



Northern Ireland
Assembly

Research and Information Service Bill Paper

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Local Government Bill

NIAR 231-13

The following Bill paper gives a brief overview of the Local Government Bill as introduced to the Assembly on the 23rd of September 2013. It describes similar legislation in other jurisdictions and highlights potential areas for further consideration.

Key Points

- The Local Government (Northern Ireland) Bill is the final piece of primary legislation in the reform process.
- It was introduced to the Assembly on the 23rd of September 2013. The Department hopes it will receive approval by March 2014 in time for elections to shadow councils in April 2014.
- The purpose of the Bill is to provide the legislative basis required to reform the future operation of councils, delivery of council functions and the promotion of communities in shaping their area.
- A number of functions are to transfer from departments to the new councils, for which legislation is to be developed. The full transfer of functions is to take place in April 2015.
- Similar legislation in England includes the Local Government Act (1992) for re-organisation of local government, the Localism Act (2001) for de-centralisation of power, local government performance, neighbourhood planning, the general power of competence and the code of conduct.
- Similar legislation in Scotland includes the Local Government (Scotland) Act (1994) for re-organisation of local government; the Community Empowerment and Renewal Bill (2012) for de-centralisation of power; the Local Government (Scotland) Act (2004) for local government performance, community planning and power of well-being; and the Ethical Standards in Public Life Act (2000) for the Code of Conduct.
- An Action Programme for Local Government Reform in the Republic of Ireland was published in 2012 with legislation to be in place by local elections in 2014.
- There have been two major changes made to the Bill since the policy proposals; these are a revised ethical standards scheme and the introduction of a general power of competence rather than a power of well-being.
- Other areas for consideration include:
 - the need for a multitude of subordinate legislation and guidance that is required and the timeline for its production
 - the costs and funding available for the implementation of the local government reform programme;
 - achieving agreement of the full suite of functions to transfer from central government to the new councils;
 - lack of an appeals mechanism for breaches of the code of conduct;
 - how the department will ensure that problems which were raised with obtaining political representation on STC's does not arise with establishment of the new councils;

- the need for further clarification on employees of the council also being members, ensuring gender equality, cohesion and integration and capacity building.

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1 Introduction

Developments for the Review of Public Administration (RPA) date back to the restoration of the Northern Ireland Assembly in 2007 when the Executive set up a Sub-committee to prepare for the process. In 2008 the Sub-committee made recommendations in relation to local government structures, functions, resources, operational arrangements and governance which included:

- Reducing the number of councils to 11;
- Bringing in new governance arrangements for councils to ensure fair and transparent decision –making;
- Developing a council-led community planning process with a power of well-being;
- Transferring functions from central to local government; and
- Developing appropriate performance management systems for councils.

The original plan was to deliver the reform package before the elections in 2011, however due to delay surrounding agreement on new boundaries; the date was moved to April 2015. The Sub-committee's review insisted that the Executive should work with local government to deliver the priorities under the Programme for Government (PfG), which fell to the commitments under the 2011-2015 PfG. Under Priority 5 "Delivering High Quality and Efficient Public Services" one of the commitments was to "*Establish the new 11 council model for Local Government by 2015*", for which the Department of Environment would hold responsibility. In order to achieve this commitment, the following milestones were listed:¹

The Reform process has encompassed the production and Executive approval of a number of pieces of legislation to include:

- The Local Government (Miscellaneous Provisions) Bill 2010;
- The Local Government (Finance) Bill 2011;
- The Planning (Northern Ireland) Act 2011;
- The Local Government (Boundaries) Order (Northern Ireland) 2013; and
- The Local Government (Severance Payments for Councillors) Regulations 2013.

The Local Government Bill (the Bill), which was introduced to the Assembly on 23rd of September 2012, to receive approval by March 2014², is the final piece of legislation in the reform process. The purpose of the Bill is to provide the legislative basis required to reform the future operation of councils, delivery of council functions and the promotion of communities in shaping their area.

¹ "Priority 5: Delivering High Quality and Efficient Public Services; Key Commitments". *Programme for Government 2011-15*. Belfast: Office of the First Minister and deputy First Minister. 12 March 2012. <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf#page=54>.

² DOENI, Reform Timetable Indicative timings http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_timetable.htm

Following the passing of the Local Government Bill, the DOE details that in May 2014 it is hoped (the Secretary of State has agreed that elections will take place in 2014 but the actual date is to be confirmed) that incoming councils during the shadow period will appoint senior staff, strike rates, and approve business and financial plans for the new councils taking on full powers and responsibilities in April 2015.³

1.2 Transfer of Functions

According to the Department of Environment, the following functions will be transferred from central to local government:

Planning

- Local development plan functions
- Development control and enforcement

Roads

- Off street parking (except Park and Ride)

Urban regeneration and community development

- Functions associated with physical development (e.g. environmental improvement schemes)
- Area based regeneration (such as Neighbourhood Renewal)
- Some community development programmes for the voluntary and community sectors

Housing

- Registration of houses in multiple occupation
- Housing unfitness responsibilities, including repair and demolition notices

Local Economic Development (transfer from Invest NI)

- Start a Business Programme and Enterprise Shows
- Youth Entrepreneurship (such as Prince's Trust and Shell Livewire)
- Social Entrepreneurship
- Investing for Women
- Neighbourhood Renewal funding relating to enterprises initiatives

Local Tourism

- Small scale tourism accommodation development
- Providing business support including business start up advice along with training and delivery of customer care schemes

³ ibid

- Providing advice to developers on tourism policies and related issues

Other

- Some elements of the delivery of the EU Rural Development Programme;
- Authority to Spot List to enable Councils to add a building to the statutory list on a temporary basis, subject to ratification by the DOE;
- Authority to draw up local lists of buildings that are of architectural and/or historic interest;
- Armagh County Museum;
- Local water recreational facilities;
- Local sports (greater involvement of local government in local sports decisions);
- Donaghadee Harbour

Source: DOE⁴

2 Overview of Bill

The following section gives brief account of the Bill which consists of 128 clauses divided into 16 Parts with 12 Schedules.

