, I do not even want to put down a deposit on it. I need to be convinced that transferring those powers to local councils will enhance the quality of life in communities. I know enough about local councils to know that they will not go out and do what you have failed to do, which is to achieve a balanced community, unless there is something in law that makes them do it.

**Mr Kerr:**

In the future, there will be an opportunity for councils to be innovative in the approach they take in their development plans. For example, if a council is dealing with the north coast, the front-loading process of a community consultation exercise could throw up the key point about second homes and student accommodation in that area. Therefore, it will be perfectly within the ability of councils to bring something forward in their local development plan that specifically addresses the issue, maybe more so than departmental officials were able to do in the past.

When we were researching this, the best examples of plans that we came across in other jurisdictions involved local members or mayors taking the lead with the planning function and addressing the issues that the community brought forward. One got a real sense of that, more so than one does working in the departmental scenario that we have had in Northern Ireland for so long.

**Mr Dallat:**

I do not want to prolong the matter. I mentioned the north coast, but I was not talking specifically about that. I am sure that you know nice models of perfection. I know that a lot of plans were influenced by local councillors who were lobbied — and I am being nice here — by people with power and influence to put something somewhere that will make them a lot of money, rather than thinking about the needs of the community. We will leave it at that, but we will come back to it again.

**The Chairperson:**

It is an issue that is close to your heart. There are new powers, and we cannot prevent what has happened in the past. However, we can change it through this policy and ensure that it does not happen in the future. There is no doubt that a lot of powers are being transferred to councils. That is why we keep harping back to the community plan and to community involvement.

**Mr McGlone:**

One issue that NILGA raised was that the cost of the required survey of a district preparing local development plans and annual monitoring reports is not included in the planning fees. I am not making a case that it should be, but we are into the question of full-cost recovery and the cost of making and processing a planning application from beginning to end versus the cost of the planning process. I have seen some of the costs proposed, and a number of them are exorbitant. In the interests of the consumer and those who work in construction and in the local economy, I do not want to see any inhibitory costs being imposed on applicants.

I am anxious to hear your thoughts on the division between where the costs associated with policy development should come from and the cost of processing a planning application from it being stamped, validated and going through the site inspection to issuing a determination.

**Ms Smith:**

Councils can pay for the planning system in three ways. First, they will have income from fees. We are reviewing the fees, which often do not reflect the real cost of processing applications. Those not paying their way are the very big applications. That is why the maximum for various fee categories has been extended upwards. The cost of applications is not being covered by the fee that they attract.

Small applications are, in effect, subsidising the big ones. So, although we are extending the maximum, some people at the lower end, with very small applications for single houses and so on, will pay less. The fee structure will be more realistic and much fairer. Councils will also have some sort of grant and the rates. So, they will have a choice in how they use their resources.

**Mr McGlone:**

The model, as you outlined it, Maggie, is based on the concept that there will be a big application. However, the big application does not exist at the moment, and there is not likely to be one for the foreseeable future. Many developer sites are just extant and some are lying vacant. Therefore, any model developed on that basis for handover to councils will in many ways be based on a notional income that potentially could come from bigger planning applications that do not exist and are not likely to come forward.

At the moment, you are saying that smaller applications are subsidising the rest of the planning process. We will still be in a situation of having notional incomes, and they will remain notional because the bigger applications are not coming in. Therefore, we are back to the situation in which councils will be seen, on paper, to be inheriting something that could be cost neutral but which, in practice, will be the opposite because of the nature of the economy at the moment.

In addition, you are throwing in other issues such as recouping the costs of EIAs, etc. I am very interested to hear where all this is going, especially policy development. You said that there might conceivably be a grant to councils for that. Is that —

**Ms Smith:**

The councils have the block grant at the moment.

**Mr McGlone:**

I know that.

**Ms Smith:**

That is what I am referring to.

**Mr McGlone:**

However, you are handing councils additional responsibilities. We have all been through consultation exercises here, there and everywhere. However, if you throw into this the likes of a development in an area plan, God knows where the costs will stop whenever one includes

barristers, specialist legal opinion, etc. I sat through one, and through part of another one, so I have a fair idea of the sorts of costs that are floating around in that room, including specialists, planners etc.

That will become a very important issue in practice for councils when the handover comes about. Councillors, and especially ratepayers, will be asking whether they are being sold a pup with proposals for fees handover and fees structuring as they are at the moment.

**Ms Smith:**

I cannot comment on issues to do with the grant in detail. I was not suggesting that there would be any change or addition to the grant. As you know, we have carried out the consultation in respect of the fees, and we will be coming to you shortly with the usual synopsis of the consultation responses, our proposals, and so on. We will have all of the information then, so that will be an opportunity to discuss it in detail.

As regards what is being handed over; we are restructuring, downsizing and changing the shape of the planning system in DOE. Part of the reason for that is to ensure that we have the right number of people in the right places when we hand the system over to councils. Therefore, we will be handing over the right system for each council cluster.

**Mr McGlone:**

It may be unfair of me to labour the point with you, but I do not see the funding for that key policy area being embraced within any reasonable full cost recovery for the processing of a planning application. There will still be a void in the funding, in so far as the responsibilities and duties of the councils and the roles that it is anticipated they will take on board.

**Ms Smith:**

At the moment, the fees focus on applications. We are also looking at areas for which the Planning Service is responsible and for which councils will be responsible in the future and where it would be reasonable to recoup costs. That work will start soon; in fact, it will start when we get the first phase of the planning review out of the way. We will know more after that. The system is working effectively. We are reshaping it; we are shaping it so that it will be right for individual

councils. The other details still have to be worked out.

**The Chairperson:**

I think that we are happy with that. We will pick up on some of the issues later, when we are discussing other clauses.

We move to clause 7. I remind members that most respondents were content that councils should be required to produce a timetable, but many sought clarification on the detail.

**Mr Kerr:**

The detail will be provided in subordinate legislation and in guidance.

**The Chairperson:**

There are no questions on that, so I will move to clause 8. I remind members that many respondents found clause 8 to be vague and suggested amendments to make it more specific. As with earlier clauses, there was almost universal support for plan strategies to have a statutory link to community plans. There was also a suggestion that a commitment to address climate change could be incorporated in the clause.

**Mr Kerr:**

Further detail about what a plan strategy will contain, over and above what is in clause 8(2), will be set out in subordinate legislation. There will also be guidance for councils on the preparation of plan strategies.

**The Chairperson:**

Do you have a time frame for the subordinate legislation? Maggie, you talked about the memorandum. What is the earliest date that we will be able to see all of the proposals.

**Ms Smith:**

The memorandum sets out the areas in which there will be subordinate legislation. On 10 January, we sent you a timetable, which set out the various stages.

**The Chairperson:**

It is in our papers; I am aware of that. I want to nail down the detail of the subordinate legislation. Is it in the timetable?

**Ms Smith:**

Yes. It is also worth saying that the good progress being made on the Bill is allowing us to push forward with subordinate legislation.

**The Chairperson:**

Once again, this is about the link with community plans and climate change. Do members have any questions on the clause?

**Mr McGlone:**

Has the Department sorted out the matter of general conformity with the RDS?

**Mr Kerr:**

The wording of clause 8(5)(a) is:

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

We discussed that at our previous meeting. It is a changed approach from that which applies to the Department and its plans, which use the phrase “general conformity with”. There is also a statementing process in legislation.

**Mr McGlone:**

Does that mean that clause 1(2)(a) and clause 8(5)(a) will use the same vocabulary?

**Mr Kerr:**

Yes. The issue was raised before. We are going to look at that to determine whether we can come up with a similar approach for both clauses.

**The Chairperson:**

Do any other members wish to comment? OK. We have the timetables, but we need to see the

detail.

We will move to clause 9, which is entitled “Local policies plan”. Most respondents sought more clarity. Will you give us a bit of detail for members and for those respondents?

**Mr Kerr:**

Again, the issues are similar. The details, as with the planning strategy, will be provided in subordinate legislation and in guidance. The local policies plan is, obviously, the more local aspect of the local development plan, whereby councils will determine zoning and local policies. The plan strategy is much more strategic.

**The Chairperson:**

Obviously, capacity building, support, etc, have to be taken into account when giving power back to councils to undertake the whole process. I note that clause 9(2) states:

“The local policies plan must set out —”

There is that word “must” again. We will liaise with respondents about specific issues, but do any members have any comments now?

**Mr McGlone:**

I am interested that people were looking for more detail on the required form and content of local policies plans. I raised the issue earlier of how compliant or otherwise local policies plans are with the likes of the RDS or, for that matter, planning policy statements? That is pretty important. Although I understand the rationale, how it rolls out in 11 different variants could lead to problems. Are you going to come back with more detail on what it means or what form it will take?

**Mr Kerr:**

The current wording includes the phrase “must take account of”, although we are going to look at that. The approach is that the plan strategy and the local policies plan must be done within the parameters of the regional policy and the RDS. The lock, as we see it, is the independent examination stage at the end of the process. One aspect of selling the process is the alignment of local development plans with central government plans, policies and guidance. In a sense, that is



where we feel that those issues will be tested and thrashed out so that we can be sure that the local policies plan for a particular area properly takes account of regional policy and guidance. That is the way we see it being achieved. It will not be achieved through a standardised approach; it will take flexibility to let local areas do their own thing to some extent.

**Mr McGlone:**

Flexibility and doing your own thing is a concern. However, is it correct that this will be subject to ratification by the Department?

**Mr Kerr:**

At the very end of the process, yes.

**Ms Smith:**

The independent examination is very important in that regard.

**Mr McGlone:**

Thanks for that.

**Mr Chairperson:**

I want to talk about training and guidance. I mentioned earlier about conformity and adhering to policies. When does this kick in? It is all very well to say that local policies can be drawn up, and outline to what they are to adhere. However, there is a training exercise involved and an understanding to be gained about what can and cannot be developed. When will that happen?

**Mr Kerr:**

It is already beginning through the pilot exercise with councils, whereby they and the Department can start to get a feel for how this will work. Also, we are already working on guidance which will be made available.

**The Chairperson:**

That is why having a review of how the whole process will work is key. Do members have any other questions?

Let us move to clause 10, the independent examination. I remind members that many respondents questioned the proposal to appoint independent examiners. Some suggested that responsibility for examination should remain with the Planning Appeals Commission (PAC), which should be given more resources, if necessary; some suggested that it might be appropriate for the PAC to appoint independent examiners when it needs additional capacity; some wanted confirmation that independent examiners would perform the task in the same way as the PAC; and others suggested that the PAC should appoint independent examiners. So, there is food for thought. Does the Department wish to comment?

**Mr Kerr:**

The approach that the Bill brings allows flexibility for the Department to go to independent examiners other than the PAC as a last resort. When a local development plan is coming through, the first point of contact will be to ask the PAC whether it can do an assessment and, if it can, there should be no problem. Due to the way things worked in the past with development plans, there has been a tendency for them to stack up when there has been a problem with resources and when the PAC has been unable to carry out an independent examination of a plan and produce a report within what the Department considers a reasonable period. This provision is being included to allow the Department the ability to have the flexibility to appoint someone in those circumstances.

As to how it will work, and to ensure that the appropriate people are appointed, the appointment procedure will have to take the usual government approach and will adhere to appointment policy. It will be done to ensure that the independent examiners will be independent and suitably qualified. It is similar approach to that used elsewhere. It was used for the independent examination of the RDS first time around and it is also used for Roads Service when it holds major inquiries for new roads, etc. The precedent for the approach exists and we believe it to be necessary to ensure that we do not have the same problem that we have had historically with delays to plans.

**The Chairperson:**

So, the Department is not in favour of councils appointing independent examiners?

**Mr Kerr:**

The provisions in the Bill do not allow for that.

**The Chairperson:**

We keep mentioning front-loading the system. If, in an ideal situation, people are being trained and are going through development plans, etc, we should be trying to get things right at that point. I know that there should be a challenge mechanism and independence, but we need to try to minimise those aspects given the time that some examinations and enquiries take. Should we concentrate more on building capacity and carrying out a review rather than saying that, at the end of the day, we need to have something in the Bill to ensure that we have the right checks and balances, and that there is equality, etc? We should look at front-loading.

