

LOCAL GOVERNMENT BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of the Environment in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Following the restoration of the Northern Ireland Assembly in May 2007 the Executive established a Sub-committee, led by the then Minister of the Environment, to review the previous Administration's decisions on the Review of Public Administration (RPA) in relation to local government. The review considered what the Executive expected local government to deliver in the context of a fully functioning devolved Assembly and Executive and in the context of the strategic direction of the RPA.
4. On 31 March 2008 the then Minister of the Environment, Arlene Foster, announced the Executive's decisions on the future shape of local government. In summary, these decisions were as follows:
 - rationalising the current 26 district councils to create 11 new district councils;
 - introducing new governance arrangements for councils to ensure the protection of the rights of all people and also provide for fair, transparent and efficient decision-making;

- developing a new council-led community planning process and introducing a power of well-being;
- transferring a range of functions from central to local government; and
- developing appropriate performance management systems for district councils.

In addition, the Executive signalled its desire to work in partnership with local government to deliver the priorities and actions set out in its Programme for Government, and thereby improve outcomes for everyone. While the RPA was progressing, the Department of the Environment was developing proposals to modernise certain procedures in councils. One of these related to providing a new ethical standards regime for local government.

5. Structures were subsequently put in place to support the development of policy and implementation proposals, in partnership with local government, to give effect to those decisions. The top tier of the structure, and key driver of the programme, was the Strategic Leadership Board, chaired by the Minister of the Environment. This was supported by three policy development panels. The Board and each of the policy development panels comprised elected representatives from the five main political parties, senior advisers from local government and senior officials from those departments transferring functions to local government.
6. The reforms are comprehensive, impacting on every aspect of the operation of councils, including how decisions are made, how positions of responsibility on a council are shared across the political parties, and how improvements in the delivery of council functions can be achieved. The reform programme will also see the introduction of a new ethical standards regime, and council-led community planning which will enable councils to act as the focal point for improving outcomes for people. Overall, the aim is to establish a strong, dynamic local government that creates vibrant, healthy, prosperous, safe and sustainable communities that have the needs of all people at their core.
7. This Bill provides the legislative basis for these reforms and gives effect to the Executive's decisions on the future shape of local government. Decision-making processes will be improved and local politicians will have the opportunity to shape the areas within which they are elected to reflect the needs and aspirations of local communities.
8. The Bill therefore establishes a new framework for reorganised local government which will be supported by a significant and comprehensive programme of subordinate legislation and guidance which will be subject to further detailed consultation exercises.

CONSULTATION

9. The Department carried out a 12-week formal consultation exercise between November 2011 and March 2012. The consultation paper was widely circulated to councils, government departments and agencies, section 75 groups, community and voluntary groups and others.
10. A total of 77 responses were received from a wide range of interests including district councils, elected representatives, individuals, charities, community and voluntary groups and private sector organisations. The representations were wide ranging from strong support for various proposals to opposition to others. A full consideration of all the responses received by the Department resulted in it reviewing and modifying a small number of the proposals put forward by the Department in the consultation paper. The Department's response and analysis to the consultation can be viewed on the Department of the Environment website at www.doeni.gov.uk.

OPTIONS CONSIDERED

11. The Strategic Leadership Board policy development panel on governance and relationships reviewed the arrangements for the political governance of councils including decision-making processes, allocating positions of responsibility and checks and balances to provide protections for minority communities. It looked at the arrangements for decision-making in other jurisdictions and recommended that alternative approaches should be introduced to allow for more efficient and transparent decision-making.
12. The panel also recommended that formal systems should be put in place to ensure that the chair and deputy chair of the council and other positions of responsibility are shared across the political parties represented on a council. Consideration was also given to how the interests of minorities could be protected in the decision-making process, and the panel concluded that an appropriate system of checks and balances should be introduced.
13. In 2005, under the modernisation agenda, a Code of Conduct Working Group (CCWG) was set up by the Department to review the current code of conduct and to consider options for monitoring the application of the code, including investigation, enforcement and appeal procedures. The recommendations of the CCWG were subsequently presented to the policy development panel on governance and relationships for consideration. It was recommended that a new ethical standards regime for local government should be introduced, which would include the introduction of a mandatory code of conduct for councillors with supporting mechanisms for investigation and adjudication. This included the

setting up of standards committees within councils and the appointment of monitoring officers to investigate alleged breaches of the code.

14. Following the Executive's review of the RPA decisions in relation to local government, the then Minister of the Environment, Arlene Foster, announced that council-led community planning would be introduced. No other options for achieving a partnership approach to addressing local issues were considered.
15. The Minister of the Environment, Alex Attwood, following consideration of the responses to the consultation on the Local Government Reform Policy Proposals and representations from local government and others, determined that a general power of competence should be provided to councils. This was in place of the previously announced power of well-being.
16. The Strategic Leadership Board policy development panel on service delivery reviewed the arrangements for ensuring the continuous improvement in the delivery of council services. It looked at the performance improvement arrangements for local authorities in other jurisdictions and recommended that the continuous improvement framework needed to be updated to support the delivery of further improvement and provide accountability to ratepayers and others.
17. The Strategic Leadership Board policy development panel on governance and relationships considered the mechanisms in place in other jurisdictions to support partnership working between the two-tiers of elected governance to deliver improved outcomes for people. The panel recommended that a formal structure similar to that operating in Wales should be established.