Part 1 clauses 1 and 2 deal with the names of councils, and require all 11 councils to prepare a constitution.

Part 2 is similar to provisions under the Local Government Act 1972, where clauses 3 to 9 are focused on the election of individuals as a councillor, their resignation, disqualification and penalties faced, and any circumstances in which a vacancy may occur. Schedule 1 (disqualification for being elected), and Schedules 2 and 3 (declaration of councillors) give more detailed provisions in relation to this part of the Bill.

Positions of responsibility come under **Part 3** clause 10 which details the arrangements needed to ensure the sharing of positions of responsibility across political parties and any independents represented on a council. Schedule 4 contains more detail on this section.

Part 4 contains clauses 11 to 22 which ultimately deal with the discharge of functions. This includes arrangements for the discharge of functions of councils and the establishment of committees to advise on this. Schedules 5 (appointment of councillors to committees) and 6 (voting rights of co-opted members) are connected to this part.

⁴ DOE Local Government Reform http://www.doeni.gov.uk/index/local_government/local_government_reform.htm

Part 5 contains provisions for permitted forms of governance which outlines the political management structures available to councils. Clauses 23 and 24 states that a council may use a committee system where all decisions are the ultimate responsibility of the council. Another option is through executive arrangements, where certain decisions will be deferred to a smaller group of councillors within a framework agreed by the council. However the Department has the remit to introduce alternative arrangements.

Part 6 which incorporates clauses 25 to 36 looks at executive arrangements in more detail. This new decision-making framework operates with the separation of decision-making and scrutiny of those decisions. Two broad forms of executive arrangements may be chosen by a council, these include that specified decisions may be taken by the executive of the council. The second option is a cabinet style executive where the executive may discharge certain functions to a sub-committee. The overall objective is to give greater transparency and efficiency to the decision making processes, increasing its accountability through overview and scrutiny committees and giving greater public access to meetings and information (also detailed in Part 8).

Part 7 of the Bill (clauses 40-45) deals with the arrangements for the regulation of the proceedings, meetings and business of the council, which must be detailed in standing orders made by the council. Any decision made by a council must be taken by simple majority which means more than 50 per cent of votes of members present and voting. However, standing orders may stipulate that certain decisions are to be taken by qualified majority i.e. requiring 80 per cent of votes. More detailed provisions on meetings and proceedings is included in Schedule 7.

Part 8 (clauses 46- 55) looks in greater detail at access to meetings and documents. It introduces new arrangements to improve transparency of councils through increased public right of access to meetings and documents (i.e. agenda, minutes, background papers etc.) to be considered at meetings of both the council and its committees. Part 8 should be read in conjunction with Schedule 8 in relation to exempt information for the purposes of access to information.

Part 9, which consists of clauses 56 to 68, is concerned with the conduct of councillors by establishing a new ethical standards framework for local government. This is to be achieved through the introduction of a mandatory code of conduct for councillors and other involved in council business. The Commissioner for Complaints for Northern Ireland will be responsible for investigations and adjudications of alleged breaches of the code.

Part 10 (clauses 69 to 81) introduces the legislative basis for community planning, a council-led process to provide a framework for councils to work in partnership with other public service providers in their district to plan and implement a shared community vision for the economic, social and environmental well-being and development of the area. This is to be achieved through the production of a community

plan. The council must ensure that community involvement is at the heart of the production of the plan, its implementation and review.

Part 11 provides councils with a general power of competence, similar to England and Wales. Clauses 82 to 86 allows councils to do anything, including the developing innovative approaches, that will help benefit the economic, social and environmental wellbeing of their area, providing it is not prohibited by law.

Part 12 (clauses 87 to 105) is concerned with a new framework to support the continuous improvement in the performance and delivery of council services. This includes determining the strategic objectives and issues that are of most importance to those receiving the services. Councils will be responsible for gathering information in order to assess improvements in services and to inform an annual report on their performance based on benchmarks set by themselves or by the departments.

Part 13 requires the Department to establish a Partnership Panel to be made up of Executive Ministers and elected representatives from councils. The main point of business is to discuss and advise on matters of mutual interest and concern, such as the delivery of functions.

Part 14 gives departments powers to supervise councils in the exercise of their functions by requiring councils to produce reports on request, and to hold local enquiries and investigations. Should a council be found to have failed to perform its functions, the Department may intervene and perform the duty the council defaulted on.

Part 15 amends the Local Government Order 2005 to reflect changes in the structure of the Local Government Audit Office by providing for the designation of a member of staff from the NI Audit Office as local government auditor, and should be read in line with Schedule 9. It also provides power for the Department to repeal any provisions in relation to councillor surcharges.

Part 16 covers further provisions such as a transitional scheme for managing rates convergence (covered in more detail in Schedule 10), managing the disposal of contracts and finances, transfer of assets and liabilities and compensation for those affected by the new structures. This section should also be read with Schedules 11 and 12 which lists minor amendments and repeals as a result of the Bill.