**Mr Kerr:**

That is right. The fundamental approach is, in a sense, to improve front-loading so that we do not end up with the situation that we have had here historically, where a draft plan is issued, and then people suddenly become engaged because they see the effect that it will have on their local community, and they start to submit hundreds of objections. Through the new approach, we are trying to sort issues up front so that the level of objection and representation at the independent examination stage is much reduced. I agree absolutely.

**The Chairperson:**

It goes back to capacity building and training, etc. Some council areas are largely rural. This will impact differently on urban and rural areas. I am not making a distinction; all that I am saying is that we have to be realistic about what a public representative will be asked to do. Constituents will ask questions, and we would prefer to get that part right. People have asked about the independent examination. The Department is giving powers to local authorities to develop plans and a vision, but, at the end of the day, we are saying that the Department must make sure that it is right. Looking at this from the other side, the Department should be trying to encourage councils to train people and should be giving them the resources to do so. Perhaps they will get it about 98% right; it is not possible to get it correct all the time. Do members have any questions

about clause 10?

**Mr McGlone:**

BCC made the point that:

“the Department should only appoint a person other than the PAC to conduct a hearing in exceptional circumstances when there are unacceptable delays caused by the increasing workload of the PAC. The wording of the statute would need to be amended to incorporate this exceptional clause”.

That is a very sensible proposal, because all I have to say to the witnesses is — judicial review. As we know, a judicial review of any area plan can cause inordinate delay. It could lead to a stack of area plans, one after another, a number of which are under judicial review and are hanging. They are delayed, and they delay the whole process. Eventually, area plans will go behind time while some come on board on time and are being reviewed. Is that sensible? If five or six area plans are being reviewed or are being independently assessed by the PAC, such provision should be factored in. There should be a one-off appointment of independent assessors to speed up the process and help break the workload. That can be brought about by reasons and circumstances not of anybody’s making other than the person who takes the judicial review, for whatever reason they choose to do so.

**Mr Kerr:**

Yes. That is the purpose of the clause. It has been written to allow the Department to do that regardless of the circumstances. It is a permissive power that enables that to happen if necessary for whatever reason.

**Mr McGlone:**

Would that person have the same powers as the PAC?

**Mr Kerr:**

Yes, and they would take the same approach.

**Mr McGlone:**

You thought about those types of circumstances. That is OK.

**The Chairperson:**

Have there been any discussions with local councils about potential legal costs, liabilities etc?

**Ms Smith:**

That goes back to the discussion of a few minutes ago. Our aim is to ensure that we hand over a workable system to councils. That is what we are working to achieve.

**The Chairperson;**

I will take your word for that, Maggie. The issue was raised. Obviously, it is a major issue for councils.

**Mr Kinahan:**

I am sorry to be coming in and out, and you may have already discussed this, but will there be a timeframe so that things do not end up sitting with the Department for ages?

**Mr Kerr:**

The overall process will be guided by the timetable, which has to be agreed up front. So, that should not happen. The idea of the new development plan process is that it should be properly project-managed because we recognise that there were problems with delays in the past.

**The Chairperson:**

We move to clause 11, “Withdrawal of development plan documents”. Concern was raised about the Department’s powers under this clause. One respondent said:

“The local authority responsible for the plan development and the programme management should be responsible for the withdrawal of development plan documents at all stages.”

**Mr Kerr:**

Councils will have the power to withdraw plans up to the point when it they are being submitted to the Department because, obviously, after that point they will be with the Department. There will also be the power for the Department to suggest this.

**The Chairperson:**

Are members content with clause 11?

*Members indicated assent.*

**The Chairperson:**

Clause 12 is entitled “Adoption”. Respondents had concerns about the Department’s power under this clause. Will you clarify the clause for members, and maybe address those concerns?

**Mr Kerr:**

From memory, one concern was about the Department’s role at the end of the process in issuing the binding report. The Department’s view is that in the administrative circumstances in Northern Ireland make it appropriate for the Department of the Environment, which will have responsibility for orderly and consistent planning in the region, to have the final say once the independent examination reports have been made.

In practice, the extent to which the Department intervenes in the process undertaken, and in the independent examination, will be minimal and will focus on the exceptional and on the alignment with central government plans and policies. It is more of a safeguard and about ensuring that there is a consistent approach across the region.

**The Chairperson:**

One council said it was concerned that:

“there appears to be an absence of a consultation or dialogue between the department and the Council prior to the adoption of the development plan”.

**Mr Kerr:**

There will be consultation throughout the local development plan process. In that way, it will work. There should always be close liaison between councils and the Department. That is the way it works in all other jurisdictions. The idea is not to end up at independent examination stage with something that is completely out of sync with what is required.

**The Chairperson:**

I know that, but this goes back to knowledge, and training, and what exactly is required. It should not be a case of having a wish list and a plan that goes awry. People should be fully trained. That is why the community element is key. Are members content with the explanation?

*Members indicated assent.*

**The Chairperson:**

I will move to clause 13. I remind members that most respondents wanted to see more detail about the time frames. Angus, will you clarify those, please?

**Mr Kerr:**

Greater detail will be provided in subordinate legislation. We expect councils to carry out a review every five years, at least. They have the opportunity to do so more regularly, if they want to, but we are insisting that it be done at least every five years. The time frame on how long a plan would last was raised. We envisage that it will last for 15 years. The term of five years is not on the face of the Bill; it will be in subordinate legislation.

**The Chairperson:**

Are members content with clause 13?

*Members indicated assent.*

**The Chairperson:**

I move to clause 14. I remind members that the clause was generally welcomed, but one respondent wanted to see provisions to ensure that all relevant persons are made aware of a proposed review.

**Mr Kerr:**

If there is to be a review, the process followed will be the same as that for preparation of the plan. That includes all the publicity and consultation arrangements.

**The Chairperson:**

Are members content?

*Members indicated assent.*

**The Chairperson:**

I move to clause 15. I remind members that many respondents indicated concern at the level of control being retained by the Department and sought more detail in relation to that.

**Mr Kerr:**

Clauses 15 and 16 relate to opportunities for the Department to intervene in the planning process. They are seen as a safeguard. They are not seen as being something that is routine. This is broadly in line with the approaches taken in the other jurisdictions, and the view is that the Department would wish to intervene only in very exceptional circumstances. Nevertheless, it was felt that this was a necessary provision in case the situation arises.

**The Chairperson:**

Are members content?

*Members indicated assent.*

**The Chairperson:**

I move to clause 16. You touched on that already. Respondents were concerned about the level of intervention, achieving consistency when using independent examiners, and the Department's ability to require reimbursement. Will you comment on that?

**Mr Kerr:**

This relates the independent examination process. We will be ensuring that independent examiners, when appointed, will be operating the same process and approach as the PAC would operate if it were holding an independent examination. There will also be a process in place to ensure that the appointees are independent and appropriately qualified.



**Mr McGlone:**

I presume that the process of independent nominations would be agreed with the PAC? That should be the case, because independent assessment is an extension of the process in which it is involved, and that, for one reason or another, such as a lack of resources, it might not be able to take part. Perhaps it is a presumption on my part, but these things do pop up now and again. Has the PAC bought into this?

**Mr Kerr:**

There will have to be close liaison with the PAC to ascertain whether it would be appropriate for us to appoint an independent examiner.

**Mr McGlone:**

I am not talking about a case-by-case basis. Has the PAC bought into the process of appointing other independents?

**Mr Kerr:**

The PAC has been fully consulted and is aware of it. You would have to ask the PAC about the extent to which it supports this.

**Mr McGlone:**

We are at quite a crucial point here, Angus. I do not want to see silos appearing further down the line. There is no reason for that to happen, but I want assurance that the PAC has bought into this process as a way forward. You are bringing forward legislation; it is for you to confirm that the PAC has bought into the process.

**Mr Kerr:**

Perhaps that is something that we can come back to the Committee about.

**Mr Kinahan:**

I want to explore the issue of reimbursement. I presume that councils will have an idea of the costs incurred before they sign up to the process. There was a debate in the Chamber the other day about hitting councils with costs mid-year that they do not know are coming. This needs to

fit into their budgeting.

**Ms Smith:**

Yes. Councils will, obviously, be responsible for their budgets and for drawing up the plans. When they set out their timetables and decide how they are going to develop their plans, they need to take budgetary issues into account. The same applies to the Department when it is making a plan.

**Mr Kinahan:**

Councils will need clarity from the Department about the costs that will need to be reimbursed. They need to know the charges that will be coming back. As I understand it, the costs being reimbursed are departmental costs.

**Ms Smith:**

I beg your pardon; I am at cross-purposes. I was talking about the reimbursement of departmental expenses.

**Mr Kinahan:**

I just wanted to make sure that there is clarity for councils that, if reimbursement is going to happen, they can plan for it and know what the costs are going to be. I am referring to clause 16(7).

**The Chairperson:**

We will get to that again; there is no need to respond unless you wish to, Angus.

**Mr Kerr:**

That provision aligns with those in other jurisdictions where, in the unlikely event that the Department would step in and undertake the plan preparation process, the council would be expected to reimburse the Department for undertaking that duty.

**Mr Kinahan:**

I am just asking whether there is clarity up front so that councils know that they will not be hit

with a surprise.

**Mr Kerr:**

Yes, that would be ensured.

**The Chairperson:**

OK. We will break for lunch and resume at 1.30 pm.

*On resuming —*

**The Chairperson:**

We will continue with Part 2. We are moving on to clause 17, which is about joint plans. The clause was generally welcomed. One council suggested that it would be strengthened if it included the ability to liaise with councils on a cross-border basis. From a personal point of view, that is very welcome. I do not think that the Committee agrees.

**Mr Kerr:**

Cross-border bodies already do liaison and planning work on a number of issues, particularly in relation to the European environmental assessment directive. Guidance will set out how cross-border liaison will take place and on what issues.

**The Chairperson:**

Speaking from experience, we are all talking about competitiveness and giving people a chance. In the likes of the Newry and Mourne and Dundalk areas, we need to give people an opportunity, no matter what the development is, to compete. I certainly welcome it from that point of view. Do members have any questions?

**Mr Kinahan:**

Is it just internal to the island of Ireland, or are we actually talking about borders?

**The Chairperson:**

I think that European funding stretches to the north-west, but that is for another Committee. We

had a good discussion about joint plans. It is like everything else: the devil is in the detail. We talked about all of the other aspects in previous clauses. I think that we are content with it. I remind members that this is informal clause-by-clause scrutiny. There will be other opportunities outside of the Committee to propose amendments or anything else to the House at Consideration Stage.

We move on to clause 18. There was objection to the power being given to the Department by this clause. In addition, one organisation queried how the Bill would address linear infrastructure that may cross several boundaries. That is a key element, and we need to look at that.

**Mr Kerr:**

The point about the electricity network was quite specific. There is power in the Bill to deal with a specific regionally significant planning application, which would be done by the Department if it was about a specific electricity project. Secondly, there is the power in Part 1 for the Department to look at issues of a strategic nature across the whole region. If it is felt that there needs to be a holistic look at energy infrastructure provision across Northern Ireland, the power is there to do that.

**The Chairperson:**

It is a valid point. I want to bring up as an example the proposed North/South interconnector. We are transferring these powers to local authorities. It is about them taking on responsibility, but there will be a perception out there that when communities are involved in all this they will have a stronger say on what goes into their area plan and what they would like to see. The regional significance of major applications clearly needs to be outlined. That issue will keep raising its head until we see it implemented on the ground. It is vitally important.

**Mr Kerr:**

We will come to that in the next Part of the Bill.

**The Chairperson:**

With even a joint council under an 11-council model, when you see major infrastructure the community will ask what participation it is really having. There clearly need to be guidelines.

We move on to clause 19. Questions were raised about the applicability of the clause to waste infrastructure. There was also a suggestion that the development of the electricity network framework should be treated in the same way.

**Mr Kerr:**

The purpose of this clause is to make sure that there is no duplication of work when there are public representations and objections to certain schemes that have a separate process to go through. A road scheme, for example, is dealt with properly through a roads inquiry as opposed to being duplicated in the local development plan inquiry.

**The Chairperson:**

Are members content with that explanation?

*Members indicated assent.*

**The Chairperson:**

There was a suggestion that guidance under clause 20 should include a reference to equality and poverty. Has the Department taken that point on board?