OVERVIEW

The Bill consists of 128 clauses, 16 Parts and 12 Schedules. The parts are:

Part 1: Councils

Part 2: Councillors

Part 3: Positions of responsibility

Part 4: Discharge of functions

Part 5: Permitted forms of governance

Part 6: Executive arrangements

Part 7: Meetings and proceedings

Part 8: Access to meetings and documents

Part 9: Conduct of councillors

Part 10: Community planning

Part 11: General powers of councils

Part 12: Performance improvement

Part 13: Partnership Panel

Part 14: Control of councils by Northern Ireland Departments

Part 15: Amendments of the 2005 Order

Part 16: Miscellaneous

Schedules

1. Disqualifications for being elected or acting as a councillor
2. Declaration of councillors
3. Positions of responsibility
4. Appointment of councillors to committees, etc
5. Declaration on appointment to committee of person who is not a councillor
6. Overview and scrutiny committees: voting rights of co-opted members
7. Meetings and proceedings
8. Access to information: exempt information
9. Minor and consequential amendments relating to local government audit
10. Transfer schemes
11. Minor and consequential amendments: general
12. Repeals

Part 1: Councils. This part makes provision regarding the name of each of the councils. It also requires each council to prepare a constitution.

Part 2: Councillors. This part re-enacts provisions from the Local Government Act (Northern Ireland) 1972 which deal with an individual being elected or acting as a councillor, and the circumstances in which a vacancy in the office of councillor may occur.

Part 3: Positions of responsibility. This part puts in place the arrangements necessary to ensure the sharing of positions of responsibility across the political parties and independents represented on a council.

Part 4: Discharge of functions. This part re-enacts provisions from the Local Government Act (Northern Ireland) 1972 which provide for a council to arrange for its statutory functions, with certain exceptions, to be discharged other than by the full council.

Part 5: Permitted forms of governance. This part outlines the political management structures available to councils. It provides that a council may adopt a committee system where all decisions are ultimately the responsibility of the council, or executive arrangements where decisions on a range of matters will be taken by a smaller group of councillors within a policy and financial framework agreed by the council. Provision is also made for alternative arrangements to be introduced by the Department.

Part 6: Executive arrangements. This part introduces a new decision-making framework in which there is a separation of decision-making and scrutiny of those decisions. It sets out two broad forms of executive arrangements from which a council may choose. The objective is to deliver greater efficiency, transparency and accountability of councils. The new arrangements are intended to ensure that decisions can be taken more quickly and efficiently than in the committee system, that the bodies responsible for decision-making can be more readily identified by the public, and that those decision-makers can be held to account in public by overview and scrutiny committees.

Part 7: Meetings and proceedings. This part re-enacts the provision from the Local Government Act (Northern Ireland) 1972 which deals with the arrangements for the regulation of the proceedings and business of the council. It also introduces a requirement for each council to make standing orders for this purpose, and for the Department to specify aspects that must be included in the standing orders.

Part 8: Access to meetings and documents. This part introduces new arrangements to ensure transparency in the operation of a council by making provision on the public's right of access to meetings of a council and its committees. It also makes provision on the accessibility of documents prepared for consideration at meetings of the council, or its committees.

Part 9: Conduct of councillors. This part establishes a new ethical standards framework for local government. This includes the introduction of a mandatory code of conduct

which will apply to councillors and others appointed to take part in council business. There will be supporting mechanisms of investigation and adjudication for alleged breaches of the code which will be the responsibility of the Commissioner for Complaints for Northern Ireland.

Part 10: Community planning. This part introduces council-led community planning to provide a framework for councils to work in partnership with other public service providers in their district to develop and implement a vision for the economic, social and environmental well-being of the district and those living or working within it. Engagement with the community is a key feature of the community planning process.

Part 11: General powers of councils. This part provides councils with a general power of competence to enable a council to do anything that individuals generally can do that is not specifically prohibited by other laws. It will provide councils with the ability to act in their own interest and to develop innovative approaches to addressing issues in their area. The availability of this power may support councils in the delivery of improvements in the economic, social and environmental well-being of their district.

Part 12: Performance improvement. This part puts in place a new framework to support the continuous improvement in the delivery of council services, in the context of strategic objectives and issues that are important to those who receive the services. Councils will be required to gather information to assess improvements in their services and to issue a report annually on their performance against indicators which they have either set themselves or that have been set by departments.

Part 13: Partnership Panel. This part provides for the establishment of a Partnership Panel to be made up of Executive Ministers and elected representatives from the councils to discuss matters of mutual interest and concern.

Part 14: Control of councils by Northern Ireland Departments. This part provides departments with powers to supervise councils in the exercise of their functions.

Part 15: Amendments of the 2005 Order. This part makes amendments to the Local Government (Northern Ireland) Order 2005 to reflect changes in the structure of the Local Government Audit Office.

Part 16: Miscellaneous covers further provisions, transfer schemes, supplemental and transitional provisions, the interpretation, minor and consequential amendments, repeals, commencement provisions and the short title.

COMMENTARY ON CLAUSES

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Part 1 – Councils

Clause 1 – Names of councils

This clause provides for how the names are to be formed and makes provision for the name given to a council to be altered by subordinate legislation.

Clause 2 – Constitutions of councils

This clause requires a council to maintain a constitution and ensure that it is available for inspection by members of the public. The constitution is to include standing orders, a copy of the code of conduct, such information as the Department may direct and such other information as the council considers appropriate. A council will have to supply a copy to anyone who requests one, upon payment of a reasonable fee.

Part 2 – Councillors

Clauses 3 to 9

These clauses re-enact sections 3 to 10 of the Local Government Act (Northern Ireland) 1972 in relation to individuals being elected to or acting as a councillor.

Clause 3 sets out the conditions to be satisfied for a person to be qualified to be elected or to be a councillor.

Clause 4 gives effect to Schedule 1 which sets out the conditions under which a person is disqualified for being elected or acting as a councillor. These conditions include the introduction of a bar on MLAs, MPs and MEPs being elected, or being, councillors.