3 Other Jurisdictions

The following table gives an indicative overview of legislation in England and Scotland that contains similar elements to the NI Bill.

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
Re-organisation	Local Government Act 1992	<p>The re-organisation of local government in England has taken a more piece-meal approach over the years. The Local Government Boundary Commission for England, set up under the 1992 Local Government Act reviewed the structure of non-metropolitan areas, and recommended that some areas retained the existing two-tier structure while others became single-tier unitary authorities (UAs):</p> <p>County and district councils - county councils cover large areas and provide most public services i.e schools, social services, public transport. Each county is divided into several districts which cover smaller areas and provide more local services i.e. housing, leisure facilities, local planning, water and recycling.</p> <p>Unitary authorities - these are just one level of local government, responsible for all local services.</p> <p>Town and parish councils still exist in some areas and cover a smaller radius. They are responsible for allotments, public toilets, parks and ponds, war memorials, local halls and community centres (sometimes referred to as the third-tier of local government).</p> <p>In April 2009, the government introduced unitary governments in 7 regions in England; reducing 44 local authorities down to 9 with the idea of simplifying the whole system.⁵</p>	Local Government (Scotland) Act 1994	Re-organisation began in 1996 where 9 regions and 53 districts were replaced with 32 single tier (or unitary) bodies. All 32 councils are responsible for delivering education, leisure and recreation, planning and building standards, social services, street cleaning, and refuse collection. ⁶
Decentralisation of power	Localism Act 2011	<p>Local authorities will be the beneficiaries of decentralisation as power is passed to them through the Localism Bill, they will also have a vital role in passing power to communities and individuals.</p> <p>The Localism Bill will scrap several instruments of top-down control: Regional strategies replaced with local plans that reflect the local area's vision.</p> <p>Standards Board regime abolished, allowing councils to devise own</p>	Community Empowerment and Renewal Bill (2012)	In June 2012, the Minister for Local Government and Planning launched a consultation on proposed Community/Empowerment and Renewal Bill to: ⁷ strengthen community participation unlock enterprising community development; and renew communities

⁵ http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/Localgovernment/DG_073310

⁶ <http://www.scotland.gov.uk/Topics/Government/local-government/localg/history>

⁷ Consultation document <http://www.scotland.gov.uk/Resource/0039/00394524.pdf>

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
		<p>regimes to govern propriety, behaviour and empowering local people to hold elected representatives to account.</p> <p>End to the ‘predetermination’ rules where councillors are prevented from acting on local issues because of the risk of challenge that they are biased.</p> <p>The Government’s ‘Essential Guide’ lists 6 actions that should be taken to make decentralisation happen, these are include:</p> <p>Lift the burden of democracy – by removing costs and control of red tape restricting local action;</p> <p>Empower communities to do things their way – by creating rights for people to get involved and direct development of their communities;</p> <p>Increase local control of public finance – allowing communities to decide how public money is spent and raised;</p> <p>Diversify supply of public services – by ending public sector monopolies, ensuring a level playing field for suppliers, giving people more choice and better standard of service;</p> <p>Open up government to public scrutiny – by releasing government information into the public domain so people can see how their money is spent, used and any effects; and</p> <p>Strengthen accountability to local people – by giving every citizen the power to change services provided to them through participation, choice or the ballot box.</p>		<p>Proposals include:</p> <ul style="list-style-type: none"> • The possible extension of a community right to buy to include urban land⁸; • Giving local people a greater say in local budget decisions; • Giving communities a right to challenge local public service delivery; • Giving local authorities greater powers to deal with/reuse empty homes/buildings; • Allotment legislation to be amended to support communities’ ‘grow your own’ projects; and • To allow Local Authority and RSL tenants to manage their housing.
LG Performance	The Localism Act	The Localism Act abolishes the complex and expensive system of targets and performance indicators used by central government to control local government i.e. the Comprehensive Area Assessment, the Local Area Agreements and the Audit Commission.	Local Government in Scotland Act (2003)	<p>The Local Government in Scotland Act 2003 is the key legislation for the modernisation of local government and provides a framework to enable the delivery of better, more responsive public services. This framework includes:</p> <p>A duty to secure “Best Value” in local government service provision. This requires continuous improvement in all aspects of</p>

⁸ Currently the right to buy only applies to rural land.

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
				<p>local authority functions, while maintaining a balance between quality and cost, the economy, efficiency and effectiveness, equal opportunities and achieving sustainable development.</p> <p>Reporting on performance outcome to the public.</p> <p>A statutory basis for “Community Planning” to ensure long-term commitment to effective partnership working with communities and between local authorities and other key bodies and organisations.</p> <p>A “Power to Advance Well-Being” to enable local authorities to work in a more innovative and creative way in responding to the needs of their communities. This supports the community leadership role of local authorities in the Community Planning process.</p>
Community Planning/Neighbourhood Planning	Localism Act	<p>Instead of Community Planning, the Localism Bill introduces the concept of Neighbourhood Planning: a bottom-up approach to planning led by the community. Communities play a greater role in finding ways to overcome the pressures that development can create for conservation, local services and amenities. It could also help ensure that development is in line with local needs, provides greater public amenity and more certainty for developers. Communities are able to proceed with local development without the need for a planning application. The neighbourhood decides what a plan contains and identifies the specific site or broad location, the form, size, type and design of new development. It must be in conformity with national planning policies and the strategic policies in the Council's LDF Core Strategy. The plan goes through an independent check, and should it pass it is put to a local referendum; the local planning authority must adopt it if it gets 50% approval.⁹</p>	Local Government in Scotland Act (2003)	<p>Section 15 of the Act places a duty on local authorities to initiate and facilitate Community Planning in their respective areas.</p> <p>Section 16 places a statutory duty requiring NHS Boards, Scottish Enterprise, Highlands and Islands Enterprise, Joint Police Boards and Chief Constables, Joint Fire Boards, the Strathclyde Passenger Transport Authority (SPTA) and the local authority to participate in the Community Planning process.</p> <p>Under Section 18, guidance produced sets out what is expected of local authorities and associated bodies¹⁰ to fulfil the duties and requirements in relation to Community Planning. It is supplemented by more detailed Advice Notes on the effective implementation of Community Planning. They are intended to reflect the evolving nature of Community Planning and to be</p>

