

LOCAL GOVERNMENT (MEETINGS AND PERFORMANCE) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department for Communities (“the Department”) 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 neither is it meant to be, a comprehensive description of the Bill. Where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

Meetings

3. In April 2020 the Department made the Local Government (Coronavirus) (Flexibility of District Council Meetings) Regulations (NI) 2020 (“Meetings Regulations”) under powers contained in section 78 of the Coronavirus Act 2020. The Meetings Regulations make provision to enable councils in Northern Ireland to hold meetings remotely and make provisions about remote access to such meetings, including access by the public. Because of section 78(3) of the Coronavirus Act, the Meeting Regulations ceased to have effect on 6 May 2021.
4. Although the COVID-19 situation is currently improving, it is likely that councils will not be able to resume full public meetings for some time to come. The Department has received representations from the local government sector on this issue requesting that provision for remote meetings should be extended.
5. This Bill will remove the restriction in section 78(3) of the Coronavirus Act 2020 thereby extending the provisions included in the Meetings Regulations regarding the holding of remote council meetings beyond 6 May 2021 until the Coronavirus Act 2020 expires on 25 March 2022 (under section 89 of that Act). The Bill also creates an enabling power to allow the Department, by subordinate legislation, to make further provision on remote council meetings in the event that, after 25 March 2022, provision to allow councils to hold remote meetings is still required or wanted. This would include the power to make such provisions permanent if considered desirable for the purposes of modernity.

Performance Improvement

6. The Local Government Act (Northern Ireland) 2014 (“the 2014 Act”) places a number of duties on councils in respect of Performance Improvement and putting arrangements in place to secure continuous improvement in the exercise of council functions.
7. As a direct consequence of the COVID-19 emergency and restrictions, concerns were raised by the local government sector about the difficulties councils would face in delivering performance improvement duties and continuous improvement in the 2020/21 financial year and following years.
8. As a result of these concerns and to provide councils with some initial relief in respect of these duties, a number of performance improvement duties for the 2020/21 year were set aside to allow councils to concentrate on providing essential services and to support their communities during the emergency.
9. This Bill includes provision to regularise the legislative position regarding the 2020/21 performance improvement duties and also creates an enabling power to allow subordinate legislation to be introduced to modify council performance improvement duties for 2021/22 and 2022/23, should this be necessary during the recovery period.
10. This Bill also includes an amendment of sections 93, 94 and 95 of the 2014 Act to provide more flexibility for annual performance audits and assessments for councils.

CONSULTATION

11. This Bill is required in response to the COVID-19 pandemic and associated restrictions and the effect this has had on the local government sector. The Bill enables councillors in Northern Ireland to continue to be able to follow public health advice in relation to self and family isolation whilst continuing to participate in democratic local government. The Bill also regularises the legislative position to ease statutory Performance Improvement duties during the 2020/21 financial year for councils. Given the urgency with which the provisions within this Bill are required, it has not been possible to consult in the normal manner. The Department has engaged with the local government sector through contact with council officials, the Northern Ireland Local Government Association and the Society of Local Authority Chief Executives in Northern Ireland and they are supportive of urgent introduction. The Department has also liaised with the Local Government Auditor regarding Performance Improvement audits and assessments.

OPTIONS CONSIDERED

12. In response to the Coronavirus emergency, district councils were provided with the flexibility to hold meetings by remote means and to provide for remote access to those meetings. This ensured that councillors were able to participate effectively in local government whilst following public health advice and restrictions. Although the COVID-19 situation is improving, councils are unlikely to be able to resume full public meetings for some time to come. Not extending provisions to allow councils to hold remote meetings would inhibit the ability of councils to fully function, could lead to

delays in council business and could also inhibit councillors in Northern Ireland from continuing to participate in democratic local government. Councils and the local government sector have requested that the powers to hold remote meetings should be extended to allow them to function effectively.

13. As a consequence of concerns raised about the difficulties councils would face in delivering performance improvement duties and continuous improvement in the context of the impact of the COVID-19 emergency, a number of statutory performance improvement duties for the 2020/21 year were set aside to allow councils to concentrate on providing essential services and support for their communities during the emergency. This Bill will make provision to regularise the decision to set aside performance improvement duties during 2020/21. Not doing so could leave the Department and councils open to potential legal challenge.

OVERVIEW

The Bill consists of 7 clauses and 2 Parts. Part 1 (Meetings and Performance) contains 5 clauses concerning district council meetings and performance improvement. Part 2 (Final Provisions) contains 2 clauses which make provision to update the reference to Department and set out the commencement provisions and short title.