Clause 5 sets out the penalties for acting as a councillor while disqualified.

Clause 6 requires a person elected as a councillor to serve a declaration, as set out in Schedule 2, on the clerk of the council before acting as a councillor. This declaration requires the person to affirm that they will observe the Northern Ireland Local Government Code of Conduct for Councillors in the performance of their functions.

Clause 7 provides for a person to resign as a councillor at any time.

Clause 8 provides for a person to cease to be a member of a council if they fail, subject to certain conditions, to attend any meeting of the council over six consecutive months.

Part 3 – Positions of responsibility

Clause 10 – Positions of responsibility

This clause sets out the positions of responsibility to be held by an elected member of the council, which must be allocated across the political parties represented on the council, and the process which must be used for the allocation. Positions of responsibility are specified as the chair and deputy chair of the council, chairs and deputy chairs of council committees, the membership of a cabinet-style executive and representative positions on external bodies.

Part 4 – Discharge of functions

Clauses 11 to 14 – Arrangements for discharge of functions

These clauses set out the arrangements that a council may use for the discharge of its functions and responsibilities.

Clause 11 provides that a council may arrange for any of its functions to be discharged by a committee, sub-committee or an officer of the council, or by another council. The authority to delegate to a lower tier of governance is also provided for committees and sub-committees. The clause also specifies that making a district rate, borrowing money or acquiring or disposing of land may only be discharged by the council.

Clause 12 places limitations on making arrangements for the discharge of functions under executive arrangements. It sets out the arrangements that will apply if a council has arranged for a function to be discharged by another council and one of the participating councils is operating or begin to operate executive arrangements and the relevant function is the responsibility of that executive.

Clause 13 provides for the establishment of a joint committee between two or more councils to discharge a function of the participating councils. It provides that joint committees cannot discharge a function that is the responsibility of the executive of any of the participating councils.

Clause 14 provides that a council or a committee is not prevented from exercising a function if it has arranged for that function to be discharged by a committee or sub-committee.

Clauses 15 and 17 – Appointment of committees

Clause 15 provides that a council may appoint a committee, and two or more councils may appoint a joint committee, to discharge functions. The appointing council or councils are responsible for determining the number of members of the committee, their term of office and the committee's remit. The clause also provides that, subject to

certain restrictions, a committee may include persons who are not members of the appointing council or councils.

Clause 16 enables a council, and two or more councils, to appoint a committee, that may include persons who are not members of the appointing council or councils, to advise on the discharge of functions.

Clause 17 gives effect to Schedule 5 which provides for the sharing of membership of a committee between the political parties represented on the council.

Clauses 18 to 22 - Supplementary

Clause 18 provides that the expenses of a joint committee must be met by the appointing councils. It also provides a power for the Department by order to constitute a joint committee as a corporate body on the application of the appointing councils.

Clause 19 provides that a person disqualified from being elected or being a member of a council cannot be a member of a committee or sub-committee of that council, or a joint committee on which the council is represented or on one of its sub-committees.

Clause 20 provides that a person who is not a member of a council may not act as a member of a committee until the person has signed a declaration agreeing to observe the Northern Ireland Local Government Code of Conduct for councillors.

Clause 21 provides that a person appointed to a committee who is not a member of the appointing council has no voting rights at meetings of that committee.

Clause 22 specifies that a person who is no longer a member of a council is also no longer a member of a committee of that council.

Part 5 – Permitted forms of governance

Clauses 23 and 24

These clauses set out the forms of political governance a council may operate for its decision-making. These are executive arrangements, a committee system or prescribed arrangements. Clause 23(4) provides a definition of executive arrangements.

A power is provided for the Department to make regulations prescribing alternative forms of governance that may be adopted by a council. It provides that the Department must have regard to any proposals received from a council when it considers whether or how to make regulations under this clause.

Part 6 – Executive arrangements

Clause 25: Council executives

This clause provides that an executive of a council must take the form of either:

- a) a committee of the council to be known as a “cabinet-style executive”, or
- b) more than one committee of the council to be known as a “streamlined committee Executive”

It also prohibits the chair or deputy chair of the council from being a member of the executive, and limits the number of councillors who can be on the executive to 10 (unless a different maximum number is specified in regulations).

Clause 26: Functions which are the responsibility of an executive

This clause provides the mechanism for determining which council functions are to be the responsibility of the executive. It provides a power for the Department to make regulations to specify those functions which may, but need not, be the responsibility of the executive, and those functions which must not be the responsibility of the executive. The presumption is that all functions of the council are to be the responsibility of the executive unless specified in regulations or in any other legislation.

Clause 27: Functions of an executive: further provision

This clause makes further provision on the exercise and discharge of functions which are the responsibility of the council executive.

Clauses 28 to 30 – Allocation and discharge of functions

These clauses set out in greater detail how decision-making is to be undertaken under executive arrangements and provide for the executive to determine how functions which are the responsibility of the executive should be discharged. Provision is also made for the Department to make regulations to enable an executive to arrange for functions for which it is responsible to be discharged by another council or by a joint committee.

Clauses 31 to 37 – Overview and scrutiny committees

These provisions require a council, which is operating executive arrangements, to set up overview and scrutiny committees.

Executive arrangements must ensure that these committees have power to make reports and recommendations, either to the executive or the council, on any aspect of council business. They must also have the power to make reports and recommendations on other matters which affect the council’s area or its inhabitants.

Where an overview and scrutiny committee reviews or scrutinises an executive decision which has been made but not yet implemented, it may recommend that it is reconsidered by those responsible, or else arrange for the council to review the decision and, where necessary, ask those responsible for the decision to reconsider it.