**Mr Kerr:**

We have taken on board the point that it would be helpful if any subsequent regulations or guidance highlighted relevant guidance from the Office of the First Minister and deputy First Minister. We can look at that in guidance, and we are happy to do that.

**The Chairperson:**

OK. Thank you. Are members happy enough with the explanation of clause 20?

*Members indicated assent.*

**The Chairperson:**

Clause 21. One council raised concerns about the cost implications of this clause. Others suggested that monitoring reports should incorporate indicators for shared space, community relations and environmental impact.

**Mr Kerr:**

Basically, we see the monitoring and review of plans as essential to establishing the success of the plan and its implementation, and whether any changes are needed to keep the plan up to date. The other point brought up was the form and content of annual monitoring. We intend to set that up in subordinate legislation and guidance. All of that will be subject to public consultation. It is important to point out that the monitoring carried out has to be focused directly on the implementation of the plan, so it is narrowly focused.

**Mr Kinahan:**

I am coming at this from a council point of view. Is there an example of a report? The councils' complaint is that they cannot get a grasp on the resources they need and what they need to do. I take on board that if you start producing examples, that will raise a whole set of different questions. However, if we handled it properly it might help.

**Mr Kerr:**

We are happy to send some examples of monitoring reports. That is no problem at all.

**The Chairperson:**

The cost issue keeps raising its head. We talked about raising the fees, the workforce model and everything else, but there are a lot of things that we are putting in the Bill to try to ensure equality and checks and balances and everything else. It all comes at a cost, and we need to look at how we are going to deal with that. We talked about fees and rates. From a departmental point of view, even up to a review period, we need to look at the funding of this.

**Mr Kerr:**

As Maggie mentioned earlier, we are looking at both the fees and the funding issue at the moment, in preparation for the eventual transfer. It will be covered in that.

**Mr Chairperson:**

No disrespect, but people are sitting out there in the dark. They do not know how this can be afforded or who will cover it. We are saying that we agree with the transfer, but the councils

need to be properly equipped with sufficient resources to deal with it. The sooner we resolve that issue the better, especially on the ground. It is all very well to sit in the Assembly and go through this. We know what you are saying, but the Minister needs to get out to local councils. Any points, members?

Clause 22. I remind members that most respondents called for a commitment by the Department to produce regulations, and a timescale for their production.

**Mr Kerr:**

This particular clause gives the Department powers to prepare all the subordinate legislation that we have been talking about. The Committee has had a letter from us setting out the timescale for completion of that subordinate legislation.

**The Chairperson:**

Have members any questions? Are we content with that explanation?

*Members indicated assent.*

**The Chairperson:**

That concludes Part 2 of the Bill. I refer members now to Part 3, which is about planning control. We will go first to clauses 33 to 38, about simplified planning zones, and we will cover them all together. I remind members that the Committee has heard mixed views on the introduction of such zones. Some, largely industry, welcomed the idea; others felt that there was no longer any justification for them. One suggestion is that they could be remodelled as renewable energy zones; another is that they could be used for sport and recreation. Most wanted clarification as to how they would work with local development plans; others wanted confirmation that environmentally sensitive land would be protected, even if it had not been designated. Some called for the Bill to require consultation with the public on the designation of simplified planning zones, and others were concerned that they had not been consulted on the principle of their inclusion in the Bill. There are a few things to comment on, Angus. I do not think that it is that simple at all.

**Mr Kerr:**

If I miss anything, call me back.

In respect of the development plan, both powers are separate. We discussed councils' powers to prepare development plans in Part 2, and that power is in place. In addition to that, this is a power to prepare a simplified planning zone, which is carried through from the Department's existing power to prepare simplified zones. Although it is possible for a council to highlight its intention to prepare a simplified planning zone in its plan strategy at some point in the future, there is no requirement for it to do that. The simplified planning zone can simply override a plan, depending on at what point in time it arrives and is brought forward. I hope that that covers the relationship between plan and simplified planning zone.

Any proposal to bring forward a simplified planning zone will have to have full cognisance of environmentally sensitive areas and the requirements of any environmental directive. There is full consultation in the preparation of the simplified planning zone, with the opportunity for the relevant authority, be it the Northern Ireland Environment Agency (NIEA) or whomever, to influence the preparation of the simplified planning zone. The intention is that it will not in any way result in damage to sensitive areas. There are specific areas in the Bill which are removed from clause 38. It highlights conservation areas, national parks and that sort of thing — nature reserves — for which simplified planning zones cannot be prepared.

**The Chairperson:**

We will need consultation on it. We consulted on the broad principles of the Bill. There has been a comment that there was not consultation.

**Mr Kerr:**

There will be full consultation procedures; there are full consultation procedures within the whole simplified planning zone approach, broadly equivalent to the development plan consultations. There is an opportunity for the public and key stakeholders to get involved.

**The Chairperson:**

There are no other points. Thank you for your time. You can take a back seat.



We will go back to clause 23. I remind members that some respondents had concerns about the proposals for applications for demolition and suggested that they should only be required in conservation areas or where it would affect listed buildings.

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

Clause 23 largely carries over the definition of “development” from the Planning (Northern Ireland) Order 1991. It is just being amended as a consequence of a proposal that we have to make sure that the partial demolition of an unlisted building in a conservation area would be under control. We have clarified that. Consent is currently required for demolition in a conservation area or area of townscape or village character, as well as for a listed building.

*[Interruption.]*

**The Chairperson:**

OK. You are aware that the Deputy Speaker will take the Chair in five minutes.

**Mr B Wilson:**

How does the area of townscape character relate to the new legislation?

**Ms I Kennedy:**

It is largely unchanged. There was a requirement for planning permission to demolish a building in an area of townscape character or village character. The enlargement of the definition of “development” deals with the case of an unlisted building in a conservation area and its partial demolition.

**Mr Buchanan:**

I welcome the fact that the provision remains and has been more or less been carried over. It is important that we protect listed buildings in the townscape and conservation areas. It is important that we retain that to protect our heritage, if nothing else — in rural areas especially.

**The Chairperson:**

Clause 24 is about developments requiring planning permission. Some respondents wanted

clarification of the circumstances under which clause 24(2) will apply. They also called for a definition of “normally used”.

**Ms I Kennedy:**

Again, this carries forward the existing provisions in the 1991 Order. As we go through this Part, we will often point out where provision has been carried forward. The clause allows a landowner or developer to revert to the use that existed prior to the granting of temporary permission. It could be for a temporary building. The use of the word “normally” relates to the lawful use that that land was put to in that prior instance.

**The Chairperson:**

Gentlemen, are you happy enough?

*Members indicated assent.*

**The Chairperson:**

Clause 25 concerns the hierarchy of developments, which raised its head earlier. Some respondents felt it imperative that applications of regional significance, especially major infrastructure projects and social housing, be dealt with by DOE, while several called for all council applications to be dealt with by the centre. Others wanted to see broad thresholds or definitions outlined in the Bill and wanted the clause to require account to be taken of the cumulative impact of similar applications for development. Several organisations wanted the Bill to require early decision-making and felt that the clause added uncertainty to the process.

**Ms Lois Jackson (Department of the Environment):**

The Department will deal with regionally significant developments. We felt that the detail for what constitutes a regionally significant or major development is best placed in subordinate legislation — we have copied details of that to you — in relation to the classes and thresholds to be applied.

**The Chairperson:**

The respondents did not have an opportunity to look at the document that we had. They sought clarification on the definition. I hope that they have now got that, but it goes back to community

aspirations. That needs to be clearly outlined from the start, and you have assured us on a number of occasions that that will happen.

**Ms Jackson:**

We will consult on the subordinate legislation as well. People will be able to have a further say about the categories and thresholds.

**The Chairperson:**

Do members have any questions? What about the cumulative impact?

**Ms Jackson:**

Yes, of a local development being directed as a major development. Flexibility is built in to the hierarchy to allow a local development to be directed and treated as a major development on the request of a council. That would be to get around issues like perhaps two local developments creating significance, which would mean that it is major. We will probably run the wording past the Departmental Solicitor's Office, but our policy intention is to make sure that sufficient flexibility is built into the Bill to allow us to do that.

**The Chairperson:**

Thank you very much. Are members content with that explanation?

*Members indicated assent.*

**The Chairperson:**

Clause 26 deals with the Department's jurisdiction in developments that are of regional significance. Respondents wanted the term "regionally significant" to be defined. One suggested that the PAC should be given the role of determining regional significance, as that would provide impartiality. Some respondents were concerned about the enforcement of pre-application discussions, and others wanted the environment to have more significance in the determination of whether a development was of regional significance. They therefore suggested that criteria on that should be introduced.

**Ms Jackson:**

Again, that is where subordinate legislation will help to outline the purpose, rationale and types of regionally significant development that we are discussing. The Department has a role in dealing with strategic and article 31 applications, and clause 26 is a continuation from that. We feel that it will enable the prioritisation of those very significant planning applications, because it will allow us to deal with them directly ourselves and fulfil our duties in that way. That is an important role for the Department.

**The Chairperson:**

Are members content?

*Members indicated assent.*

**The Chairperson:**

Clause 27 is concerned with pre-application community consultation. Can we suggest that we call that “participation”? Do not panic just yet, Maggie; it is only a word.

The introduction of pre-application community consultation was strongly supported, but respondents wanted measures in place to ensure that it was carried out properly. However, one respondent wanted clarity about the extent to which a developer crossing council boundaries would have to meet different council requirements. Another called for clarity on the definition of the word “community”, and another asked for confirmation that pre-application consultation would not be required for amendments to conditions. That is a valid point. I know that we use the word “consultation”, but the process should be about participation.

**Ms Jackson:**

We will probably seek clarification on the definition. However, given that this is an entirely new proposal that everyone has to get to grips with, we will outline it clearly in guidance and subordinate legislation. Therefore, we appreciate that there is a lot more detail on that to come.

**The Chairperson:**

We are relying heavily on subordinate legislation.

**Mr Weir:**

A concern was raised about cross-area development. If two councils were involved, for example, surely such a situation at present would be handled through the planning schedule of one council rather than that of the other. Presumably, one council takes jurisdiction for the matter. It is the same for a planning application. If a legal case, for example, crosses different jurisdictions, someone takes lead authority. I presume that such a situation will be dealt with in the same way.

**Ms Jackson:**

Absolutely. That is probably how it would work in practice when the development in question is not a regionally significant development that crosses the councils in a substantial part of the region. However, a major planning application would be dealt with by a council area, which will obviously be one of the proposed 11. Again, those cross-boundary issues would have to be explained, possibly through the statutory consultee mechanism. It would be outlined that, in such cases, a council would be required to consult the neighbouring council. We will look at that as part of getting around that issue to make sure that the function is not necessarily discretionary but is carried out.

**The Chairperson:**

We would be interested to know how that will be worded in the subordinate legislation.

The issue of any amendment to any condition raised its head on a lot of occasions. Respondents asked for confirmation on whether consultation will be required for that. For example, an approval may be agreed, and some respondents wanted confirmation that no consultation will be required for the amendment of a condition.

**Ms Jackson:**

Again, because that issue was raised, we have to take it forward with the Departmental Solicitor's Office. Scotland consulted recently on amendments to its pre-application community consultation, because people questioned whether they would have to carry out the full community consultation process for what could be the removal or alteration of one condition. Therefore, we need clarification on the types of application that that could possibly apply to, and we will then

look at that.

**The Chairperson:**

I would say that it would be limited.

**Ms Jackson:**

It would be, because the removal of even one condition could be contentious.

**The Chairperson:**

That is why I asked. Thank you for that clarification. Are members happy with clause 27?

*Members indicated assent.*

**The Chairperson:**

We will move on to clause 28, which deals with the pre-application community consultation report. The requirement for a report on the pre-application community consultation was generally welcomed, but many respondents wanted the Bill to specify that responses needed to be taken into account and an opportunity given for the public and community groups to comment on the report. It was also noted that the report should be done at no charge to the public.

**Ms Jackson:**

Obviously, the consultation report would be made available to those who were interested in it. It would be required to be kept on the council's register and would, therefore, be available to view.

