

Equality Commission

FOR NORTHERN IRELAND

15 November 2013

Ms Sheila Mawhinney
Committee Clerk
Room 416
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Ms Mawhinney

Re: Local Government Bill – Evidence

The Equality Commission¹ welcomes the opportunity to respond to the call for evidence on the Local Government Bill at Committee Stage. The Commission considers the Review of Public Administration (RPA) as a whole to be a key opportunity to embed equality of opportunity and good relations in public service delivery and this final stage of completion of RPA to be crucial.

As we stated in our response to the Department of the Environment's ('the Department') consultation *Local government Reform: Policy Proposals in 2010 (Policy Proposals)* 'introducing new, inclusive governance arrangements, implementing a code of conduct which extends the principles of public life and establishing community planning arrangements

¹ An outline of the Commission's role and powers is at annex 1

which provide a sharpened focus for the delivery of public services are the final steps to successful completion'.²

We have set out below our comments on some specific areas covered by the Bill on which we have previously offered advice or recommendations; including the discharge of functions by councils, decision making processes, a mandatory Code of Conduct for councillors, community planning, a general power of competence and the creation of a Partnership Panel.

Discharge of functions (Part 4)

We understand that the Department intends to introduce subordinate legislation on the functions of devolved decision-making structures and that this will include the specification of those decisions which must be taken by a full council.

The Commission recommends³ that this subordinate legislation makes it clear that key documents associated with the outworking of the equalities duties - such as the council's equality scheme and disability action plan, which councils are required by equality legislation to produce, should be included in the core issues to be considered by full council. Further, we recommend that other key equality considerations, such as S75 equality action plans recommended as good practice by the Equality Commission, along with Article 55 reviews under the Fair Employment and Treatment (NI) Order 1998 and annual monitoring returns, should also be considered by full council.

Filling positions of responsibility (Section 17)

We note that councils will have a choice of methods by which they can fill positions of responsibility within councils. We welcome the fact that the Bill

² Response to the Department of the Environment's consultation on Local Government Reform: Policy Proposals, March 2013, paragraph 6 - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

³ Response to the Department of the Environment's consultation on Local Government Reform: Policy Proposals, March 2013, paragraphs 11-17 - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

sets out the precise method for applying each of these available systems, as this will help to ensure consistency and accuracy of approach across councils.

In accordance with their duties under Section 75, it is important that councils assess and consult on (in terms of screening and possibly equality impact assessing) methods which they propose to adopt in relation to the allocation of key positions both within the council and for representative positions on external bodies as new policies when the councils are established.

If a council proposes to adopt a new method (or change the method which it currently uses) for the allocation of key positions, then these policy decisions should be assessed and consulted on in accordance with Section 75 commitments as set out in its equality scheme.

Code of Conduct (Sections 56-68)

The Commission supports the introduction of a mandatory Code of Conduct for Councillors and asks that consideration is given to placing a duty on the Department to issue a Code of Conduct for councillors rather than providing the Department with a power to do so.⁴

The Commission considers this appropriate in the context that a Code of Conduct is of critical importance in setting and ensuring clear standards for elected representatives in undertaking the important work that councils currently undertake as well as the new functions that will be transferred to them⁵.

⁴ Response to the Department of the Environment's consultation on Local Government Reform: Policy Proposals, March 2013, paragraph 37 - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

⁵ Response to the Department of the Environment's consultation on Local Government Reform: Policy Proposals, March 2013, paragraphs 38, 39 - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

Further we support the Department's proposal to ensure that the principles to be enshrined in the proposed Code extend beyond the Nolan Principles to embrace the additional concepts of equality and good relations⁶.

We note that the Minister has recently indicated that there will be mandatory training for councillors in some specific areas of responsibility⁷. As made clear in the Commission's final report on the Section 75 Effectiveness Review⁸, the Commission recommends, in order to ensure visible commitment to the principle of good relations by leaders across local government, training on equality and good relations is placed on a mandatory footing for all elected representatives.

We welcome the provision that makes clear that breaches of the Code will be investigated by the Commissioner for Complaints, and that the Commissioner will consider *all* complaints in the first instance. We note that the Department has indicated that only complaints of a serious nature are to be retained by the Commissioner. We raised in our earlier response the difficulties that could arise in relation to establishing what constitutes 'serious' complaints.

We further note that the Commissioner can make recommendations to a council about any matters relating to the exercise of the council's functions or its failure to observe the code of conduct. It also appears from the Bill that these recommendations *must* be sent to the Department concerned and *may* be sent to any other public body. The Committee may wish to give consideration to the greater transparency, openness and learning that may flow from the Commissioner publishing more widely its recommendations.

We have written to the Department in relation to the scope of the Code and offering suggested wording for the Code in relation to the proposed

⁶ The Equality Commission, in its final report on reviewing the effectiveness of Section 75, recommended that adherence to the principles of equality of opportunity and good relations are enshrined in a Code of Conduct - Section 75, Keeping it Effective: final report, ECNI, November 2008
<http://www.equalityni.org/archive/pdf/EffectivenessReviewFinalRpt1108.pdf>

⁷ For example, any councillor sitting on a planning committee will be required to undergo mandatory training in the legal framework on which planning decisions are made and in his or her role in the decision making process See NI Assembly debate on Committee stage of Local Government Bill on 1 October 2013

⁸ *Section 75, Keeping it Effective Final Report*, November 2008, ECNI, recommendation page 65
<http://www.equalityni.org/archive/pdf/EffectivenessReviewFinalRpt1108.pdf>

principles on equality and good relations. We will continue to advise as development of the Code progresses.