⁹ <http://www.parliament.uk/briefing-papers/SN05838>

¹⁰ <http://www.scotland.gov.uk/Publications/2004/04/19168/35271>

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
				updated on a regular basis as experience is shared and examples of Community Planning in practice are added. ¹¹
General Power of Competence/ Power of Wellbeing	Localism Act	Under Schedule 1, rather than a power of wellbeing the Localism Bill introduces a 'general power of competence' for local authorities – allowing councils to do anything that is not specifically forbidden by law.	Local Government Act in Scotland (2003)	<p>Section 12(1) of the Act gives a local authority the power to do anything that it considers is likely to promote or improve the well-being of its area and persons within that area.</p> <p>Section 20(2) states that this includes the power to:</p> <ul style="list-style-type: none"> • Incur expenditure; • Give financial assistance to any person; • Enter into arrangements or agreements with any person; • Co-operate with, or facilitate the activities of any person; • Exercise any functions of any person; and • Provide staff, goods, materials, facilities, services or property to any person. <p>Previously, local authorities had to check whether legislation explicitly enabled them to engage in a particular activity. The new power is wide-ranging and enables local authorities to do anything that they consider is likely to promote or improve the well-being of their area and/or persons in it.</p> <p>It is classed as a “power of first resort”; rather than searching for a specific power elsewhere in statute in order to take a particular action, the Scottish Executive encourages local authorities to look to the new power in the first instance in taking forward measures likely to promote and improve well-being.¹²</p>
Code of Conduct	Localism Act	Standards Board The abolition of the Standards Board will revoke the model code of conduct for councillors, and abolish the need for a local authority to	The Ethical Standards in Public Life etc.	Operating since 2003 ¹³ , the codes of conduct are for councillors and the way in which they should conduct themselves in undertaking their duties in the Council. It also imposes on Councils

¹¹ Local Government in Scotland Act (2003) *Statutory Community Planning Guidance* <http://www.scotland.gov.uk/Resource/Doc/47237/0028845.pdf>

¹² Local Government in Scotland Act (2003) *Power to Advance Wellbeing Guidance* <http://www.scotland.gov.uk/Resource/Doc/47237/0028847.pdf>

¹³ This was reviewed in 2009 to reflect changes in the planning regime and in light of experience gained from its first years of operation.

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
		have a statutory standards committee. The government's view is that the Standards Board regime was a vehicle for petty and vexatious complaints about councillor's conduct that wasted time and resources, as well as damaging confidence in democracy. The government is committed to the highest standards of conduct by councillors, meaning that while the Standards Board regime is being abolished, they are legislating to make it a criminal offence to deliberately withhold or misrepresent a personal interest. This means that serious misconduct could result in a criminal conviction. A new duty on local authorities to promote and maintain high standards of conduct will be introduced, along with provision for the adoption of a voluntary code of conduct and the powers to revise, adopt, and withdraw such a code.	(Scotland) Act 2000	and relevant public bodies a duty to help their members to comply; and establishes a Standards Commission for Scotland to oversee the new framework and deal with alleged breaches of the codes. The code is based on nine general principles: <ul style="list-style-type: none"> • Duty; • Selflessness; • Integrity; • Objectivity; • Accountability and Stewardship; • Openness; • Honesty; • Leadership; and • Respect It considers Councillors conduct at meetings; with council employees; towards remuneration and expenses; accepting gifts and hospitality; confidentiality requirements; towards registration and declaration of interests; lobbying and access to councillors; and statutory decision making processes i.e. planning. ¹⁴
Electoral Change: Single Transferable Vote			Local Government (Scotland) Act (2003)	This brought the introduction of a form of proportional representation, the Single Transferable Vote (STV), which enables voters to rank local council candidates in order of preference. First elections using this process were in May 2007; election rules are set out under the Scottish Local Government Elections Order 2011 ¹⁵
Remuneration for Councillors			Local Governance (Scotland) Act 2004 (Remuneration)	May 2007 also saw the introduction of salaries for elected members. Previously, councillors did not receive salaries, although they did receive allowances, based upon a system introduced in 1995. The basic allowance depended upon the size of the council, and was payable up to a maximum of £7,321. Reason for change

¹⁴ Councillors' Code of Conduct 2010 <http://www.scotland.gov.uk/Resource/Doc/334603/0109379.pdf>

¹⁵ Scottish Local Government Elections Order 2011 <http://www.legislation.gov.uk/ssi/2011/399/contents/made>