Currently in such situations, there is a nominal charge for photocopying or suchlike, and it is up to councils to set that charge. That is how we are dealing with that. Certainly, the report will be of interest to a lot of people who will want to see exactly what was taken on board before a decision on whether to accept a decision was made.

**Mr Weir:**

I appreciate the point, and I would not be against such a nominal charge. Presumably the intention is also to make the report available on the Internet. There would still be some cost to

someone printing off something, but at least people would have the Internet as an option.

**Ms Jackson:**

A whole area of electronic communication will, again, be identified in subordinate legislation. There are certainly website facilities and so on to allow people to view a report.

**The Chairperson:**

We will move on to clause 29, which is concerned with the call-in of applications and so forth to the Department. Many councils were concerned about the clause. They felt that it was excessive and wanted to see it made more specific so that they could see the criteria that would make an application subject to call-in. Some were also concerned about the Department's power to appoint external examiners, and they would prefer to see the PAC fully resourced to deal with all applications as required. There is obviously an issue with the call-in process. Will you clarify that point, please?

**Ms Jackson:**

We appreciate that we have had a few debates about call-in and what it will consist of. The Department will issue a direction on call-in, and it will consult on that as part of the subordinate legislation. We will outline the criteria under which councils will be required to notify the Department of certain types of planning application. The judgement as to whether the Department calls an application in will be based on whether it is regionally significant. That will be subject to consultation.

**Mr McGlone:**

Is the regional significance of an application the only criterion for call-in by the Department? I raised that point before.

**Ms Jackson:**

Yes.

**Mr McGlone:**

Does that mean that no other application, no matter how contentious or seriously laden with

issues it may be, will be called in by the Department?

**Ms Jackson:**

The application will be called in only if it fulfils the criterion of being regionally significant. Councils will be dealing with significant, top-level planning applications. We are suggesting that the types of applications that would be notified would involve a significant objection from a statutory consultee or a significant departure from a local development plan. Obviously, we cannot pre-empt those applications. Some may have a direct impact on the whole region, for example, and the Department will base its decision on that. However, if it is determined that the issues that arise from the application are mostly based in a particular council area, it would be up to that council to deal with the application.

**Mr McGlone:**

Do you not think that that is a bit loose? Perhaps “ill defined” is a better way to put it. An application in an area could ultimately be of major regional significance, for example, on equality grounds, yet it would be initially confined to a district council area.

**Ms Jackson:**

The Department would be made aware of the planning application if it fell within the criteria to be notified. Councils are directed to let the Department know.

**Mr McGlone:**

Your criteria will be so loose as to be uninterpretable, if there is such a word, when determining an application’s regional significance, or they need to be tightened up to say that this or that application is significant. I am picking up on the fact that you have not yet reached the point of giving a proper definition. As I said, the definition is loose.

**Ms Jackson:**

A definition of the term “regionally significant” is in the Bill. However, we would have to fully outline in guidance the types of application that we would consider significant. I think that that is where you are going.



**Mr McGlone:**

I am probably looking at consequential, rather than type of, application, if you get where I am going.

**Ms Jackson:**

The issues that a planning application raises will differ from one application and from one area to the next. The Department will have the advantage of discretion. It will have the discretion to decide whether the issues that a planning application raises are regionally significant. Your issue, perhaps, is about how the Department makes that decision.

**Mr McGlone:**

I am asking how it determines regional significance.

**Ms Jackson:**

As I said, we will use the criteria that we defined in the Bill. We will expand on those in guidance, but we feel that there is sufficient in the Bill to allow the process to happen.

**Mr McGlone:**

When is that guidance likely to be available? We are stabbing in the dark again. It is almost a case of the cart being stuck between two horses.

**Ms Jackson:**

Primary legislation sits with subordinate legislation and guidance. They form a complete picture, but we have to start with primary legislation. We are fairly well established with our subordinate legislation, and, flowing from that, we have identified separate pieces of departmental guidance.

**Mr McGlone:**

I know that that is all part of a jigsaw. The problem is that a major part of that jigsaw is not present. In fact, probably two thirds of it are not present, and the consequence is that the Bill is not being properly informed. Therefore, we are back to where we were earlier.

**Ms Jackson:**

I certainly do not think that we are at a disadvantage at the moment in that the Department currently deals with article 31 major planning applications. The guidance for that is already in place; therefore, the determination of those applications is something that we would —

**Mr McGlone:**

Perhaps I did not explain myself well enough. I am not talking about the quantity or magnitude of a planning application; I am talking about the scale of its repercussions. That application could be for a single house or a housing development, depending on how a council interpreted the planning policy. We are back to the safeguards and to the powers of regional government to call in when there is a difficulty.

**Ms Jackson:**

The power exists to call in by exception any planning application that raises issues of regional significance. However, what I am saying is what it hinges on.

**Mr McGlone:**

Are you saying that it is down to the interpretation of the term “regional significance”, the guidelines for which you are working on? I am labouring this point, because I need to know, but will those guidelines will be in place before the transfer of functions?

**Ms Smith:**

Yes.

**Mr McGlone:**

Are you working on those, too?

**Ms Jackson:**

A whole suite of subordinate legislation and guidance will flow from the Bill.

**Ms Smith:**

We are working on those. Certainly, we are working on the subordinate legislation, and we will

move on to the guidance.

**The Chairperson:**

We will tease that issue out. I think that we got some answers, but the devil will be in the detail.

**Mr Weir:**

Are you confirming and guaranteeing that the subordinate legislation and the guidance will be in place pre-transfer of functions?

**Ms Smith:**

Yes.

**Mr Weir:**

You answered that to some extent in your response to Patsy.

**The Chairperson:**

Thank you very much. Are members content with clause 29?

*Members indicated assent.*

**The Chairperson:**

Clause 30 deals with pre-determination hearings. Several organisations wanted to see minimum criteria with the clause, and one was concerned that councils would be able to decide who should attend a hearing.

**Ms Jackson:**

As I said, we are producing subordinate legislation on the criteria for a pre-determination hearing — I feel that I am constantly repeating myself. The detail on pre-determination hearings will be in the subordinate legislation. However, there will be flexibility for councils, because that is really a council function.

The Department will set out mandatory hearings for certain types of application. However,

councils will have the discretion to hold hearings for other types of application as they see fit. Holding hearings will largely boil down to resources and to what councils have available for them. There will be mandatory hearings and the facility for discretionary hearings.

**The Chairperson:**

We are starting to rely a lot on guidance and subordinate legislation without having had prior sight of them.

**Mr Kinahan:**

Who will decide what is mandatory?

**Ms Jackson:**

We will set that out.

**The Chairperson:**

Are you content with that explanation, gentlemen?

*Members indicated assent.*

**The Chairperson:**

Clause 31 concerns schemes of delegation for local developments. Several councils sought clarity on proposals for schemes of delegation, with one calling for the clause to be amended.

**Ms Jackson:**

Are you looking for an example of a scheme of delegation? We could certainly provide that.

**The Chairperson:**

Yes, that is OK.

**Ms Jackson:**

It is quite useful to see how they work in other jurisdictions.

**The Chairperson:**

I am just checking to see what that particular council's point was.

**Ms Jackson:**

I think that there was an issue about the words "must" and "may".

**The Chairperson:**

For clause 31(1), Belfast City Council suggested that:

"consideration be given to replacing the word 'must' with 'may' ... and delete the sub-sections (a)(i) and (ii). Accordingly, consideration should be given to the removal of sub-section 3".

Do you have any comments to make on that?

**Ms Jackson:**

Essentially, we are saying that a council must prepare a scheme of delegation. We are not saying that it is optional for councils.

**The Chairperson:**

There is that word "must" again. I think that I asked about "must" before the lunch break.

**Ms Jackson:**

I do not think that there will be such an amendment. We want schemes of delegation to be implemented. We want councils to be responsible for introducing them, carrying them out and having them approved by the Department. I do not think that the word "may" is an appropriate substitute in this case.

**The Chairperson:**

"May" is a better word. It is OK, Maggie; there is no call to respond. We just wanted clarification on those points. Do members have any questions about clause 31? Are you happy enough with the Department's explanation?

*Members indicated assent.*

**The Chairperson:**

We will move on to clause 32, which deals with development Orders. Respondents supported definition Orders being drawn up jointly with local authorities but wanted a detailed definition of the term “development Orders”. One respondent wanted the clause to refer to permitted development rights for minerals.

**Ms I Kennedy:**

A development Order is simply a piece of subordinate legislation that sets out the detail of how planning permission is granted. Members may be familiar with the current development Order, the Planning (General Development) Order (Northern Ireland) 1993.

One group of respondents wanted permitted development rights for minerals, and we have been looking at that issue in recent consultations on amendments to permitted development rights.

**The Chairperson:**

Members, do you have any comments to make, or are you content with that explanation?

*Members indicated assent.*

**The Chairperson:**

We will move on to clause 39. For the information of those who were not here, we covered clauses 32 to 38 earlier. Clause 39 is concerned with granting planning permission in enterprise zones.

Three councils had concerns about this clause. One objected to it strongly, another required clarification, and a third was concerned that such zoned areas are often in the ownership of Invest NI and are thereby confined to Invest NI client companies.

**Ms I Kennedy:**

The DOE is responsible for designating enterprise zones under the Enterprise Zones (Northern Ireland) Order 1981. The Bill will simply carry that provision forward. No significant changes will be made to the 1981 Order, and the Bill relates to planning permission in enterprise zones. It

is important to recognise that designation of land is available through local development plans and not just through enterprise zones. A council looking at the local development plans will identify economic development needs at a range of sites, and there will be a choice of site location and so forth in its district.

**The Chairperson:**

Do members have any questions? Is everyone content with that?

**Mr W Clarke:**

I declare an interest as a member of Down District Council, which raised that point. The council is trying to get across the point that it wants a bit of flexibility for enterprises, such as those that are concerned with tourism, in land that was designated for industry, and that tourism is treated as an industry. When it came to designating land, once the Invest NI land was zoned, it was very difficult to get the small industrial parks and so on that were needed. That was particularly the case for small businesses and small units. The council is looking for flexibility and common sense in providing recreational potential, even for those who use the Invest NI site. It also wants waste management potential in Invest NI sites looked at. The council experienced difficulties with that, so that is the point that it wants to get across.

**The Chairperson:**

That is certainly something that we should look at. Obviously, this matter comes down to how land is zoned for industrial use. Clearly, Invest NI is an issue. If it has not secured that land, it certainly has first shout on it. I know that members from different areas will ask for investment in jobs and so on, but there should occasionally be opportunities for other developers in certain district council areas. You are saying that it is down to what the local council wants.

Are there any other comments?

Clause 40 is about the form and content of applications. I remind members that responses to this clause called for more robust validation procedures, the inclusion of issues relating to amenity, nuisance, human health and environmental impacts, and a greater emphasis on ascertaining whether a site is fit for its intended use. One respondent stressed that they did not

feel that applications dispensed with the need for proper assessment by professional planners, and, as such, there was no need to prohibit validation until submission.

Irene, would you like to respond on behalf of the Department?

**Ms I Kennedy:**

Clause 40 deals with the form and content of a planning application as it arrives. Many of the issues raised are procedural and are not directly related to the primary legislation. The Department has a robust approach to dealing with the validation of applications, and it anticipates that councils will do likewise. That is because it is obviously in councils' interests to check that, on submission, applications are valid and contain all the information that is required to allow them to be considered.

The clause will carry forward existing legislation that relates to amenity, nuisance and human health. It also carries forward the requirement for certain statements to accompany planning applications. Those statements relate to access and design. The issues raised in the submissions about amenity, nuisance and human health would all be material factors in the determination of applications, and if information on those is needed for the determination, councils may request it. Therefore, we do not necessarily believe that we need specify the need for a statement on human health or a statement on issues related to amenity or nuisance.

One of the respondents raised the issue of the intended use of a site. That will be a material consideration, and the planning authority will have to take that into account when it determines the application. I am not sure whether the Committee needs me to address any other points on that.

**The Chairperson:**

No, thank you. Obviously those provisions will apply to applications across the board. Is that right?

**Ms I Kennedy:**

Yes.



**The Chairperson:**

Have there been problems with costs incurred in the past, with applications not being properly filled in and sent back?

**Ms I Kennedy:**

Yes.