COMMENTARY ON CLAUSES

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

Part 1 – Meetings and Performance

Clause 1: Meetings: effect of regulations under the Coronavirus Act

This clause repeals section 78(3) (local authority meetings) of the Coronavirus Act 2020 in respect of district council meetings. This will remove the 7 May 2021 end date in relation to councils' ability to hold remote meetings in Northern Ireland.

Clause 1 further provides that The Local Government (Coronavirus) (Flexibility of District Council Meetings) Regulations (Northern Ireland) 2020 will continue to operate, as if they had never been subject to the restriction in section 78(3) of the Coronavirus Act. This means they will continue to have effect until the Coronavirus Act 2020 expires in March 2022 (under section 89 of that Act) or until such section 78 is suspended (under section 88 of that Act), if this happens earlier. Section 90 of the Coronavirus Act 2020 also contains provision enabling the expiration date to be extended on a six month rolling basis.

Clause 2: Meetings: power to make similar or further provision

This clause provides an enabling power for the Department for Communities to make regulations in relation to district council meetings, including committee, sub-committee and joint committee meetings and meetings of the executive of a council.

The regulations can include provision in relation to the requirement to hold meetings, the requirements on timing and frequency of meetings, the place at which meetings must be held, the way in which people may attend, speak at and vote at meetings, public admission and access to meetings, and documents relating to those meetings.

This enabling power will allow provision for remote council meetings to be extended for a further period, or made permanent, by means of subordinate legislation, should this be considered necessary or desirable at a future date

Regulations under this clause will be subject to negative resolution procedure.

Clause 3: Performance: exemption from yearly audit and assessment

This clause amends sections 93, 94 and 95 of Part 12 of the 2014 Act. Sections 93 and 94 of the 2014 Act place a duty on the Local Government Auditor to complete annual performance audits and assessments on all councils. However, under section 95 of the 2014 Act, the Department for Communities, after consulting with the Local Government Auditor, must determine the councils for which the auditor will be required to issue an audit and assessment report each financial year. Clause 3 amends sections 93 and 94 to make it clear that they are subject to a similar flexibility as section 95 whereby the Department for Communities can determine each year, after consulting with the Local Government Auditor, on which councils the auditor must perform a section 93 Audit, a section 94 Assessment or both. Section 95 of Part 12 is also amended so that where a section 95 Audit and Assessment report is required, the report will note any exemption of section 93 or section 94 within its body.

Clause 4: Performance: certain rules deemed as not applying (2020/21)

This clause sets aside the requirement for a district council to have set itself improvement objectives, to consult on its improvement duties and to publish an improvement plan during the 2020/21 financial year.

Clause 5: Performance: power to alter various rules (2021/22 and 2022/23)

This clause creates an enabling power, allowing the Department for Communities to by regulations amend or set aside any provision within Part 12 (performance improvement) of the 2014 Act for the 2021/22 and 2022/23 years, should this prove necessary during the period of recovery from the COVID-19 pandemic. Any regulations made under this clause will be subject to the affirmative resolution procedure in the Assembly.

Part 2 – Final Provisions

Clause 6: Updated reference to the Department

This clause substitutes the reference in section 126 (interpretation) of the Local Government Act (Northern Ireland) 2014 from “the Department of the Environment” to “the Department for Communities”, following the reorganisation of Departments in 2016.

Clause 7: Commencement and short title

This clause makes provision for the Bill to commence the day after it receives Royal Assent. This clause also provides the short title for the Bill.

FINANCIAL EFFECTS OF THE BILL

14. The Bill will not give rise to any government expenditure.

HUMAN RIGHTS ISSUES

15. The proposals have been screened for compatibility with the European Convention on Human Rights. No human rights implications were identified.

EQUALITY IMPACT ASSESSMENT

16. In accordance with its duty under section 75 of the Northern Ireland Act 1998, to have due regard to the need to promote equality of opportunity, the Department conducted a screening exercise on the proposals, concluding that they did not have significant implications for equality of opportunity and that an equality impact assessment was therefore not necessary.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

17. The Department has considered the potential regulatory impacts and concluded that no Regulatory Impact Assessment was required.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

18. The proposals do not provide for the collection, use or storage of individual data, therefore the Department concluded that a Data Protection Impact Assessment was not required.

RURAL NEEDS IMPACT ASSESSMENT

19. The Department has considered the potential rural needs impacts and concluded that no Rural Needs Impact Assessment was required.

LEGISLATIVE COMPETENCE

20. At Introduction the Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Local Government (Meetings and Performance) Bill would be within the legislative competence of the Northern Ireland Assembly.”