Main Elements	England		Scotland	
	Legislation	Summary	Legislation	Summary
			Regulations 2007 as amended, and the Local Government (Allowances and Expenses) (Scotland) Regulations 2007.	was that there was general agreement that the allowance was too low, and that special responsibility allowances were overused by councils; there was also a lack of consistency across the country and a lack of transparency regarding which councillor posts attracted the higher salaries. Since May, 2007, therefore, the basic remuneration for councillors with no significant additional responsibilities in the Council's policy development or decision-making structures has been set at £15,452: this figure is set nationally and applies to the majority (around 62%) of councillors. A limited number of senior councillors - e.g. opposition spokesmen and committee convenors - receive enhanced salaries. ¹⁶

¹⁶ For more detail on remuneration in Scotland and Wales please refer to Research Paper *Councillor Remuneration* (1st July 2013) NIAR 413-13. Detail on the Severance Scheme in Republic of Ireland can be found in Research Paper *Severance Scheme: Republic of Ireland* (1st July 2013).

3.1 Republic of Ireland

An Action Programme for reforms across all the main areas of local government reform in the Republic of Ireland was published in October 2012, titled '*Putting People First*¹⁷'. The aim of the Action Programme is to implement changes since the present system of local government began in 1890s. It sets out the reforms the Government has approved in relation to local government and its structure, functions, resources, operational arrangements and governance, some of which include:

- Local government structures at sub-county and regional levels are being streamlined with a reduction of around 500 councillors, the replacement of 114 local authorities with 31 integrated authorities organised on the basis of municipal districts within counties. The total number of local authority seats nationally will not go beyond 950, compared with 883 county and city council and 744 town council seats currently.
- Three sets of local authorities such as Tipperary North and South County Councils and the City and County Councils of Limerick and Waterford will be merged after 2014 local elections.
- Municipal districts will be established all over around existing town authorities and larger non-municipal towns and hinterlands.
- Councillors will be elected simultaneously to both municipal district and county council, with members in common instead of the current separate town and county membership whereby municipal towns have double representation.
- Elected members will perform a substantial range of “reserved” functions at district level on a fully devolved basis, including: a local policy/regulatory role in areas such as planning, roads, traffic, housing, environmental services, recreation, amenity and community development; formal civic functions; a general representational and oversight role; and citizen/community engagement. More far-reaching expansion of the local government remit will be pursued on an ongoing basis as the reforms across the local government system take effect.
- There will be a stronger role for local government in promoting economic development because of the economic impact of its functions in general and its local knowledge and leadership.
- Local government will have a central role in the oversight and planning of local and community development programmes.
- Revision of regional structures and functions by replacing the eight regional authorities and two assemblies by three regional assemblies to perform updated strategic functions.
- A rigorous programme of efficiency measures, organisational streamlining and robust performance evaluation of local government is being implemented

¹⁷ DECLG, *Putting People First* (2012) Full pdf and Summary available at <http://www.environ.ie/en/Publications/LocalGovernment/Administration/>

- A secure and sustainable system of local funding will be established with provision for a proportion of local authority financial responsibility to support local democratic decision-making
- Support structures for the reform process include a national steering group to formulate implementation details and over-see the process for new sub-county arrangements, a statutory local government committee to provide recommendations on the configuration of municipal districts/electoral areas, and Implementation Groups for the merger of local authorities.
- A programme of legislation will be put in place to provide for the wide range of measures in time for the 2014 local elections.

4 Possible areas for further consideration

The following section considers some of the areas of the Bill that may be of interest for further consideration. This includes some of the main changes that have appeared in the draft Bill since the consultation on the Local Government Reform Policy Proposals in March 2011. For those proposals that have remained the same, some of the issues that were raised during the consultation back in March 2011 have been highlighted. The table in Appendix 1 contains more detail on the proposals in the draft Bill that raised concern during the consultation, and the associated response from the Department. The table in Appendix 1 refers to the following documents:

- The Local Government Bill as introduced to the Assembly on 23rd September 2013.
- The Consultation document on the Policy Proposals
- The Synopsis of Responses to the Consultation
- The Department's Response to the Consultation.

4.1 Main Changes

There have been two main areas of change since the consultation that have appeared in the Bill, these are:

A revised ethical standards regime

The Bill simplifies and streamlines the system where the Commissioner for Complaints deals with *all* investigations into breaches of the Code. This is opposed to the consultation which suggested the Commissioner deal with higher profile cases and the local council with less serious cases (for more detail see section on Ethical Standards and Code of Conduct)

General Power of Competence

The Consultation document suggested the use of a Power of Wellbeing instead of a General Power of Competence. According to the Department the change was made to the Bill due to lobbying by local government who wanted a General Power of

Competence as it is a much wider power. The PoW would require a council to find a statute to allow the council to act, whereas the General Power of Competence (under clause 82) gives councils the same freedom as an individual, unless there is a law there preventing them from carrying out the action (for more detail see section on General Power of Competence).