**The Chairperson:**

That would be burdensome on local councils' costs and resources. Does the clause make that process robust enough? We need to ensure that the situations described do not happen. From experience, I know that many applications, especially individual applications, were sent back at an unseen cost to the Department.

**Ms I Kennedy:**

Yes, and there is obviously a cost to the applicant, and the agent of their application is not progressing as quickly as they would like. Therefore, the need for correct applications is in everybody's interests.

**The Chairperson:**

That is correct.

**Ms I Kennedy:**

Of course, there is guidance on what is required to complete the forms.

**Mr Peter Mullaney (Department of the Environment):**

There are now also fee reckoners. Obviously, one way to get an application wrong is to enclose an incorrect fee. Hopefully, that will be resolved.

There is a difference between what is necessary to complete or to validate an application and the information that is needed to determine it. There is a basic A -to-Z step that everybody has to complete. Over and above that, depending on the nature and type of the application, there are

instances where the planning authority, whether that is the Department or councils, may require additional information. However, that may not necessarily be apparent at the outset.

**The Chairperson:**

People need to be made aware of that. In the past, it has been OK to deal with an ordinary application as a constituency issue, but, when responsibility is given to councils, they must be ready for exactly that. Given that it is not specifically in the Bill, I am checking to ensure that that issue is raised here and that that message is dealt with through guidance or another mechanism. I am only raising the point. Are you aware of that need?

**Ms I Kennedy:**

Yes.

**The Chairperson:**

Are there any other questions? Are members content with that explanation and with clause 40?

*Members indicated assent.*

**The Chairperson:**

We will move on to clauses 41 and 42, which concern the notice and so forth of applications for planning permission and the notification of applications to certain persons. This is the first time in 42 clauses that respondents have raised no issues. Are members content with clauses 41 and 42?

*Members indicated assent.*

**The Chairperson:**

Clause 43 is about a notice requiring planning application to be made. I remind members that respondents wanted clarity on clause 43 where timing and what constitutes a breach are concerned.

**Ms I Kennedy:**

Again, clause 43 will carry forward provisions in the Planning (Northern Ireland) Order 1991 for what are often referred to as submission notices. Such notices are used when a development has taken place without the necessary permission and the Department, or the councils as it will be, asks the developer to submit an application to regularise the development.

It is where the development is likely to be acceptable in planning terms, but an application has not been received and granted.

**The Chairperson:**

Is that retrospective planning? That is an issue. Do members have any questions?

Clause 44 provides for an appeal mechanism in relation to the previous clause. No issues were raised by respondents. If you are content, we will move on, gentlemen.

*Members indicated assent.*

**The Chairperson:**

There seemed to be general support for clause 45, but one organisation suggested that it should be amended to require the Department or council, prior to planning approval, to consult and/or inform developers of planning conditions that are being imposed.

**Ms I Kennedy:**

Conditions are attached following a rigorous assessment of the application. They are required to meet a number of tests. There is also the opportunity for anyone who has conditions attached to their permission to appeal them. The difficulty with the suggestion is that if it were to apply to all planning applications and decisions, it would be quite onerous to consult the applicants before the decision is issued. It may well be practice that, in some cases, there is discussion with applicants before a decision issues as to the conditions that will be attached, but it is not necessary or practical in each case to adopt that approach and to have a requirement that councils or the Department consult applicants on the conditions that will be attached to their permission.

**The Chairperson:**

Do members have any comments? Content?

*Members indicated assent.*

**The Chairperson:**

Clauses 46 to 49 concern the power of council to decline to determine subsequent applications, the power of the Department to decline to determine subsequent application, the power of council to decline to determine overlapping application and the power of the Department to decline to determine overlapping application. Could we not have simplified that? No issues were raised about those clauses. If you are content, gentlemen, we will move on.

*Members indicated assent.*

**The Chairperson:**

Clause 50 is the duty to decline to determine application where section 27 not complied with. One respondent called for clear guidance on pre-application community consultation to prevent challenge and delays. Another called for the clause to include a requirement for the Department or council to take account of any comments made on the pre-application community consultation report by the public and community groups.

**Ms I Kennedy:**

This goes back to the discussion that we had earlier about the pre-application community consultation and the requirement for us to produce guidance. That will certainly set out what those requirements are. What was the second point?

**The Chairperson:**

Including a requirement was the first, and clear guidance was the second.

**Ms I Kennedy:**

It has to be as part of the consideration of the application.

**The Chairperson:**

OK. Content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

Several issues were raised in relation to clause 51, including the necessity of taking into account the effects of human health and the need for environmental impacts to be assessed.

**Ms I Kennedy:**

Clearly, those will be material factors when applications are being considered. The clause deals with the regulations that may be made under it to deal with environmental effects. Some of the suggestions will already be covered through the work that goes into preparing a local development plan. Obviously, issues about well-being will be picked up in the links with the local government legislation.

**The Chairperson:**

Any comments? Content?

*Members indicated assent.*

**The Chairperson:**

With the exception of a call for sufficient resources to be made available to deliver the provisions, which will be dealt with later, no issues were raised about clause 52. Are members content?

*Members indicated assent.*

**The Chairperson:**

Several issues were raised in relation to clause 53, including its applicability to landfill sites and what happens to restoration obligations in the event of insolvency.

Several amendments were suggested to extend aftercare conditions to take account of nature conservation and useful amenity and to require developers to take advice from the Department of Agriculture, Forest Service, the Environment Agency and non-governmental organisations. Irene, would you like to comment on that? I am sure that members will have some questions to ask.

**Ms I Kennedy:**

Clearly, the clause deals with mineral planning permissions, but it would not be unusual for

similar conditions to be attached to landfill developments. For example, restoration conditions also often follow a determination of an application.

In the case of insolvency, the Department can try to remedy the problem by seeking redress from the landowner, if that is a separate person or entity from the applicant. If restoration does not occur and court proceedings fail, the Department or the council can issue an enforcement notice. Provided that the notice is placed on the statutory charges register, any subsequent owner can be held liable for the works. Councils can use powers under section 145 of the 1991 Order to carry out works and require reimbursement.

The suggestion of a fourth category, nature conservation, is something that we would like to take a look at further. We would like to take some legal advice on the term “nature conservation”, because the clause talks about use of land. While we can see how you can use land for agriculture, forestry or amenity, it is important to tease out what use of land for nature conservation would actually mean. Nature conservation may well be more of an objective than a use of land.

**Mr McGlone:**

Where, for example, a quarry site belongs to someone who becomes insolvent, I do not know if there is an answer to that. Is there a mechanism outside the Planning Bill to accommodate that — to revamp the site and get it back into action again? Unless the site is sold and the new owner decides to do something with it, or there is a form of grant aid available to facilitate that, there is no mechanism in the real world to accommodate that.

We have all been around sites where planning permission has been granted, houses have been built, some of which have lapsed, and the next thing you hear the contractor has gone belly up. In those cases, it is a major job to even get the roads in the estate adopted, let alone the sewers and stuff like that. This is a question without an answer.

**The Chairperson:**

How do we deal with that? That is an issue, and it is something that we need to look at. With regard to aftercare conditions, there are some out there who have not complied, and we need to

look at them. You mentioned the insolvency, which is one element. Certainly, we need to take a look at this.

**Mr Buchanan:**

For an application like that for mineral extraction, is it not possible to include a bond sufficient that, if insolvency comes about, Planning Service, DOE or whoever is responsible can come in and restore the site to its full potential? We have a difficulty like that in west Tyrone with mineral extraction from sites. There is a huge concern among residents that the sites will not be restored back to their natural states. There may be some bonds on those sites, but they may not be large enough. Maybe that is something that we should look at: making sure that, in applications like this, there is a sufficient bond to cover any default by the operator.

**Mr Mullaney:**

There is an analogy to road bonds under the Private Streets (Northern Ireland) Order 1980, which Mr McGlone has referred to. I am not aware that that pertains to mineral operations at the minute. Some mineral operations can be substantial in nature and scale. I understand your point, but I think that we will have to think about the practicalities of that. The analogy that I can think of is with the roads bond.

**Mr W Clarke:**

I am glad that the Department is going to look at the nature conservation element. This comes from the quarry representatives, who felt that measures to create the right habitats for indigenous species should be included. If it is coming from the quarry industry, it should be seriously considered.

**The Chairperson:**

I am looking at putting landfill back in to proper condition as best use. I have driven past a couple of areas, and I have seen that quarrying has stopped and it is just sitting there — and I am not saying that it is insolvency. Where is the recourse for that? How do we deal with that? Is it being dealt with here?

**Ms I Kennedy:**

There are provisions further on in the Bill which deal with the review of old mineral permissions and dormant quarries in which working may not have taken place for some time.

**The Chairperson:**

That will be dealt with in other clauses?

**Ms I Kennedy:**

Yes.

**The Chairperson:**

Any other points?

The only issue raised in relation to clause 54 was the need for guidance, in general, for the Bill. We will discuss that later. Will there be guidance in relation to this?

**Ms I Kennedy:**

Yes. It will depend very much on the individual application and the condition that is going to be removed. It will be up to the councils and the planning authority to look at that and give it consideration.

**The Chairperson:**

Content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

On clause 55, it was suggested that a premium fee for retrospective planning applications be introduced and that applications for developments already carried out without permission should attract an additional fee.

**Ms I Kennedy:**

That is included at clause 219.



**The Chairperson:**

OK, gentlemen?

*Members indicated assent.*

**The Chairperson:**

Some councils objected to clause 56, as they believed that it seemed excessive.

**Ms I Kennedy:**

Clause 56 relates to the call-in power that we discussed earlier. It is a necessary part of the call-in process.

**The Chairperson:**

OK. Moving on, there were no issues raised in respect of clause 57. Are members content?

*Members indicated assent.*

**The Chairperson:**

I remind members that many respondents raised the issue of third party rights of appeal on clause 58. The reduction of the appeal time frame from six to four months was generally welcomed, but one respondent suggested that the clause should include a reference to planning and mediation.

**Ms I Kennedy:**

I think there may well have simply been a misunderstanding about the time frame. The appeal period is currently six months and will move to four months.

**The Chairperson:**

Planning and mediation were mentioned. I propose to talk about third party appeals under general issues; I will not bring that point now. Are there any other points? No?

Clause 59 refers to appeals against failure to take planning decisions. Respondents wanted clarification of the period that may be specified by a development order.

**Ms I Kennedy:**

It is currently two months, as established by article 11 of the Planning (General Development) Order (Northern Ireland) 1993, which is the subordinate legislation. It is the responsibility of the Department to change that. A council can agree in writing a longer period with an individual applicant. There may well be changes to that particular non-determination period, which we will bring forward in subordinate legislation, to deal with the different types of applications.

**The Chairperson:**

Ok; thank you. Content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

Concerns were raised about the clause 60 and the provision to lengthen the period for which permission is granted, as it might lead to land banking. Clarification was also sought as to whether the clause imposed a time limit if a time clause is not included. I must say that the issue of land banking needs to be addressed. We have seen the effects and the impact of that.

**Ms I Kennedy:**

I think it is important that you read clause 63 in conjunction with clause 60. Clause 60 allows the time period to be stated as five years or such other time period as may be appropriate in the particular application. On the issue of land banking, we consulted on reducing the duration of planning permissions from five years to three, which would be in line with other jurisdictions. However, considering all the responses received, both in favour and against, the policy decision was that the existing duration of five years should remain.

**The Chairperson:**

I am just putting it to the Committee that we have seen the impact of that and we need to look at it, especially on the periphery of urban settings where land was banked for a period of time when it could have been used for better development or sold for better things.

**Mr McGlone:**

I am not too sure whether the land banking issue can be dealt with just by reducing the duration

of a planning application. What would focus people's minds sharply would be if the land was to be rezoned or de-zoned. That probably goes back to the development plan process. If there was a risk or threat of land being rezoned or de-zoned, you would probably see it being brought into use pretty quickly.

**Mr Mullaney:**

That is quite right in the sense that, even if planning permission expires, if the land in question has been approved on the basis of a zoning, that zoning still pertains. Therefore, the assumption is that, other things being equal, permission would be re-granted until such time as the zoning were to change, if at all.

**Mr McGlone:**

That is right. That brings us on to the development plan process with the councils. They will have the power, with local input and knowledge, to monitor what is happening or not happening, as may be the case, in their district.