Clause 32 describes in detail how overview and scrutiny committees may carry out their functions, giving them the power to appoint sub-committees and make arrangements for these sub-committees to discharge any functions of the overview and scrutiny committee. It also allows an overview and scrutiny committee to require officers of the council and members of the executive to appear before it and invite any other person to appear before it. Neither the overview and scrutiny committee nor any of its sub-committees may include any member of the council's executive, but can include people who are not members of the council. People who are not members of the council co-opted to an overview and scrutiny committee will not have voting rights unless they are permitted to vote under paragraph 1 of Schedule 6.

Clause 33 provides that a council operating executive arrangements must designate one of its officers as a scrutiny officer to perform the functions set out in this section. The clerk of the council or the chief financial officer may not be designated as its scrutiny officer.

Clause 34 provides that a council's executive arrangements must make provision to enable members of an overview and scrutiny committee, including a sub-committee of such a committee, to refer matters to the committee or sub-committee. It also stipulates that a council operating executive arrangements must make arrangements to enable councillors who are not members of either the committee or sub-committee to refer any matters, which are not specified as excluded matters in an order, to overview and scrutiny committees.

Clause 35 makes further provision in relation to the reference of matters to overview and scrutiny committees by a member of a council who is not also a member of the committee. It specifies certain factors that a committee may have regard to when considering whether to exercise its powers to review and scrutinise matters which have been referred by such a non-member.

Clause 36 makes provision about reports and recommendations of overview and scrutiny committees. It provides that overview and scrutiny committees may publish reports and recommendations and must, in writing, require the council or executive to take the steps specified.

Clause 37 makes provision in relation to an overview and scrutiny committee or a council excluding "confidential information" and "relevant exempt information" when publishing a document.

Clauses 38 and 39: Meetings and access to information etc.

These clauses provide powers for the Department to specify in regulations the circumstances in which meetings of the executive or its committees must be open to the public and which meetings must be held in private. Other than where specified in regulations, it will be for the executive to choose whether to meet in private or in public. Written records of prescribed decisions made at meetings of the executive held in private must be kept, including reasons for the decisions. These records, together with such reports and background papers as may be prescribed, must also be made available to the public.

Regulations may also make provision requiring prescribed information about prescribed decisions to be made publicly available, and may also make provision about access to meetings of joint committees which are discharging functions which are the responsibility of an executive.

Part 7 – Meetings and proceedings

Clauses 40 to 42 – General and standing orders

These clauses make provision on the timing and general arrangements for meetings of a council, and require a council to make standing orders for the regulation of the proceedings and business of councils and their committees. A power is provided for the Department by regulations to specify matters that must be included in a council's standing orders.

Clauses 43 to 45 – Decision-making

These clauses provide for the voting mechanisms to be used by councils in their decision-making. The mechanisms specified are simple majority and, for decisions specified in standing orders, qualified majority.

A power for councillors to require decisions to be reconsidered, in specified circumstances, is also provided.

Part 8 – Access to meetings and documents

Clauses 46 to 50

These clauses make provision in relation to public access to meetings of councils, and to the agenda and connected reports on issues to be discussed at a meeting of the council. Provision is also made to enable members of the public to inspect the minutes and other documents, and background papers, after a meeting of the council. Exclusions are applied to ensure that any confidential information, either discussed at a meeting of a council or included in any papers, is not open to the public. These provisions are also applicable to meetings of council committees.

Clause 51: Additional rights of access to documents for members of councils

This clause provides that, subject to specific exclusions, any council document relating to any business to be discussed at a meeting of the council or committee or sub-committee is to be open to inspection by any member of the council.

Clause 52: Councils to provide additional information

This clause requires a council to maintain in a register that is open to inspection by the public, contact details and details on the membership of committees and sub-committees for every member of the council. A council must also maintain a list specifying the powers of the council which are exercisable by officers of the council and the title of the officer by whom it is exercised.

Clause 53: Supplemental provisions and offences

This clause sets out supplemental provisions in relation to access to documents that must be open to inspection and the offences that will apply in the event of obstructing access to the documents or refusing to provide copies as required.

Clause 54: Exempt information and power to vary Schedule 8

This clause provides a power for the Department to add to, delete or vary any description of exempt information by virtue of which the public may be excluded from a meeting during the item to which the report containing the information relates.

Part 9 – Conduct of councillors

Clause 56: Code of conduct

This clause provides for the Department to issue the Northern Ireland Code of Conduct for Councillors. The Code must specify the principles which are to govern the conduct of councillors. Before issuing or amending the Code, the Department must consult with associations or bodies representative of councils, officers of councils, councillors and such other persons as appear to the Department to be appropriate. A draft of the Code must be approved by resolution of the Assembly before it can issue.

Clause 57: Guidance

This clause states that the Northern Ireland Commissioner for Complaints (Commissioner) may issue and publish any guidance on matters relating to the conduct of councillors.

Clauses 58 and 59: Investigations

These clauses deal with the conduct of investigations carried out by the Commissioner on receipt of a written allegation of a breach of the Code. Clause 58 provides that the purpose of an investigation is to determine whether there is evidence of any failure to comply with the Code and whether action needs to be taken in respect of the matters under investigation and if an adjudication should be made by the Commissioner on the matter under investigation.

The procedure for conducting an investigation shall be such as the Commissioner considers appropriate. Clause 59 provides that the person who is the subject of an investigation should be given the opportunity to comment on the allegation put to the Commissioner.

Clauses 60 and 61: Reports

These clauses provide for the Commissioner to produce a report on the findings of an investigation and, where the Commissioner considers it necessary in the public interest, to produce an interim report prior to the completion of an investigation. These clauses also specify the persons who must be given a copy of such a report.