4.2 Subordinate legislation and guidance

The Department will have a large repertoire of subordinate legislation and guidance that will need to be produced in an efficient and timely manner if it is to take effect in time. In its response to the consultation, a number of times the Department stated that concerns would be addressed through detail in further guidance and subordinate legislation, which includes:

- The production of guidance on the publishing of a standardised format for a published constitution in relation to Clause 2.
- The suggested ability, by respondents, that councils should be able to add to the list of decisions to be made by the full council under clause 11 and 12.
- Providing more information and guidelines on the different models to be used for decision making in clauses 23-25.
- The production of subordinate legislation, under clauses 26 and 27, to allow councils to add to the list of council functions that are to remain the responsibility of the executive i.e. those that cannot be discharged to a committee.
- The production of regulations (stated in clause 38) or primary legislation (as suggested in the Department's consultation response) specifying the limited circumstances when council meetings can be closed to the public.
- In relation to voting mechanisms to be used for council decision making i.e. simple and majority voting (clause 43-45), the Department suggested in the consultation that it will produce guidance with further clarification.
- It has also been suggested that the call-in mechanism will be provided under Standing Orders in Regulations.
- The development of training and guidance and subordinate legislation on the role of the Commissioner for Complaints in relation to the councillors' code of conduct in clause 58-61.
- The production of guidance in relation to community planning where clause 77 states councils must have 'regard' to guidance. This was also suggested in the consultation, to which respondents felt was too soft a requirement.
- Subordinate legislation will be produced for the bodies involved in community planning. More detail on the scope of duties on participants in community planning (clauses 78 and 79) will be set out in guidance, while the role of departments in supporting community planning will be underpinned through the Partnership Panel.

- Subordinate legislation will also be produced for functions to transfer from central government to the new councils.
- Subordinate legislation in relation to the role of councils during the shadow period.

Ideally it would be advantageous to have guidance and subordinate legislation produced in time for scrutiny with the rest of the Bill. However the timescale afforded for Assembly scrutiny is tight in order for the Bill to receive Royal Assent in time for elections in April 2014 so as to have it in operation for the Shadow Councils. As guidance and subordinate legislation tends to contain the detail, ensuring its production is in line with the movement of the Bill through the Assembly may prove to be difficult due to the vast amount that has to be produced.

4.3 Costs and Funding

In February 2013, the Executive announced a £47.8million package to help fund and support the implementation of the local government reform programme, which will have three elements to it:

1. £13.8 million over the next two financial years to fund new councils working in shadow form, a councillor severance scheme, capacity building, change management, staff induction and winding up the current 26 councils.
2. Up to £4 million over the next two financial years to cover the cost of council borrowing in relation to ICT costs and systems convergence.
3. An estimated £30million for rates convergence following the creation of the 11 new councils in April 2015 to protect those whose rates bills may have experienced an increase due to merging with councils with a higher level.¹⁸

The Department has stated that there will be a need for all those involved in the reform to look at other funding opportunities to cover the remaining costs of implementation such as early savings from local government's Improvement, Collaboration and Efficiency Programme, and the use of assets and loans. *However the question remains as to whether these suggestions alone will be sufficient, and whether all councils will have adequate resources for this.*

In relation to the financial effects of the Bill, the explanatory notes state that 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 NI Commissioner for Complaints. The Bill provides that the cost to resource the Commissioner's office will be covered by local government which is currently estimated at £380,000. In a briefing to the Environment Committee on 26th September 2013,

¹⁸ DOE, Reform FAQs

http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_faqs.htm#who_is_funding_local_government_reform?

Department Officials informed that the Commissioner's costs will be apportioned according to size of councils.

4.4 Transfer of functions

Agreeing the full transfer of functions from central to local councils may be an area of the Bill that may generate great discussion. This may be due to concerns in relation to resourcing and funding the transfer in a way that will in fact create a more efficient delivery of public services. For example during discussion of the Planning Act 2011 and the Planning Bill 2012 concerns in relation to the transparency and the resources available to local councils to operate a fair and efficient system were raised, and may continue to be an area of discussion throughout the Bill.

4.5 Ethical Standards and Code of Conduct (Clauses 56-67)

Under clause 56 of the Bill the Department produces the Code of Conduct that all councillors must adhere to. Respondents to the consultation made reference to the situation in England under the Localism Bill where one of the aims was to streamline the standards regime while maintaining high ethical standards whereby a code of conduct is no longer compulsory. The Localism Bill removes the need for councils to adopt a model code of conduct; however each local authority must develop and adopt their own code of conduct. Proposals under the consultation suggested that high profile cases should be retained by the Commissioner, with less serious cases sent to the local council for decision. However some consultees expressed that they would prefer for the Commissioner to make decisions on all cases as a safeguard to vexatious complaints and felt it would be undesirable to have the council or committee adjudicating issues with other councillors.

Initially the Department stated in its response to the consultation that it did not agree with the Commissioner having monopoly over all decisions and that evidence suggested that an ethical standards system is accepted more readily where those that it applies to are actively involved in its application and development. However, since this the Department's opinion has changed as clauses 58 to 61 of the draft Bill simplifies the proposals allowing the Commissioner for Complaints to deal with *all* investigations and adjudication of breaches. According to the Department this simplification will make the process more efficient and cost effective as it does not require the setting up of standards committees in councils or appointing independent monitoring officers.

4.6 Appeals Mechanism

It is unclear what right of appeal a person has against a decision made by a Commissioner as clauses 58 and 59 states that the person under investigation should be given the opportunity to *comment* on the allegation put to the Commissioner. However, during their briefing to the Environment Committee (26/09/2013), Department Officials clarified that once the Commissioner makes a decision the person has a right to judicial review. Committee members were concerned by this as judicial review is limited only to challenges regarding unfair procedures, and it was felt this offers too narrow a grounds for appeal.