**Mr Mullaney:**

Yes. Members may be aware that the Department undertakes an annual housing monitor, which is clearly a fundamental information tool for the preparation of future development plans.

**Mr McGlone:**

I am aware from speaking to other people of the situation, for example, in the United States. In some of the states, and under some of the authorities, this can be quickly done. If land is not used quickly, it is rezoned or de-zoned and other land that could be used brought into use. That seems to work very effectively. How do you think that would work under the new proposals? We talked earlier about the monitoring being done by councils. How does that kick in? You could have monitoring being done and recommendations made, but then you would be into a process of re-consultation and all that all over again.

**Mr Mullaney:**

As Mr Kerr outlined this morning and on previous occasions, there is clearly a mechanism for review of the new style of development plans, and it does not necessarily follow that all issues

have to be addressed. If there is a particular issue relating to housing, the usual land use that crops up, it does not necessarily follow that everything has to be redone just to get your plan through, if those issues have not changed or can be dealt with in the future.

One of the premises of the new development plan system is that it will not only be quicker in preparation from A to Z, but have the facility to review and look at those key issues. How quickly it is done is ultimately a matter of resources — and need, of course. You have to have a need to do it in the first place.

**Mr McGlone:**

Yes. OK. Thank you.

**The Chairperson:**

Is there an opportunity for de-zoning? Say that there are three area plans now and we have gone so far down the road that we believe they should be adopted. Say a local council, in the next couple of years, decides to revisit that. A specific area, especially an industrial area as opposed to a residential one, would be most relevant. If they wanted to change, and it is zoned for a particular use, can it be de-zoned?

**Mr Mullaney:**

Ultimately, to put it in very simple terms, the zoning of land is a balance between supply and demand, although we prefer to use the word “need” instead of “demand”. If need were to be reduced and, when a review arose, there was less need, there is potentially a situation for that to happen.

There is also the regional context. You will be aware that, under the regional development strategy, there have been a number of examples where there has been an issue, when the housing growth indicators have been translated into area plans, as to whether the land zoned in previous plans was all required now for the future. It is not done arbitrarily; we have to look at —

**The Chairperson:**

It is for a particular use. Land zoned for industrial use follows a pattern of previous experience

and years, and it is not necessarily the right area. It has not been established. It just grew up in one area and it has continued, plan after plan, over a number of years. We should look again at the whole process. Maybe it is rezoning as opposed to de-zoning.

**Mr Mullaney:**

It could be. You can have a situation where you zone land for a particular reason, for instance employment, and that is dependent upon roads infrastructure. Maybe that infrastructure has been delayed, or a new proposal makes the land less attractive in terms of access than another area. I am only surmising, but you can conceive of a situation something like that. It is a case of reviewing and assessing the circumstances. It may come to pass, but I suspect that the majority of land will still be deemed to be suitable for its zoning.

**The Chairman:**

Basically, we are drawing a new line and starting all over. It is very difficult to go back over the plan. The developments have been there and the whole argument has taken place in the past.

**Mr Mullaney:**

You have to look at change of circumstance. It comes down to considering whether there have been any changes of circumstances and whether that then warrants a change of direction.

**The Chairperson:**

OK. Thank you very much.

Moving on, no issues were raised under clauses 61 and 62. Are members content to move on?  
*Members indicated assent.*

**The Chairperson:**

One respondent interpreted clause 63 as being applicable only to schemes where a time limit has been imposed.

**Ms I Kennedy:**

That refers back to clause 60. If a time limit is not imposed on a permission, there is deemed to

be a five-year time limit. It is possible to terminate in that case.

**The Chairperson:**

OK. Thank you very much.

One council considered the requirement under clause 64 for the Department to agree completion notices to be unnecessary.

**Ms I Kennedy:**

This is a theme will emerge as we go through these provisions. The requirement for the Department to be involved is part of the Department's proposed oversight arrangements and intervention powers, which very much draw on similar powers in other jurisdictions. If there are certain tools that councils may use that have to be confirmed by the Department, this allows the Department to have a consistent approach across district council areas.

**The Chairperson:**

OK. Any comments? Content?

*Members indicated assent.*

**The Chairperson:**

On clause 65, several councils sought justification for the Department's being able to serve completion notices.

**Ms I Kennedy:**

Again, that is the theme that runs through. These are reserve powers that the Department wishes to retain for the unlikely event that it would need to issue a completion notice. That would be in cases of last resort.

**The Chairperson:**

OK. Content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

Moving on to clause 66. Respondents wanted reassurance that, if conditions are made in error by the planning authority, there should be no fee to change them, and that applicants should be informed well in advance of any conditions likely to be attached to planning permission. Other respondents suggested that the non-material change provision should also be made available to the Department.

**Ms I Kennedy:**

The issue of whether a fee will be charged is a matter for the fee regulations that will be made. It is not a matter for the Bill. This is a new power, devised to allow applicants to address changes that have emerged since permission was granted. We propose to issue some guidance on this, because it is a new provision.

**The Chairperson:**

The guidance is going to require as much paper as the legislation. We are supposed to be environmentalists on this Committee. However, thank you for your clarification. Happy enough, gentlemen?

*Members indicated assent.*

**The Chairperson:**

On clause 67, one respondent welcomed the flexibility that the clause provides to revoke or modify permissions.

**Mr McGlone:**

I may be asking more out of ignorance than anything else, but clause 67(2) states that:

“The power conferred by this section to revoke or modify permission to develop land may be exercised ... where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed”.

I understand that to mean that a planning application has gone through the process and been approved by the planning authority, and then they come in looking to get it changed. What that says to me is that the planning authority has got it wrong. Am I reading that wrongly?

**Ms I Kennedy:**

Revocation could emerge for a number of reasons. Perhaps the applicant has decided that they wanted a different site. That is unlikely in the case that you raised, where development is already under way. It could be that circumstances have changed and there is a need for that permission to be revoked.

**Mr Weir:**

I can think of one example, although it may be unusual, of a major capital work that we are looking at in north Down. I do not think that it has led to any direct change, but before completion of work on a leisure centre, it was realised that it was on a site that, unbeknownst to us, had been a dumping ground a number of years ago. Therefore, issues arose when drilling down because of what was underneath the land. If something comes up during development that nobody knew about, it could lead to some degree of variation in the precise sight lines or something of that nature. Therefore, there could be something that nobody knows about beforehand, but a particular event could happen that gives rise to a need to change.

**Mr Mullaney:**

There have been examples where there has been a change of policy or, perhaps, an adjoining piece of land has been designated for some amenity purpose. There have been revocations, or development plan land has become unzoned. However, there is a potential compensation implication behind revocation, so it is not undertaken lightly.

**Mr McGlone:**

You mentioned the issue of change of policy. I thought that the policy that applied is the one in place at the time of determination. This could open up a floodgate, and policies could be changed. For example, at the point of determination in PPS 21 on rural planning, a new policy could come in within a week, and that person could find that their application could be revoked because of that. Therefore, for me, the policy that is applied is the policy at the time of determination of that application.

**Mr Mullaney:**

That is quite correct, but, in theory, it could be revoked. However, as I say, there is a



compensation implication. That could be undertaken on occasions where a development is of great public significance, and not least because there is a financial implication.

**Mr McGlone:**

Does that mean that it is an exceptional tool rather than anything else?

**Mr Mullaney:**

Yes, it has tended to be.

**The Chairperson:**

Are members content with clause 67?

*Members indicated assent.*

**The Chairperson:**

Clause 68 deals with aftercare conditions imposed on revocation or modification of mineral planning permission. No issues were raised on that clause, so we will move on. Are members content with clause 68?

*Members indicated assent.*

**The Chairperson:**

Clause 69 is about opposed cases in the procedure for section 67 orders. One respondent felt that the clause gave unnecessary scrutiny powers to the Department. Another called for clause 69(2)(c) to include people who originally made representation, as well as others who may be affected but who did not know about the original application or who represent a wider interest.

**Ms I Kennedy:**

That relates to the previous clause. It allows for an appeals mechanism for someone who is faced with the revocation of their permission. We believe that the Department's involvement in such cases is, again, part of its oversight and intervention role, and it allows it to ensure a consistent approach across the district councils. It is clearly a serious issue if a permission is being revoked.

Clause 69(2)(c) would allow councils to consult any other person who, in the council's opinion, would be affected by the revocation modification order. Thus, there is flexibility for the councils to consult anyone.

**The Chairperson:**

Are members content with clause 69?

*Members indicated assent.*

**The Chairperson:**

We will move to clause 70, which is about unopposed cases in the procedure for section 67 orders. No issues were raised about that clause.

**The Chairperson:**

Are members content with clause 70?

*Members indicated assent.*

**The Chairperson:**

We will move on to clause 71, which is about revocation or modification of planning permission by the Department. Some councils did not support that clause. Some wanted the clause removed, and others wanted confirmation that it would not apply to decisions made before functions were transferred to councils.

**Ms I Kennedy:**

Again, that is one of the reserved powers, if you like, that the Department is carrying forward. It provides a power for the Department to revoke if it considers it necessary to do so. Again, it is part of the Department's oversight and intervention powers, and it will consult the council for the area before it proceeds down that route.

**The Chairperson:**

If members are happy enough with that explanation, we will move on.

Are members content with clause 71?

*Members indicated assent.*

**The Chairperson:**

Clauses 72 and 73 deal with orders requiring discontinuance of use, alteration or removal of buildings or works, and confirmation by the Department of section 72 orders. Councils were concerned about the requirement under the clauses for confirmation from the Department. Other respondents sought confirmation that the clauses would be applicable in such issues as vesting schemes to regenerate an area. Would you like to comment on that?

**Ms I Kennedy:**

Discontinuance is really a process that will be used if revocation is not used. It is used in circumstances where a building is in use but that use is to be discontinued. Again, it is important that that provision is there, but it would be used very rarely. As we mentioned when we were talking about revocation, discontinuance brings with it compensation provisions. It is also part of the oversight powers that the Department has a role in such functions.

**The Chairperson:**

Thank you for the clarification. Are members happy enough?

*Members indicated assent.*

**The Chairperson:**

Clause 74 deals with the Department's power to make section 72 orders. One submission suggested that, to avoid confusion, the function provided by the clause should lie solely with councils.

**Ms I Kennedy:**

Again, the Department's view is that it should retain a power, where necessary and in rare cases, to make orders under section 72.

**The Chairperson:**

Are members content?

*Members indicated assent.*

**The Chairperson:**

Clause 75 deals with planning agreements. Most submissions called for the introduction of a community infrastructure levy. Others called for the clause to be amended to require the transfer of land from a developer to the Department. Would you like to comment on that?

**Mr Brian Gorman (Department of the Environment):**

The clause will carry forward the existing provision, which is in the 1991 Order. The only proposed amendment to the proposals is that the change of transferred financial sums should be made explicit. That is intended to mitigate site-specific impact. It does not actually set a requirement for a transfer. It will be used only where mitigating the impact of the development would be the necessary action.

**The Chairperson:**

Thank you very much. The 1991 Order has a lot to answer for.

Clauses 76 and 77 deal with modification and discharge of planning agreements and appeals. No issues were raised about those clauses, so if we are content, we will move on. Are members content?

*Members indicated assent.*

**The Chairperson:**

Clause 78 deals with land belonging to councils and development by councils. Although

respondents were generally happy with the clause, one sought confirmation that the Department would consult on the secondary legislation that will emerge from it. Others called for the intention and implication of the Bill to be made clear in support of the clause. Would you like to comment on that?

**Ms I Kennedy:**

That will clearly be of interest to councils, and it will also be of more widespread interest. Further guidance in subordinate legislation will be prepared.

**The Chairperson:**

We look forward to that.

That concludes consideration of Part 3 of the Bill. We will move on to Part 4, which deals with additional planning control. Clause 79 deals with lists of buildings of special architectural or historic interest. Councils wanted further clarification of their roles under the clause.

It is like musical chairs today; you are very welcome, Stephen.

**Ms I Kennedy:**

I will start with clause 79, and Stephen, who is the expert on some of these clauses, will then join us. The Department will retain responsibility for listing buildings, which will continue as is. The Department will be required to consult with councils under clause 79(3), so there will be no change in council responsibility. Of course, councils will wish to be involved in discussions and dialogue with the Department on potential listings.