Clause 62: Decision following report

The clause provides for the Commissioner to adjudicate on any matter by deciding whether or not a person has failed to comply with the Code and sets out to whom this information must be sent. This clause also permits the Commissioner to decide on the extent to which the Code has been breached and to establish if a councillor should be censured, suspended or partially suspended, or disqualified for being, or becoming, a councillor.

The Commissioner will specify the details of such sanction(s).

Clause 63: Decisions on interim report

This clause provides that, where the Commissioner considers that there is evidence that a person who is subject to an interim report has failed to comply with the code and that the failure is such that it would be likely to result in disqualification, and if the Commissioner considers that it would be in the public interest to immediately suspend or partially suspend the person, then the Commissioner may give notice to the clerk of the council accordingly, giving effect to that consideration.

Clause 64: Recommendations

This clause provides for the Commissioner, having adjudicated on any matter, to make recommendations to a council about any matters relating to the exercise of the functions of a council or the failure to observe the Code. A copy of the recommendations must be

sent to the Department concerned. A council, having received any such recommendation, must consider this and, if necessary, prepare a report for the Department concerned within such period as the Commissioner may specify, giving details on what action the council proposes to take to address the recommendations. The Department concerned, on receipt of a report from the council, may require the council to publish a statement giving details of the recommendations made by the Commissioner and the reasons for those not being fully implemented if necessary. The consideration of any such recommendations by a council may only be considered by the council meeting as a whole.

Clause 65: Disclosure and registration of councillors' interests, etc.

This clause provides for the clerk of the council to establish and maintain a register of the interests of its councillors and for the council to ensure that the register is available for public inspection.

Clause 66: Extension of 1996 Order

This clause provides for certain provisions of the Commissioner for Complaints (Northern Ireland) Order 1996 to apply as if references to that Order includes reference to this Bill. These provisions set out the powers available to the Commissioner in conducting the duties conferred by this Bill in relation to the conduct of councillors.

Clause 67: Expenditure of Commissioner under this Act

This clause provides for the Commissioner to apportion the estimated amount of the expenses of the Commissioner's office in relation to the ethical standards framework between all the councils in Northern Ireland. Councils must pay the apportioned amount to the Commissioner at such time and in such manner as the Commissioner directs. The method of apportioning the costs will be prescribed in regulations.

Part 10 – Community Planning

Clause 69: Community planning

This clause places a duty on councils to initiate, maintain, facilitate and participate in community planning for their area. It also places a duty on community planning partners to participate in community planning and assist the council in the discharge of its duty.

The clause defines community planning as a process by which a council and its community planning partners identify long-term objectives for improving the economic, social and environmental well-being of the local government district, and also contribute to the achievement of sustainable development. The duty also requires the

identification of actions to be performed and functions to be exercised for the purpose of meeting the objectives.

Clause 70: Community planning partners

This clause provides a power for the Department by order to specify the bodies or persons who are to be the community planning partners of a council. Such an order can only be made following consultation with the bodies or persons concerned, and with district councils and other bodies as the Department considers appropriate. A power is also provided for the Department, by order, to amend, to add to or to remove bodies from those listed.

Clause 71: Production of community plan

This clause specifies that, once a council and its community planning partners have reached a consensus as to the community plan objectives and actions, the council must produce a document (known as a community plan) capturing that consensus. This must be as soon as practicable after the consensus has been reached. The clause requires the plan to contain appropriate objectives and actions for meeting those objectives.

Clauses 72 and 73 – Review of community plan

These clauses require a council and its community planning partners to review the community plan at least every four years to consider the extent to which objectives have been met and, if not met, the progress made towards the objectives. They also specify the actions that may be taken following the review.

Clause 74: Monitoring

This clause requires a council, and its community planning partners, to make arrangements for monitoring progress made on meeting the community planning objectives and the associated actions. It also places a duty on a council to publish a statement at least every two years on the progress which has been made towards meeting the community planning objectives and undertaking the actions attributed to the various community planning bodies.

Clause 75: Implementation

This clause requires that a council or a community planning partner must take all reasonable steps to perform any action or exercise any function assigned to it in the community plan.

Clause 76: Community involvement

This clause requires a council and its community planning partners to make arrangements to involve, and take account of the views of:

- local residents;
- non-residents who receive services provided by the council or one of its community planning partners;
- representatives of voluntary organisations;
- representatives of business interests; and
- anyone else whom the council considers to have an interest in improving the district's economic, social or environmental well-being

in connection with community planning, preparation of a community plan and the review of a community plan.

Clause 77: Guidance

This clause provides a power for the Department to issue guidance in relation to community planning to which a council and its community planning partners must have regard.

Clause 78: Duty of departments in relation to community planning

This clause places a duty on Northern Ireland Departments, as far as it is reasonably practical for them, to promote and encourage community planning when exercising a function which might affect community planning, and to have regard to any implications of a community plan on the exercise of functions.

Clause 79: Establishment of bodies corporate

This clause provides a power for the Department, by order, to establish corporate bodies to co-ordinate and further community planning following application by a council and one or more of its community planning partners, and consideration of a report on matters specified in subsection (2) of the clause.

Clause 80: Amendments to the Planning Act (Northern Ireland) 2011

This clause amends the Planning Act (Northern Ireland) 2011 to provide a statutory link between community planning and spatial planning.

Part 11 – General powers of councils

Clause 82: Council's general power of competence

This clause provides a general power of competence for councils. It gives councils the same power to act that an individual generally has and provides that the power may be

used in innovative ways, that is, in doing things that are unlike anything that a council – or other public body – has done before, or may currently do. Where the council can do something under the power, the starting point is that there are to be no limits as to how the power can be exercised other than it cannot be used outside Northern Ireland.

