

# **LOCAL GOVERNMENT BILL**

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## **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](http://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 129 clauses, 16 Parts and 10 Schedules. The parts are:

Part 1: Councils

Part 2: Disqualifications

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: Supervision of councils by Northern Ireland Departments

Part 15: Amendments of the 2005 Order

Part 16: Miscellaneous

Schedules

1. Positions of responsibility
2. Appointment of councillors to committees, etc
3. Declaration on appointment to committee of person who is not a councillor
4. Overview and scrutiny committees: voting rights of co-opted members
5. Meetings and proceedings
6. Access to information: exempt information
7. Minor and consequential amendments relating to local government audit
8. Transfer schemes
9. Minor and consequential amendments: general
10. 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: Disqualifications. This part makes provision in relation to the disqualification of individuals from acting as a councillor.

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 must adopt a committee system where all decisions are ultimately the responsibility of the council, unless it decides to adopt 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. This part also provides a person who is subject to an

adjudication of the Commissioner, with the option to apply for leave to the High Court to appeal the outcome of that adjudication and sets out the grounds for any such appeal.

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, elected representatives from the councils and members of a local government representative body to discuss matters of mutual interest and concern.

Part 14: Supervision 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 at the offices of the council and on the council's website. 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 – Disqualifications

#### **Clause 3: Disqualification for being councillors**

This clause introduces a bar on MLAs, MPs and MEPs being councillors.

#### **Clause 4: Power to exempt offices and employments from disqualification**

This clause amends section 4 of the Local Government Act (Northern Ireland) 1972 and makes provision for the Department to specify those offices and employments in a council that would disqualify the holder from being elected, or being, a councillor.

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### Part 3 – Positions of responsibility

#### **Clause 5: 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 6 to 9 – 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 6 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, setting the borrowing limit and monitoring that limit, or acquiring or disposing of land may only be discharged by the council.

Clause 7 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 8 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 9 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 10 to 12 – Appointment of committees**

Clause 10 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 11 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 12 gives effect to Schedule 2 which provides for the sharing of membership of a committee between the political parties represented on the council.

### **Clauses 13 to 17 - Supplementary**

Clause 13 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 14 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 15 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 16 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 17 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 18 and 19**

These clauses set out the forms of political governance a council may operate for its decision-making. This will be a committee system unless a council decides to adopt executive arrangements or prescribed arrangements. Clause 18(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 20: 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 provides that the chair or deputy chair of the council shall be ex-officio (non-voting) members 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 21: 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 22: 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 23 to 25 – 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 26 to 32 – 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 27 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 4.

Clause 28 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 29 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 prescribed matters in regulations, to overview and scrutiny committees.

Clause 30 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 31 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 32 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 33 and 34: 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 35 to 37 – 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 38 to 40: 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 41 to 45**

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, 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. Provision is also made for members of the public to inspect the background papers connected with the preparation of a report that has been considered by a council and for such background papers to be available on the council's website. These provisions are also applicable to meetings of council committees.

##### **Clause 46: Audio recording of meetings**

This clause places a requirement on a council to, as far as is reasonably practicable, make an audio recording of those parts of a council meeting that are open to the public and make the recording available on the council's website for a period of two years from the date of the meeting.

**Clause 47: 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 48: Councils to publish 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 49: 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 50: Exempt information and power to vary Schedule 6**

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 52: 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 53: 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 54 and 55: 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 54 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. This clause also provides the Commissioner with the flexibility to take action considered appropriate for resolving minor complaints.

The procedure for conducting an investigation shall be such as the Commissioner considers appropriate. Clause 55 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 56 and 57: 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 58: 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). This clause also provides a person who is subject to such sanction(s), with the right to apply for leave to the High Court to appeal. The clause also sets out the grounds for any such appeal.

### **Clause 59: 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. This clause also provides a person who is subject to a notice to suspend or partially suspend with the right to apply for leave of the High Court to appeal that notice.

**Clause 60: 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. A council, having received any such recommendation, must consider this and, if necessary, prepare a report for the Department within such period as the Commissioner may specify, giving details on what action the council proposes to take to address the recommendations. The Department, 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 61: 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 62: 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 63: Expenditure of Commissioner under this Act**

This clause provides for the Department 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. This clause also permits the Department to top-slice the amount due from councils from any grant payable to the councils under section 27A of the Local Government Finance Act (Northern Ireland) 2011. The clause also places a duty on the Department to consult with councils regarding the manner in which the expenditure is apportioned.

Part 10 – Community Planning

**Clause 65: 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. Social well-being is defined as including promoting equality of opportunity in accordance with section 75 of the Northern Ireland Act 1998 and economic well-being as including tackling poverty, social exclusion and patterns of deprivation. The duty also requires the identification of actions to be performed and functions to be exercised for the purpose of meeting the objectives.

**Clause 66: 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 67: 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 68 and 69 – 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 70: 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 and outcomes achieved in meeting the community planning objectives and undertaking the actions attributed to the various community planning bodies.

### **Clause 71: 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 72: Community involvement**

This clause requires a council and its community planning partners to seek the participation of, and encourage the persons specified to express their views,, and take account of those views:

- 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 73: 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 74: 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 75: 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 76: Amendments of 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 78: 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 79: 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 80: 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 81: 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.