**The Chairperson:**

Thank you. We will move on to clauses 80 and 81 —

**Mr Kinahan:**

I declare an interest as the owner of a listed building. Will councils be able to designate something as listed in categories, or will that still be held by the Department?

**Ms I Kennedy:**

As we move through the next clause, you will see that councils will have powers to issue building preservation notices. However, the Department will be responsible for maintaining the list.

**The Chairperson:**

I confirm that Mr Kinahan declared an interest.

We shall move on to clauses 80 and 81, which deal with temporary listing: building preservation notices and temporary listing in urgent cases. Respondents called for additional resource capacity under those clauses. However, that will be dealt with later under general concerns. Is that correct?

**Ms I Kennedy:**

Yes. That is important, and it is clearly a resourcing issue that we have to consider.

**The Chairperson:**

There were no issues with clause 82, which deals with lapses of building preservation notices. Therefore, gentlemen, I propose to move on.

Clause 83 is concerned with the Department issuing a certificate to say that it does not intend to list a building. Concerns were raised about resource capacity, and one respondent asked for clarification on councils' role in the listing process.

**Ms I Kennedy:**

The Department will retain responsibility for the listings, so there will be no change to councils' responsibilities. A council will not —

**The Chairperson:**

We have to adjourn for a couple of minutes, because we are down to three members, so we cannot record the proceedings.

*Committee suspended.*

*On resuming —*

**The Chairperson:**

We have an hour, and we will try to complete as much as possible within that time. On clause 84, most respondents felt that the proposed fine of £30,000 was insufficient to act as a deterrent.

**Ms I Kennedy:**

The current fine exceeds the equivalent in GB, which is £20,000. Members should also be aware that clause 84(6)(b) provides for an unlimited fine or a prison sentence. The Department considers £30,000 to be a significant level of potential fine, although it is ultimately for the courts to decide the actual fines.

**The Chairperson:**

I am not sure whether we have clarification on the previous clause with regard to a council's role in the listing process. I might have interrupted you in the middle of that.

**Ms I Kennedy:**

That is OK.

**The Chairperson:**

Can you clarify that point?

**Ms I Kennedy:**

Clause 83 relates to where a certificate can be issued stating that a building that will not be listed over the next five years, and someone can apply for that. The certificates will be issued by the Department, and councils will not be involved. A council will not be able to issue a building preservation notice under clause 80 for five years after the Department has issued a certificate under clause 83.

**The Chairperson:**

Thank you for that clarification. Do members have any questions on clause 84? Are we content?

*Members indicated assent.*

**The Chairperson:**

Thank you, gentlemen. Clause 85 deals with applications for listed building consent. I remind members that one respondent sought clarification of the circumstances that would apply for listed building consent to be referred to the Department instead of to councils.

**Ms I Kennedy:**

This is similar to the discussions that we had earlier with regard to call-in arrangements. Call-in will happen only in rare and exceptional circumstances where significant policy issues are raised.

**The Chairperson:**

Thank you. Are you happy with that explanation, gentlemen?

**Mr Kinahan:**

I declare an interest. Will councils be using the same advisers when discussing listed buildings, will it always be driven by the one that work for the Department or will there be a separate group?

**Ms I Kennedy:**

Councils may wish to think that issue through. The Northern Ireland Environment Agency will retain responsibility for listing and will also retain expertise. Councils may have conservation officers or experts in built heritage issues.

**The Chairperson:**

We move on to clause 86. There are no issues in relation to the clause. Are members content?

*Members indicated assent.*

**The Chairperson:**

On clause 87, one respondent called for the power to be used in exceptional circumstances only and another wanted clarification on when an application would be referred to the Department rather than remaining with councils.



**Ms I Kennedy:**

It is difficult to be certain and to prescribe when a particular case might be referred to the Department. It will depend on the circumstances of that case.

**The Chairperson:**

Any questions, gentlemen? Thank you.

**The Chairperson:**

On clause 88, councils sought clarity in their roles and that of the Department.

**Ms I Kennedy:**

Councils will be required to inform the Department if they intend to grant listed building consent, and that is to allow the Department to decide whether it wishes to call in that application. Again, it is part of the Department's oversight role.

**The Chairperson:**

Thank you. Content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

On clause 89, the only issue raised was the need for consideration to be given to the capacity of councils for delivering the functions. It will be dealt with at a later date. Are we content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

No issues were raised with clauses 90-92. Are members content?

*Members indicated assent.*

**The Chairperson:**

Clause 93 relates to the duration of listed building consent. I remind members that one

respondent called for more consideration to be given to the proposed duration of listed building consent.

**Ms I Kennedy:**

Listed building consent is currently granted for a period of five years. However, a council or the Department can attach a longer or shorter period, depending on the circumstances. That is in line with the duration of other permissions and consents.

**The Chairperson:**

OK. No issues were raised about clauses 94 and 95. If you are content, we will move on, gentlemen.

*Members indicated assent.*

**The Chairperson:**

On clause 96, respondents requested clarification on the period for determining an application and the responsibility for prescribing that period.

**Ms I Kennedy:**

The period is currently eight weeks, and responsibility for prescribing it lies with the Department.

**The Chairperson:**

OK, thank you. Content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

No issues were raised in respect of clause 97. If members are content, we will move on.

*Members indicated assent.*

**The Chairperson:**

On clause 98, councils expressed concern at the degree of scrutiny that will be retained by the Department.

**Ms I Kennedy:**

That provision is very much in line with the similar parallel process for planning permission and forms part of the Department's oversight role.

**The Chairperson:**

The Department has a big oversight role, and that is what the councils are questioning. Are we content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

Again, no issues were raised with clause 99. If members have no questions, I propose to move on.

*Members indicated assent.*

**The Chairperson:**

The councils felt that clause 100 gives an unnecessary level of scrutiny to the Department, and that revocation should be left to councils.

**Ms I Kennedy:**

That provision is very similar to the — *[Interruption.]*

*Committee suspended for a Division in the House.*

*On resuming —*

**The Chairperson:**

We are going to clarify some points around clause 97. Some respondents raised the issue of a potential conflict between councils and the Department, especially where a council deems a listing detrimental to economic development. The rules of engagement needed to be clearly defined. Also, clarity is needed on how councils might seek to vary or cancel a designation to help revitalise sections within a conservation area.

**Ms I Kennedy:**

I think that some of those comments relate to clause 103, but, nevertheless, we can look at them now. We anticipate quite regular dialogue between councils and the Department to allow those issues to be aired and discussed. Councils may discuss with the Department the case for seeking a variation or cancellation of a designation made prior to the transfer of powers.

**The Chairperson:**

Do members wish to raise any points?

**Mr Kinahan:**

Are there any plans for arbitration between a council and the Department if they cannot agree?

**Ms I Kennedy:**

There is nothing in the Bill. At this point, we do not anticipate that that will be necessary. However, as we move through the process, something may arise, but, at this point, we hope that there will be dialogue between the two.

**The Chairperson:**

OK. We have dealt with clause 98. No issues were raised in respect of clause 99. Are we content to move on, members?

*Members indicated assent.*

**The Chairperson:**

Councils felt that clause 100 gives an unnecessary level of scrutiny to the Department and that revocation should be left to councils.

**Ms I Kennedy:**

This clause carries forward the Department's revocation powers. It is line with the revocation powers that the Department has in relation to planning permission and is part of its scrutiny role and oversight.

**The Chairperson:**

OK. Are there any comments? Content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

No issues were raised in respect of clause 101. Are we content to move on, gentlemen?

*Members indicated assent.*

**The Chairperson:**

One organisation stressed the importance of clause 102. Other than that, no issues were raised.

Are we content to move on?

*Members indicated assent.*

**The Chairperson:**

On clause 103, most respondents felt that the conservation area designation would be valuable where there are many significant trees of special interest in an area of multiple ownership that is not specifically under threat and, therefore, not a priority for a tree preservation order (TPO). They also wanted clarity on how the Department will designate a conservation area and on further provisions on conservation areas and listed buildings. Does the Department have anything to add?

**Ms I Kennedy:**

I have nothing further to add.

**Mr Kinahan:**

Again, will there be a need for the provision of arbitration?

**Ms I Kennedy:**

At this point, we do not anticipate a need for that. However, that might have to be looked at in the future.

**The Chairperson:**

OK. On clause 104, councils indicated that they will require powers to vary older orders. Does the Department wish to comment?

**Ms I Kennedy:**

It is important that the authority that makes a designation has the power to vary it.

**The Chairperson:**

Do you have any comments to make, gentlemen?

*Members indicated assent.*

**The Chairperson:**

Clause 105 deals with grants in relation to conservation areas. The provision of grants and loans was largely welcomed, but one group wanted the provision applied to trees of special interest in conservation areas. There was also concern that a requirement of DFP approval for each grant would be too restrictive.

**Ms I Kennedy:**

The current limited resources would be targeted more at the preservation of the built environment than at trees in conservation areas.

**The Chairperson:**

Do you have any questions, gentlemen? Are members content?

*Members indicated assent.*

**The Chairperson:**

Clause 106 deals with the application of chapter 1, etc, to land and works of councils. One organisation called for further consideration of the clause.

**Ms I Kennedy:**

This is a parallel clause to one that we discussed earlier about planning applications by councils. It allows regulations to be made to modify the provisions in the Bill dealing with a council making an application for listed building consent.

**The Chairperson:**

Are you content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

Clause 107 deals with the requirement of hazardous substances consent. Councils are concerned about the additional capacity required to access specialist knowledge in relation to the clause.

**Ms I Kennedy:**

Resourcing will have to be considered for many of those specialised areas. Hazardous substances cases are few and far between.

**The Chairperson:**

Do you have any comments to make, gentlemen? No issues were raised about: clause 108, which deals with applications for hazardous substances consent; clause 109, which deals with determination of applications for hazardous substances consent; clause 110, which deals with grant of hazardous substances consent without compliance with conditions previously attached; clause 111, which deals with revocation or modification of hazardous substances consent; or clause 112, which deals with confirmation by the Department of section 111 orders. If we are content, we will move on.

*Members indicated assent.*

**The Chairperson:**

Clause 113 deals with the call-in of certain applications for hazardous substances consent to the Department. Respondents called for the circumstances of the use of the clause to be particularly

described.

**Ms I Kennedy:**

That is a call-in power that is similar to the call-in for applications for planning permission and listed building consent applications. It is used only in exceptional circumstances and with the small number of hazardous substances consent applications, that would be a very rare occurrence.

**The Chairperson:**

Are you content, gentlemen?

*Members indicated assent.*

**The Chairperson:**

No issues were raised about clause 114, which deals with appeals, or clause 115, which deals with the effect of hazardous substances consent and change of control of land. If you are content, gentlemen, we will move on.

*Members indicated assent.*

**The Chairperson:**

Clause 116 deals with offences. Some respondents felt that a fine of £30,000 was insufficient as a deterrent and that imprisonment should be considered.

**Ms I Kennedy:**

That would have to be very carefully considered.

**The Chairperson:**

It would have to be very carefully considered.

**Ms I Kennedy:**

We did not bring that forward in the Bill, and only one representation suggests that.



**The Chairperson:**

Do members have any questions?

**Mr Kinahan:**

I would like to know that council's reasoning.

**Ms I Kennedy:**

I know that only one respondent suggested that consideration should be given to a potential penalty of imprisonment. I do not have any information about why or in what case or instance that would be appropriate.

**Mr McGlone:**

I wonder whether imprisonment would be a final recourse if people were fined and persistently did not pay their fine. That could be a matter for the courts, and there are people better informed than me to adjudicate on that.

**Mr Weir:**

I do not have particularly strong views on the issue, but, when considering the normal processes of criminal conviction, I found one thing strange. We are talking about something that could be at indictment level but has no option for imprisonment and carries a potential fine of £30,000. Offences that rule out a prison sentence generally tend to be pitched with a lower level of fine. Often, offences that carry high levels of fine have a correlation that at least gives the courts the option of imprisonment. I suspect that imprisonment would not be a frequent possibility, but I wonder about that.

**Mr B Wilson:**

Previously, we looked at the demolition of listed buildings, and there was a fine of £30,000 and, if necessary, an unlimited fine or prison sentence. The issue of hazardous waste is equally serious, and the potential penalty of imprisonment should be introduced.