Clause 83: Boundaries of the general power

This clause sets out the boundaries of the general power, requiring councils to act in accordance with statutory limitations or restrictions. Restrictions that apply to existing powers that are overlapped by the general power are applied to the general power. So for instance, if an existing power requires a particular procedure to be followed, the same procedure will apply to the use of the general power to do the same thing. It also applies any express prohibitions, restrictions and limitations within primary or secondary legislation, to the use of the general power.

The general power does not give councils power to delegate or contract out delivery of their functions, nor to alter political governance arrangements.

Clause 84: Limits on charging in exercise of the general power

This clause restricts the ability of a council to charge for providing a service to a person using the general power, or where they are using an existing provision which provides a similar power. If no specific charging power exists, councils can charge up to full cost recovery for discretionary services – that is those that they are not required to provide to a person, where that person has agreed to their being provided.

Clause 85: Powers to make supplemental provision

This clause provides the Department with powers to remove or change statutory provisions that prevent or restrict the legal capacity of councils to use the general power to do things that an ordinary individual can do, and to remove overlaps between the general power and existing powers. Powers are also provided for the Department to restrict what a council may do under the general power or to make its use subject to conditions.

Before exercising any of these powers the Department must consult with any person, or their representatives, substantially affected by the proposal. This duty to consult does not apply to orders that only amend an earlier order so as to apply it to further councils or disapply it in relation to a particular council.

Clause 86: Limits on the power conferred by clause 85

This clause requires the Department, before exercising the power provided by clause 85, to consider whether certain specified conditions have been met.

These conditions are: that the effect of the provision made by the order is proportionate to its policy objective, in other words that the Department considers that there is an appropriate relationship between the policy aim and the means chosen to achieve it; that the provision made by the order, taken as a whole, strikes a fair balance between the public interest and the interests of the persons adversely affected by the order, including any new or increased burdens; that the provision does not remove any necessary protection such as protections in the areas of civil liberties, health and safety, the environment of national heritage; the provision will not prevent any person from continuing to exercise any right or freedom which the person might reasonably expect to continue to exercise such as, for example, rights conferred by the European Convention on Human Rights; and that the provision is not constitutionally significant. This last condition would allow orders to amend enactments which are considered to be constitutionally significant, but only if the amendments are not themselves constitutionally significant.

The clause provides that the Department may not make orders that delegate or transfer legislative powers, or abolish or vary any tax.

Part 12 – Performance improvement

Clause 87: Improvement: general duty

This clause requires a council to make arrangements to secure continuous improvement in the exercise of its functions. In doing so, a council must have regard in particular to the need to improve the exercise of its functions in terms of: strategic effectiveness; service quality; service availability; fairness (equity); sustainability; efficiency and innovation. These terms are defined in clause 89.

Clause 88: Improvement objectives

This clause requires a council, for each financial year, to set itself improvement objectives for improving the exercise of particular functions of the council and to have in place arrangements to achieve those objectives. A council must frame each improvement objective so as to bring about improvement in at least one of the specified aspects of improvement as defined in clause 89.

Clauses 89 to 91: Improvement: supplementary

Clause 89 defines the aspects of improvement which feature in this Part of the Bill, and allows a council to demonstrate improvement in a variety of different ways. The clause also creates a number of aspects of improvement which are used to assess whether improvement has taken place. Explanations of the definitions and how they will operate in practice, such as illustrative examples and circumstances in which a council might apply the aspects of improvement, will be set out in guidance. A power is provided for the Department to amend, add to or remove aspects of improvement.

Clause 90 places a duty on a council, in fulfilling its duty and setting improvement objectives, to consult with representatives of people falling within specified categories;

- persons liable to pay rates;
- those who use or are likely to use services provided by the council; and
- persons appearing to the council to have an interest in the district.

Clause 91 requires a council, in the discharge of its improvement duties to have regard to any guidance issued by the Department.

Clause 92: Performance indicators and performance standards

This clause provides the Department with a power to prescribe by order factors of performance (performance indicators) against which a council's performance will be measured. In addition, the Department may set performance standards in respect of the performance indicators set by it. This clause also gives the Department the discretion to specify different performance indicators and standards for different councils.

Before specifying performance indicators or standards, the Department must consult with councils, bodies representative of councils and others as appear appropriate. A council must make arrangements to exercise its functions so that any performance standards are met.

Clauses 93 to 95: Improvement planning and information

These clauses require a council during each financial year to collect information which will allow it to assess its performance in achieving its improvement objectives and to measure its performance against performance indicators or standards set by the Department or any other indicators or standards which the council chooses to use.

A council is required to use this information to measure its performance against a previous year's performance and compare its performance, so far as is practicable, with the performance of other councils and other public bodies. In addition, a council must use the information it collects to assess whether it could improve its performance and, based on that, must decide on steps to take to improve its performance in exercising its functions.

A requirement is placed on a council to make arrangements to publish specified information relating to its performance before 31 October immediately following the financial year to which it relates. A council must ensure it publishes a summary of any report relating to a special inspection by the Local Government Auditor.

A council is also required to publish an 'improvement plan' which sets out its plans for discharging its duties under clauses 87, 88 and 92 for a financial year and, if appropriate, subsequent years. This must be published as soon as practicable after the start of the financial year to which it relates.

Clauses 96 to 100: Improvement audits and assessments

Clause 96 requires the Local Government Auditor to carry out an audit to assess whether a council has discharged its duties under clause 95 and acted in accordance with any guidance issued by the Department.