Any proposed use of these powers will require the Department to lay a draft order, together with details on the consultation undertaken by the Department, in the Assembly. No order giving effect to the proposals (with or without modification) is to be laid in the Assembly until after the expiry of the statutory period. Before preparing an order for the approval of the Assembly, the Department must consider any representations made during the statutory period. When laying the order for debate in the Assembly, the Department must include a statement, giving details of any representations considered and any changes made to the proposals.

### **Clause 82: 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 83: 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 84: 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 85 to 87: Improvement: supplementary**

Clause 85 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 86 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 87 requires a council, in the discharge of its improvement duties to have regard to any guidance issued by the Department.

#### **Clause 88: 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 89 to 91: 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 30 September 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 83, 84 and 88 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 92 to 96: Improvement audits and assessments**

Clause 92 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 93 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 94 places a duty on the Local Government Auditor to produce a report or reports for each council, as determined by the Department in consultation with the Local Government Auditor in relation to his duties under clauses 92 and 93. The report or reports should:

- certify the Local Government Auditor has carried out the audit under clause 92 and state whether as a result it is believed that the council has discharged its duties under clause 91 and acted in accordance with guidance;

- certify that the Local Government Auditor has carried out the assessment under clause 93 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 97.

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 95 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 99, the council must also send a copy of its statement to the Department within 30 working days.

Clause 96 requires the Local Government Auditor to produce and publish each year an annual improvement report for each council that has been the subject of an audit and assessment report. The report must contain a summary of the results of any report issued under clauses 94 and 98. 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 99; and
- exercise any of the Local Government Auditor's functions in relation to the council.

### **Clauses 97 to 98: 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 99.

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

### **Clause 99: 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 if failing to comply with this Part of the Bill. The clause also sets out the options open to the relevant department.

### **Clause 100: 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 102 requires the Department to establish a Partnership Panel for Northern Ireland whose members are to comprise Northern Ireland Ministers, members of district councils and representatives of a representative body or association of district councils as appear to the Department to be appropriate. 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 103: 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 104: 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 105: 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.

##### **Clause 106: International obligations**

This clause provides a power for any Northern Ireland department to direct a council not to take an action that would be incompatible with any international obligation or to require it to take any action for the purpose of giving effect to an international obligation.

#### Part 15 – Amendments of the 2005 Order

##### **Clause 107: 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 108: 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 110: 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 111: 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 112: 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 113: Transferred functions grant**

This clause makes provision for the payment of a grant to councils to fund functions and powers being transferred to or powers being conferred on the new councils from Northern Ireland departments. The transferred functions grant will bolster the tax base of each of the 11 new local government districts and provide a relatively settled and sustainable funding source, rather than operating through alternative grant based mechanisms.

**Clause 114: 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 115: 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.

**Clause 116: Payments for special purposes and public appeals**

The Local Government Finance Act (Northern Ireland) 2011 (the 2011 Act) provides that a council may make payments for special purposes, subject to a specified upper limit. The introduction of a general power of competence for councils allows a council to take any action it considers appropriate, provided it is not prevented from doing so by other legislation, with no upper financial limit applying. The provisions in the 2011 Act would have conflicted with this therefore this clause makes provision for the relevant sections in the 2011 Act to cease to have effect.

**Clauses 117 and 118**

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

**Clause 119: Power to dissolve the Local Government Staff Commission for Northern Ireland**

The Local Government Staff Commission was established by section 40 of the Local Government Act (Northern Ireland) 1972 as a corporate body with perpetual succession. This clause provides a power for the Department to wind up the Local Government Staff Commission at some future date, if such an action is agreed as appropriate.

**Clause: 120: Insurance against accidents to councillors**

This clause re-enacts the provisions in section 39 of the Local Government Act (Northern Ireland) 1972 in respect of a council providing 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: Council websites**

This clause provides an enabling power for the Department, by regulations, to specify a standard format for the domain names of council websites.

**Clause 125: Interpretation**

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

**Clause 126: Regulations and orders**

This clause details the assembly controls which will apply to regulations and orders under the Bill. Regulations and orders under clauses 19, 20, 37, 39, 40, 47, 50, 75, 81, 85, 100, 108, paragraph 11(3) of Schedule 1 and paragraph 5 of Schedule 2 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 127: Minor and consequential amendments and repeals**

This clause provides for the amendments set out in Schedule 9 and the repeals set out in Schedule 10 to have effect.

**Clause 128: Commencement**

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

**Clause 129: Short title**

This clause provides a short title for the Bill.

**SCHEDULES**

**Schedule 1** to the Bill provides the Declaration for person(s) who are not a councillor on appointment to a committee

**Schedule 2** to the Bill includes detailed provisions in relation to the filling of positions of responsibility

**Schedule 3** to the Bill includes detailed provisions in relation to the appointment of councillors to committees

**Schedule 4** to the Bill includes detailed provisions in relation to the voting rights of co-opted members of overview and scrutiny committees

**Schedule 5** to the Bill includes detailed provisions in relation to meeting and proceedings.

**Schedule 6** to the Bill includes detailed provisions in relation to exempt information for the purposes of access to information.

**Schedule 7** to the Bill lists the minor and consequential amendments relating to local government audit

**Schedule 8** to the Bill includes detailed provisions in relation to transfer schemes

**Schedule 9** to the Bill list the minor and consequential amendments necessary as a result of the Bill

**Schedule 10** 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."*