4.7 Community Planning (Part 10)

Respondents to the consultation felt that a financial limit should be placed on community planning so as not to waste public money and ensure that actions remain focused. The Department informed that community planning will give councils, departments, and statutory bodies the opportunity to align existing funding streams to free up resources. The Department is also of the opinion that placing a financial limit on community planning could inhibit the ability of councils and their strategic community planning partners.

Sub-ordinate legislation is to be produced for statutory bodies in community planning, and detailed guidance on the procedures to be used by councils in performing their duties under Part 10 of the Bill.

For further detail and discussion on Community Planning please refer to Research Paper '*Community Planning*' (NIAR 220-13).¹⁹

4.8 General Power of Competence (clause 82)

The consultation document made reference to the introduction of 'power of well-being' which would enable councils to take actions they aren't authorised to do (within their legal limits) in order to promote or improve the well-being of their district. There was general support for this; however respondents also suggested the use of a general power of competence, similar to England, as an alternative. Within the Bill provisions have been made for a General Power of Competence in clauses 82 to 85 similar to that in the Localism Act in England. In England concerns were expressed that the power of well-being was not being used efficiently. This brought about an evaluation of the power in 2008 by DCLG which found that early uses of the power tended to emphasise economic and environmental goals, with no evidence of local authorities balancing the economic, social and environmental impacts in line with sustainable development principles.²⁰

¹⁹ Supplied in Committee Pack for 26/09/2013

²⁰ Evaluation of the take-up and use of the well-being power; Research summary; Dept for Communities and Local Government, 2008, p1

The Department also emphasised that in relation to the use of the power, it will be up to the council to ensure that there are no legislative restrictions to taking a proposed action. As such, the General Power of competence is a much wider power than the PoW, as it gives councils the same freedom as any individual provided the act is within the law.

4.9 Role of the Local Government Auditor

In relation to the Local Government Auditor's role over auditing a council's improvement plan in clauses 96 to 100, some respondents to the suggestions made in the consultation voiced concern over the impact on local democracy and the addition of unnecessary bureaucracy and costs. However in response to these concerns the Department replied that it is of the opinion that the role would not inhibit local democracy or add to bureaucracy as councillors will retain control of the strategic direction of their council and setting of local performance indicators. The Department continued that the role of the Local Government Auditor will give external assurance that any Improvement Plan was prepared within legislative requirements, and would ensure a consistent approach across councils.

For further detail please refer to Research Paper Local Government Audit in Northern Ireland, Scotland and Wales (NIAR 347-13) which gives a comparison of local government audit throughout the UK devolved administrations.²¹

4.10 Control of councils by departments

Clauses 107 to 109 extend powers to all departments allowing them to request reports, conduct inquiries and intervene in the administration of functions by any council. However upon consultation of this proposal, the majority of responses were against the proposal as they felt that such an extension could diffuse supervisory powers. In fact it was felt that the Department of Environment should act as a channel for other departments who could provide a supportive and advisory role.

4.11 Rates convergence (clause 114)

Issues have been raised in relation to the effects of rates convergence and legacy debt issues and how these are going to be handled within the new councils. The consultation did not address the issue in any great detail, however clause 114 of the Bill proposes a transition scheme for managing rates convergence where there are wide disparities in the level of district rates between merging councils. Giving more detail on the issue in response to an Assembly question, in January 2013, on progress that has been made in funding rates convergence costs within new councils, the Minister at the time, Alex Atwood, stated that there will be a need for government assistance with this issue. He also suggested a need to provide soft loans, potentially

²¹ Supplied in Committee Pack for 26/09/2013)

with the interest being paid by central government, in respect of a council's funding for the transitional and transformative costs that fall to it. He mentioned the need for upfront assistance (around £40 million) where there are no cash-releasing benefits on the far side of RPA. Finally he explained that rates convergence will have to be managed so that it occurs over a period of time and in a way that does not place a burden on ratepayers.²²

In addition to this, the DOE website has published,

“There is also a further commitment of an estimated £30million for rates convergence following the creation of the 11 new councils in April 2015. Essentially this will protect those whose rates bills may have experienced a significant increase as a result of merging with councils where rates are currently at a higher level.”²³

According to the Department, the matter is being led by DFP and work is currently in progress. It is anticipated that the way forward will be finally set out around autumn 2014, ahead of financial planning for 2015/16.²⁴

4.12 Transfer of assets and liabilities

Dissolving current councils and creating the new 11 councils will require the transfer of legal title of assets and legal responsibility for any liabilities from the current council to its successor

Clause 121 and Schedule 10 requires the Department and any other department transferring a function, to make a scheme for the transfer of assets, liabilities and staff from a local government body or department to a new local government body. The consultation also proposed the issuing of a certificate by the department whereby interests in, or rights over property, could be clarified. It was also suggested that provision for a continuing interest should contain limiting covenants for property, to allow a council to apply for change of use. The Department informed that once asset transfer is affected, sole responsibility will pass to the new council. Where problems might arise with the transferee or recipient there will be a need to develop agreements or covenants to maximise and protect the assets in the broader Northern Ireland context. The Department has begun a process of engagement events with council representatives from each of the 11 new local government districts.²⁵

²² Assembly Question **AQO 3287/11-15** to the Minister of the Environment (21/01/2013)

<http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/04-February-2013/#AQO%203287/11-15>

²³ DOE, Reform FAQs

http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_faqs.htm#who_is_funding_local_government_reform?