Clause 97 places a duty on the Local Government Auditor to carry-out a forward-looking assessment of how far a council is likely to meet the requirements of this Part in that year; this may cover more than one year if the Local Government Auditor so wishes.

Clause 98 places a duty on the Local Government Auditor to produce a report or reports for each council in relation to his duties under clauses 96 and 97. The report or reports should:

- certify the Local Government Auditor has carried out the audit under clause 96 and state whether as a result it is believed that the council has discharged its duties under clause 95 and acted in accordance with guidance;
- certify that the Local Government Auditor has carried out the assessment under clause 97 and state whether as a result of the assessment it is believed that the council is likely to comply with the requirements of this Part;
- recommend (if appropriate) any action the council should undertake to discharge its duties or to act in accordance with guidance; and
- state whether the Local Government Auditor is minded to undertake a special inspection under clause 101.

Copies of the reports should be sent to the relevant council and the Department by 30 November each year. This date may be changed by the Department by order.

Flexibility is provided for the Local Government Auditor, in circumstances in which it would be unreasonable or impractical to issue a report on a specified council by the specified date to ask the Department for an extension to complete the audit and assessment reports for one or more named councils (without the need for an order)

Clause 99 requires a council to respond to a report or reports from the Local Government Auditor if it contains:

- a recommendation to the council as to the action it should take to comply with the requirements of this Part; or
- a statement that the Local Government Auditor intends to undertake a special inspection.

The council must prepare a statement setting out the actions that the council proposes to take and the timetable for doing so. The council must also include the statement in the improvement plan for the next financial year. Where a report includes a recommendation that a Department use the power of intervention in clause 103, the council must also send a copy of its statement to the Department within 30 working days.

Clause 100 requires the Local Government Auditor to produce and publish each year an annual improvement report for each council. The report must contain a summary of the results of any report issued under clauses 98 and 102. The Local Government Auditor must consider in the light of the report whether to:

- make a recommendation that a department exercise its powers under clause 103; and
- exercise any of the Local Government Auditor's functions in relation to the council.

Clauses 101 to 102: Special inspections

These clauses permit the Local Government Auditor to conduct a special inspection of a council where the Auditor believes that a relevant council may fail to comply with the requirements of this Part. Before making a decision to conduct a special inspection the Auditor must consult the Department. The Department may also direct the Local Government Auditor to carry out an inspection, but before doing so it must consult the Auditor.

The Local Government Auditor is required to produce a report for each special inspection carried out and must mention in the report if they believe as a result of the special inspection that the council is failing to comply with the requirements of this Part. The Auditor may also recommend that a department uses its direction powers in clause 103.

A copy of the report should be sent to the inspected council and to the Department.

Clause 103: Powers of direction, etc.

This clause contains powers for a relevant department to intervene in and direct a council which is failing, or is at risk of failing to comply with this Part of the Bill. The clause also sets out the options open to the relevant department.

Clause 104: Power to modify statutory provisions and confer new powers

This clause provides the Department with a power (by order) to make provision to modify or exclude the application of enactments which apply to councils if it is satisfied that such an enactment prevents or obstructs a council from complying with the provisions of this Part.

The Department also has a power to confer upon a council any additional power it considers necessary in order to facilitate compliance with this Part of the Bill. In exercising a power conferred on them a council must take account of any guidance issued by the Department.

Part 13 – Partnership Panel

Clause 106 requires the Department to establish a Partnership Panel for Northern Ireland whose members, to be appointed by the Department, are to comprise Northern Ireland Ministers and members of district councils. Before appointing district council members, the Department will be required to consult appropriate bodies representative of local government. The functions of the Panel will be to advise the Northern Ireland Ministers on matters affecting their functions, to make representations on matters affecting, or of concern to, those involved in local government in Northern Ireland, and also to give advice to those involved in local government in Northern Ireland.

Part 14 – Control of councils by Northern Ireland Departments

Clause 107: Power of any Northern Ireland department to direct council to make reports

This clause re-enacts section 127 of the Local Government Act (Northern Ireland) 1972 but extends it to all departments, not just DOE. It provides a power for any department to require a council to make reports and returns and provide information in relation to the exercise of its functions specified in a direction to that department. A duty is placed on a council to comply with any such direction.

Clause 108: Inquiries and investigations

This clause re-enacts section 128 of the Local Government Act (Northern Ireland) 1972 but extends it to all departments, not just DOE. It provides the power for any department to instigate an inquiry or an investigation into the administration of any

statutory provisions relating to the functions of any council or any committee or sub-committee of a council.

Clause 109: Power of any Northern Ireland department to intervene in case of default by council

This clause re-enacts section 129 of the Local Government Act (Northern Ireland) 1972 but extends it to all departments, not just DOE. It provides a power for any department, if it is satisfied following an inquiry or investigation that a council has failed to discharge any of its function, to intervene in the operation of the council. This intervention may take the form of either a direction requiring the council to specified actions within a specified timeframe, or if such a direction is not complied with to arrange for the exercise of those functions other than by the council.

Part 15 – Amendments of the 2005 Order

Clause 110: The local government auditor

This clause amends the Local Government (Northern Ireland) Order 2005 to reflect the Comptroller and Auditor General’s responsibility for local government audit with the Northern Ireland Audit Office (NIAO), and structural and procedural changes within the local government audit section. It provides for the designation of a member of staff of the NIAO as the local government auditor, and for arrangements to be made for members of staff in the NIAO to assist in the performance of the local government auditor’s functions.

Clause 111: Power to repeal provisions relating to surcharge, etc.

This clause provides a power for the Department to remove the provisions relating to the surcharge of councillors, contained in the Local Government (Northern Ireland) Order 2005, by regulations.