Community planning (Section 69-81)

We welcome the proposed introduction of community planning as a structure for working across and between agencies with the full participation of area communities and communities of interest delivering equality of opportunity and good relations.

We support the proposed duty on councils to produce a community plan that sets out both long-term objectives and actions; as well as the proposed duties on councils to review, monitor progress and provide a bi-yearly progress statement.

We welcome the proposed requirement to ensure that arrangements are made for individuals and representatives of organisations and voluntary bodies to express their views and to have them taken into account.

In addition, pursuant to commitments in councils' equality schemes, the Commission expects that councils will effectively engage with equality groups covered by the Section 75 duties, in order to ensure better decision making by councils as regards policy and service development and in the setting of priorities for action. In support of clause 74, we recommend that there are also be clear performance indicators for the delivery of councils' community planning functions.

We also welcome the clear duty on community planning partners to participate in the community planning process and assist the council in discharging its community planning duties.

Further, we support the proposed duty on every Northern Ireland Department to promote and encourage community planning, so far as is reasonably practicable. We recommend that consideration is given to introducing a duty on the Department to issue guidance on community planning and consult before issuing that guidance as set out in Section 77 (1) of the Bill. Given the importance of community planning, we consider that a duty is more appropriate than a power in this matter.

General Power of Competence (Section 82-86)

In our earlier response, we welcomed the proposed introduction of a power of well being. We note that the Bill includes provision for the proposed introduction of a general power of competence, which we understand will enable a council to act with similar freedom to an individual unless there is a law to prevent it from doing so.

As we previously raised in our earlier response in relation to the proposed power of wellbeing, we recommend this new general power of competence should be used to maximise opportunities for embedding equality and good relations into local services and governance arrangements. We also stress, as stated in our earlier response⁹ in relation to the power of wellbeing, that the equality implications of any new structures or policy decisions in pursuance of the power of competence must be considered in line with obligations under Section 75 equality schemes.

We note that the Department had indicated that it proposed to issue guidance in relation to the proposed power of well being; a proposal that we supported.¹⁰ Aligned to this, we recommend that consideration is given to introducing a duty on the Department to issue guidance on the general power of competence.

Performance improvement (Section 87-105)

We note that the Bill places a duty on councils to 'have regard in particular to the need to improve the exercise of its functions across seven key areas including 'fairness (equity)'

We further note that the Bill makes it clear that a council improves the exercise of its functions in terms of fairness if "*disadvantages faced by particular groups in accessing, or taking full advantage of, services are*

⁹ Response to the Department of the Environment's consultation on Local Government Reform: Policy Proposals, March 2013, paragraphs 89-91 on the power of well-being - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

¹⁰ DOE consultation on local government reform, November 2010 http://www.planningni.gov.uk/downloads/local_government_reform_-_consultation_document.pdf

reduced; or social well-being is improved as a result of the provision of services or the way in which functions are otherwise exercised”.

The Bill proposes that a council must set itself improvement objectives and that must be framed to improve the exercise of the function or functions to which it relates in terms of at least one of these seven key areas.

We consider that this proposed duty aligns with existing duties on councils under Section 75 to have due regard to the need to promote equality of opportunity, and have regard to the desirability of promoting good relations, across relevant equality grounds

On the matter of performance indicators, we would reiterate the position set out in our 2011 response, where we recommended that the Department, in its guidance on performance indicators should encourage councils to have measures relating to equality and good relations in their corporate plans and objectives; and performance indicators relating to equality and good relations in a range of other action plans and strategies¹¹.

Partnership Panel (Section 106)

In general we support structures which facilitate more effective relationships between central and local government. We note that the Partnership Panel is primarily an advisory body only and it is not intended to hamper the discretion of the Department or local government.

We are of the view that further clarity on the operation of this panel would be helpful and therefore welcome the Minister’s recent indication that Departmental officials will be working with NILGA (Northern Ireland Local Government Association) to develop the procedures for the operation of the Panel.¹²

¹¹ Response to the Department of the Environment’s consultation on Local Government Reform: Policy Proposals, March 2013, paragraph 37 - http://www.equalityni.org/sections/default.asp?id=198&cmsid=7_36_198&cms=publications_general_consultation%20responses&pagesize=10&searchterm=&secid=8&pageoffset=3

¹² See NI Assembly debate on Committee stage of Local Government Bill on 1 October 2013

Concluding comments

The Commission notes that there will be a significant body of subordinate legislation and guidance required following the enactment of the Local Government Bill and will offer further advice as this is produced.

Yours sincerely

A handwritten signature in black ink, appearing to read "Darren McKinstry". The signature is stylized with a large, sweeping flourish at the end.

Darren McKinstry

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Legal, Policy and Research**

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Annex 1: Role and remit of the Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998.

The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, age, sexual orientation and disability. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and the disability duties under the Disability Discrimination (Northern Ireland) Order 2006.

The Commission, along with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the Rights of People with Disabilities as the independent mechanism tasked with promoting, protecting and monitoring implementation of UNCRPD in Northern Ireland.