**Ms I Kennedy:**

We have not consulted on that, obviously.

**Mr Stephen Gallagher (Department of the Environment):**

I do not believe that that is an option in other jurisdictions.

**Ms I Kennedy:**

It may not be.

**The Chairperson:**

Can you check that and come back to us, please?

**Ms I Kennedy:**

We can check that.

**The Chairperson:**

Clauses 117 to 119 deal with emergencies, health and safety requirements and applications by councils for hazardous substances consent. No issues were raised on those clauses, so we will move on.

Clause 120 deals with planning permission to include appropriate provision for trees. I remind members that respondents largely welcomed the clause but warned of the need for resources to be able to access the specialist skills needed. Resources are dealt with under general issues, so, if members are content, we will deal with that at that time.

Clause 121 deals with tree preservation orders (TPOs) and councils. I remind members that several issues were raised with that clause, including the need for substantial penalties, the provision for areas of trees to be protected by TPOs and the exclusion of exemptions for dead and dying trees. Other respondents were opposed to the removal of the provision to appeal to the PAC against a decision to designate a TPO, and councils were worried about the cost implications of the clause.

**Ms I Kennedy:**

We will be talking about costs as a wider issue. The focus of the current work programme of

planning reform has been very much on the transfer of planning controls to councils, the overhaul of the development plan system and the development management approach. This phase of reform transfers responsibility for TPOs and tree protection to district councils, carrying over the existing powers in the 1991 Order. We have not proposed a radical or wholesale review of the tree protection regime. The Department will want to consider carefully some of the detailed points that have been raised in the submissions.

The issue over the appeal to the PAC is simply a misunderstanding. Currently, there is no appeal to the PAC over the designation of a tree preservation order. However, there would be an appeal if someone were to apply for consent for works to a tree and that were refused.

**Mr Weir:**

I do not want to labour the point, because you will be coming back on some of the issues that have been raised. The Woodland Trust raised an issue about the complete exemption on dead and dying trees in clause 121(5). Again, you will be coming back to us with information. The provision in clause 121(5) may be black and white in that it states that under no circumstances could a TPO be retained for that. Could there be a more nuanced position that, for example, might indicate that a material consideration when granting a TPO may be the state of health of a tree or something of that nature? It may be that, nine times out of 10, we want to get rid of a dead or dying tree. Say, for the sake of argument, that a tree had a historic connection but you had no way of preserving it, could you take a nuanced position in that regard?

**Ms I Kennedy:**

When there is a proposal or desire to make a TPO, the trees are thoroughly reviewed and surveyed to assess their condition. That probably also picks up any cultural historic reasons why the trees are important. We need to look at those issues more widely.

**Mr B Wilson:**

TPOs concern me greatly. They were made on a number of trees, and I was told a few years later that the trees were dying or dead. However, as far as I could see, there was very little wrong with them. Such action is justified by consultants who contact the Department on behalf of developers. Does the legislation state that the person who says that trees are dead or dying should

be independent, or can he or she be employed by a developer?

**Ms I Kennedy:**

There is nothing in the legislation that requires that, but those people may belong to a professional body. Any reports that arboriculturalists prepare for developers are scrutinised by staff in the Department who have expertise and qualifications in landscaping and tree issues.

**Mr B Wilson:**

When a developer wants to build on a site, it is very convenient that trees on that site suddenly develop some disease, even though they have been there for a couple of hundred years. I do not want the legislation to make it too easy for developers to get rid of trees.

**Mr Mullaney:**

I understand your point. As Irene said, the Department can have recourse to its own arboriculturalist, but perhaps the member means that that could be included in guidelines and practice as opposed to its being in legislation.

**Mr Kinahan:**

We need an arbitration system because many developments have been built carefully around the preservation of a tree and then, a few years later, people decide that a tree is blocking their light or that it is in a dangerous condition.

**Mr Mullaney:**

We touched on that point last week. It is incumbent on the planning authority to ensure that there is recourse to the necessary expertise to ensure that there is sufficient light and distance between trees and the built development to ensure that the trees are not subsequently removed. Therefore, it is incumbent on the planning authority, whether that be the council or the Department, to ensure that it receives the necessary advice at the outset to make a proper decision.

**Mr Kinahan:**

Can we put that in the Bill?

**Mr Mullaney:**

That is good practice, and I would have thought that it is a question of guidance and practice.

**The Chairperson:**

We would be grateful if you could come back to us on some issues.

Clause 122 relates to provisional tree preservation orders. Are members content with clause 122?

*Members indicated assent.*

**The Chairperson:**

Clause 123 relates to the power for the Department to make tree preservation orders. I remind members that counsel felt that clause 123 was an unnecessary duplication of responsibility.

**Ms I Kennedy:**

Again, this is part of the Department's oversight role in that it retains the power, in exceptional circumstances, to designate a TPO.

**The Chairperson:**

That needs to be clearly stated in guidance or whatever.

Clause 124 deals with the replacement of trees. I remind members that one respondent said that it would be more appropriate for offenders to be required to replace trees.

**Ms I Kennedy:**

It is important that landowners are involved in that. Obviously, they own the land on which the tree will be replaced.

**The Chairperson:**

Do members have any comments to make?

*Members indicated assent.*

**The Chairperson:**

Clause 125 deals with penalties for the contravention of tree preservation orders. I remind members that one respondent felt that there should be just one offence for any breach of tree preservation regulations to strengthen and rationalise the law.

**Ms I Kennedy:**

The current provision is drafted to provide some flexibility in dealing with a potentially wide range of contraventions of tree preservation orders. The Department wishes to look at this very carefully before it considers an amalgamation of the two offences. It will need to talk to its legal advisers.

**Mr Weir:**

I am happy enough with that response. However, is it not possible for the courts to interpret the seriousness of offences? Can the courts not impose sentences for a wide range of offences, from the maximum right down a more-or-less absolute discharge and take a minimalist approach? If it were codified as one offence, could there be flexibility in sentencing?

**Ms I Kennedy:**

Yes, I see how that could happen if the two offences were merged together. We will wish to talk to departmental solicitors on that point.

**The Chairperson:**

There are a couple of matters that you will come back to us on in relation to that.

No issues were raised on clause 126, which deals with the preservation of trees in conservation areas. If members do not have any comments, we will move on.

*Members indicated assent.*

**The Chairperson:**

Clause 127 deals with the power to disapply section 126. I remind members that there was no

support for clause 127.

**Ms I Kennedy:**

Clause 127 is carried forward from the 1991 Order. It provides flexibility for the management of trees in conservation areas. The Department sees it as being of some value.

**The Chairperson:**

Are members content with clause 127?

*Members indicated assent.*

**The Chairperson:**

Clause 128 deals with a review of mineral planning permissions. I remind members that respondents were concerned about how councils will access the specialist expertise required to deliver this function, which is currently located in the Planning Service, after planning functions have been devolved. They suggest that it should perhaps remain as a central departmental function.

**Ms I Kennedy:**

We touched on this area earlier. It is the review of old mineral planning permissions that may be on the books for some time. Resources are the issue. We need to discuss how best to handle such cases with the councils.

**Mr McGlone:**

There is a specialism at the centre, but it may be required once every four or five years in one council area and once every year in another, depending on the nature, topography and tradition of industry in the area. It is definitely an issue that requires an awful lot more thought. Not every council will require that resource regularly enough to need full-time staff to be employed in the area.

**Ms I Kennedy:**

The power will transfer to councils, but there needs to be a discussion about how that will be

implemented. There may be an opportunity for councils to group together to look at various mechanisms for the delivery of those powers. Some councils may have more mineral sites than others and be better placed to manage it.

**The Chairperson:**

We need to look at that one again and come back to it.

Clause 129 deals with control of advertisements. I remind members that councils called for flexibility in relation to controls on advertising.

**Ms I Kennedy:**

The control of advertisements is set out in the Department's planning policy statements and in its current regulations relating to advertisements, which it also wishes to update.

**Mr Kinahan:**

I am pleased that the Department is trying to tackle advertising at roundabouts. We need to link that to Roads Service and the police. The police cannot enforce regulations at certain roundabouts in certain areas where there are masses of parked trailers.

**The Chairperson:**

Are we content, gentlemen?

*Members indicted assent.*

**The Chairperson:**

There are two issues that we need to go back over. Clause 53 deals with aftercare conditions. Do such conditions also apply to landfill sites? We talked about quarries.

**Ms I Kennedy:**

Not in clause 53; similar conditions can attach that relate to aftercare administration.



**The Chairperson:**

Do you want to come back to us about whether we can amend that clause? Will that be incorporated?

**Ms I Kennedy:**

It would be incorporated into the previous clause, which allows conditions to be attached to any planning decision if they are considered appropriate and necessary.

**The Chairperson:**

I am looking for clarity on the community infrastructure levy (CIL). That is not intended to be in the Bill.

**Ms I Kennedy:**

It is not included in the Bill.

**The Chairperson:**

Have you considered bringing that to the Minister's attention?

**Ms I Kennedy:**

That issue needs to be discussed widely across the Executive, because it involves infrastructure from different Departments. That is our intended approach, but there is no provision in the current reform for a CIL.

**The Chairperson:**

Is it within the scope of the Bill?

**Ms I Kennedy:**

It is not within —

**The Chairperson:**

Is it possible?

**Ms I Kennedy:**

I suppose that anything —

**The Chairperson:**

I am asking only because we talked about developer contributions.

**Ms I Kennedy:**

It is a type of developer contribution.

**The Chairperson:**

I was simply seeking clarification. Do members wish to make any comments on those issues?

**Mr McGlone:**

The issue of simplified planning zones was dealt with earlier; I am sorry that I missed that discussion. Concerns have been raised by people who, with respect, have much more academic and practical expertise than any of us in the room. Professor Lloyd raised issues, as did another witness last week, about their effectiveness. They were tried in Britain but were described as a damp squib. Has the Department given any more thought to the practicality of the simplified planning zones? From what we are hearing, if it just a simple read-across — a cut and paste from elsewhere — there is not much point in replicating other people's failures.

**Mr Kerr:**

The approach to simplified planning zones differs from the approach taken in the 1991 Order. We have made a number of changes to try to improve the process. Nevertheless, as Mr McGlone rightly says, the provision has not been in general use here or in the other jurisdictions for a number of complex reasons. Much work and resources would be involved in putting a simplified planning zone into operation. In many respects, it can cut off the revenue from planning application fees, because there is no need to put in a planning application. There have been problems with the way in which schemes have operated, in some respects.

**Mr McGlone:**

From what I am hearing, are you having second thoughts about it?

**Mr Kerr:**

We believe that it is important that there is a provision for councils to be able to apply it to a small area and that they at least have the option to make use of it. It will be used only in certain circumstances, which will probably be limited.

**Mr McGlone:**

We are not going to repeat the errors of elsewhere; we are going to ignore them. That is how it seems.

**Mr Weir:**

We could make up our own.

**Mr McGlone:**

The issue has been raised by people who are well acknowledged in their field. In fact, the Department acknowledges people such as Greg Lloyd when he raises such issues. There was another guy there last week, but I cannot remember his name. He seemed to have a fair command of the issues from an architectural point of view and was representing that section of the industry. When people with a command of their brief start to raise issues about the effectiveness of a concept that has been introduced to a planning Bill, you tend to ask why it is there.

**Mr Kerr:**

It is not ineffective, and there have been simplified planning zones in the other jurisdictions. We have looked at some of those. Perhaps we can give you sight of where they have pulled them through in England and Wales.

Our approach has been to try to see the local development plan as being the main tool that councils will use and to make that document much more up to date and receptive to the needs of the areas at a given time. In many ways, that was part of the original rationale for simplified planning zones. Originally, they were, perhaps, seen as a quick way to go in and do something in a local area. We hope that the way in which we have brought forward the local development plan will give councils an opportunity to go in, zone land and bring forward urgent policies for an

area, if required. The need is there.

**Mr McGlone:**

I am being guided by the advice of people who have more experience than me in the formulation of policy.

**The Chairperson:**

Thank you for attending today's meeting. We will see you again on Thursday. Members, please wait for a minute, and we will have a chat about some amendments.