Part 16 – Miscellaneous

Clause 113: Guidance

This clause provides a power for the Department to issue guidance on any aspect provided for in the Bill. A duty is placed on a council to have regard to any such guidance.

Clause 114: Transitional rate relief in consequence of changes in local government districts

This clause amends the Rates (Northern Ireland) Order 1977 to provide a transition scheme for managing rates convergence where there are wide disparities in the level of district rates between the merging councils.

Clauses 115: Commencement of the Local Government (Boundaries) Order (Northern Ireland) 2013

This clause amends Article 1(4) of the Local Government (Boundaries) Order (Northern Ireland) 2012 to ensure there is clarity on which hereditaments the new councils will have the power to make a rate in respect of before they take on full responsibility for all their functions on 1 April 2015.

Clause 116: Exclusion of non-commercial considerations

This clause re-enacts the provisions in section 2 of the Local Government (Best Value) Act (Northern Ireland) 2002 to provide a power for the Department to specify a matter that should cease to be a non-commercial consideration for the purposes of district council contracts.

Clause 117: Control of disposals and contracts of existing councils and their finances

This clause amends the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 to supplement the controls on existing councils in the run up to reorganisation to take account of the Local Government Finance Act (Northern Ireland) 2011. The clause also adds controls in respect of the borrowings and reserves on the existing councils and, extends the controls provisions to include the new councils whilst operating in shadow mode.

Clauses 118 to 120

These clauses re-enact the provisions in sections 34, 35 and 39 of the Local Government Act (Northern Ireland) 1972 in respect of persons ceasing to hold office, validity of acts done by unqualified person and insurance against accidents to councillors.

Clause 121: Schemes for transfers of assets and liabilities

This clause requires the Department, and any other department transferring a function to the new councils, to make a scheme or schemes for the transfer of assets and liabilities of a local government body or a department to a new local government body. It also introduces Schedule 10 which deals with the transfer of assets and liabilities, and staff, from a local government body or department to a new local government body.

Clause 122: Compensation for loss of office or diminution of emoluments

This clause provides for compensation to be paid to a person who suffers loss of employment or diminution of emoluments as a result of the establishment of the new councils or the transfer of functions from a local government body or Northern Ireland department to a new local government body. Any compensation is to be paid in

accordance with regulations made under the Superannuation (Northern Ireland) Order 1972.

Clause 123: Supplementary and transitional provisions for the purposes of this Act and other purposes

This clause provides a power for the Department and, any other Northern Ireland department, to make incidental, consequential, transitional or supplemental provisions that it considers appropriate in connection with the reorganisation of local government and the transfer of functions from a local government body or Northern Ireland department to a new local government body.

Clause 124: Interpretation

This clause contains interpretation provisions and defines a number of terms used throughout the Bill.

Clause 125: Regulations and orders

This clause details the assembly controls which will apply to regulations and orders under the Bill. Regulations and orders under clauses 24, 25, 42, 44, 45, 79, 85, 89, 104, 111, Schedule 1 paragraph 1(2) or (3) and paragraph 11(4) of Schedule 4 must not be made unless a draft of the regulations or order has been laid before, and approved by a resolution of, the Assembly.

Clause 126: Minor and consequential amendments and repeals

This clause provides for the amendments set out in Schedule 11 and the repeals set out in Schedule 12 to have effect.

Clause 127: Commencement

This clause concerns the commencement of the Bill and enables the Department to make Commencement Orders.

Clause 128: Short title

This clause provides a short title for the Bill.

SCHEDULES

Schedule 1 to the Bill includes detailed provisions in relation to disqualifications for being elected or acting as a councillor

Schedule 2 to the Bill provides the Declaration of councillor(s)

Schedule 3 to the Bill provides the Declaration for person(s) who are not a councillor on appointment to a committee

Schedule 4 to the Bill includes detailed provisions in relation to the filling of positions of responsibility

Schedule 5 to the Bill includes detailed provisions in relation to the appointment of councillors to committees

Schedule 6 to the Bill includes detailed provisions in relation to the voting rights of co-opted members of overview and scrutiny committees

Schedule 7 to the Bill includes detailed provisions in relation to meeting and proceedings.

Schedule 8 to the Bill includes detailed provisions in relation to exempt information for the purposes of access to information.

Schedule 9 to the Bill lists the minor and consequential amendments relating to local government audit

Schedule 10 to the Bill includes detailed provisions in relation to transfer schemes

Schedule 11 to the Bill list the minor and consequential amendments necessary as a result of the Bill

Schedule 12 to the Bill list the repeals necessary as a result of the Bill

FINANCIAL EFFECTS OF THE BILL

18. The Bill will place a marginal additional financial burden on the public purse as a result of the introduction of the ethical standards regime, which will be the responsibility of the Northern Ireland Commissioner for Complaints. The Bill makes provision for proportionate financial contributions from the new councils to cover the cost of the ethical standards regime within the Commissioner's office from April 2015. The total annual costs to resource the Commissioner's office is currently estimated at £380,000.

HUMAN RIGHTS ISSUES

19. The provisions of the Bill are not in the Department's view incompatible with the provisions of the Human Rights Act 1998.

EQUALITY IMPACT ASSESSMENT

20. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the provisions in the Bill will not lead to discriminatory or negative differential impact on any of the section 75 groups.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

21. The Bill has been assessed to determine any regulatory impact and it is considered that it does not contain any provisions that will result in an increased or adverse impact on businesses, charities or the community and voluntary sectors.

LEGISLATIVE COMPETENCE

22. The Minister of the Environment had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Local Government Bill would be within the legislative competence of the Northern Ireland Assembly.”