²⁴ DOE, Reform Timetable http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_timetable.htm

²⁵ For more information on the workshops see 'Reform Inform' Issue 11 (July 2013)

http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_newsroom.htm

4.13 Statutory Transition Committees

The Department has produced regulations for the set up and establishment of Statutory Transition Committees which will be responsible for the recruitment of a new chief executive to its council. However concern has been expressed following detail given on the recruitment process for chief executives. In its briefing to the Committee on the 12th September 2013, the Department informed that it will publish guidance in September. It is important that guidance is produced in time with the operation of this, which is needed in advance of councils adopting shadow form in April 2014.

Political Representation

During the Departmental briefing to the Environment Committee on the 26th September 2013, members raised concern in relation to ensuring political representation on the new councils due to problems experienced with the set-up and formation of STCs. However, Department officials informed that the provisions in the Bill are much stronger than the provisions in the STC Regulations, suggesting that the problems experienced with STCs should not arise in a similar way.

4.14 Shadow councils

Elections to the new councils will take place in mid-2014. Following the election of the new councillors, the eleven new councils will operate in shadow form while the 26 councils and their members will continue to be responsible for service delivery to the ratepayer (such as waste collection, registration of births, deaths and marriages; leisure centres etc.). The 11 new councils will build upon the work of the Statutory Transition Committees in preparing for the transfer of the full range of powers and responsibilities in April 2015, which will include:

- Agreeing a striking of the rate for 2015/16;
- Agreeing a budget for the first financial year; and
- Agreeing Corporate and Business Plan of the new councils;

Further clarification on the roles of new councils during the shadow period is needed and according to the Department will be provided in subordinate legislation.²⁶

4.15 Council headquarters

Agreeing the location of headquarters in each of the new councils where old councils have had to amalgamate may prove to be difficult in the interim. Clarification on the process and procedure to be used may be needed to ensure full agreement by each council.

²⁶ Assembly Question **AQO 4037/11-15** to the Environment Minister (2/05/2013)

4.16 Council Employees as Members

During the briefing by the Department to the Environment Committee, Members raised concern with regards to employees of a council also being a member of the council. Members felt that the Bill is unclear on determining the level where employees cannot be a member i.e. does it stop at Chief Executives, Directors, heads of departments etc. or lower? It is clear that clarification on this issue is needed, whether it is addressed through regulations and whether these would be consulted on. Another issue that was raised, and needs further clarification, is in relation to dealing with declarations of interest from an individual who is acting as both a member and employee.

4.17 Gender Equality

The issue of addressing gender equality was raised during the consultation as the proposals did not contain any details on how to ensure it. It was highlighted that there is a need for decision making and policy development to be informed by both men and women, and the Equality Commission raised the issue of participation by under-represented groups.

In response the Department stated that in order to meet statutory obligations, councils should take the steps necessary to ensure that their policy development is informed by all groups in society. The Department continued that while appreciating that addressing under-representation of specific groups in elected members on councils is a matter for political parties, the Department is investigating whether it has the legislative authority to introduce gender quotas for election candidates.

This issue was also brought up during the consultation on Statutory Transition Committees, where respondents commented that provisions should be made to address gender issues in the representation on Statutory Transition Committees.²⁷

A further consideration is in relation to how gender issues may be affected by the bigger council models, and how this may in turn effect representation amongst elected members to the Northern Ireland Assembly.

4.18 Cohesion and Integration

In an Assembly question asked to the Minister at the time, Mr Alex Attwood, in relation to plans to ensure that Cohesion, Sharing and integration (CSI) plan is embedded within councils following the reform of local government, the Minister stated his support this. He continued that options for how this might be rolled out will be considered and that he intends to monitor what the political parties and OFMDFM may, or may not be doing. Finally he stated that should it be needed, an RPA/Council initiative will be considered.²⁸

²⁷ DOE, Statutory Transition Committees Synopsis of Responses

²⁸ NIAQ (15/01/2012)

4.19 Capacity Building

Preparing local and central government staff and councillors for their new roles is an important element in the transfer of functions. While the Department has stated that £13.8million will partly go towards capacity building, the Bill itself does not cover capacity building and how it will be rolled out and achieved. In particular, it is important to ensure that all levels of staff involved in producing community plans are provided with sufficient capacity building, this includes staff at local and central government plus the voluntary and community sector. Further detail and guidance is required.

Appendix 1

The following table summarises the clauses of the Local Government (Northern Ireland Bill) and any consideration of the corresponding proposal during the consultation exercise. The table makes reference to the Consultation Document on Policy Proposals, issued by the Department of Environment in November 2010, the accompanying Synopsis of Responses, the Department's Response and finally the Bill as introduced to the Assembly.

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
Constitution of councils		
(Clause 2) Bill requires councils to prepare and publish a constitution detailing how it operates i.e. standing orders; code of conduct and other details the Dept. may require.	Respondents were in agreement with this proposal and also suggested the need for a standardised format for a published constitution to be established.	Departments stated that detail of this would be addressed through guidance, and is therefore not included in the primary Bill
Positions of responsibility		
(Clause 10) This lists the positions of responsibility to be held, such as the chair and deputy chair of the council and council committees, members of cabinet style executive and positions on external bodies.	Some respondents felt that specification of positions should be a matter for each council, given the potential for differing structures. It was suggested that guidance needs to be provided on a potential list.	To ensure that power and responsibilities are shared across the political parties and any independents on a council, the Department considers that some form of specification of the positions is required. The Department will limit the specification to broad categories (i.e. to positions on the council and its committees, and appointments to external bodies). Councils would be able to add to the list of positions if they considered this appropriate.
Arrangements for discharge of functions		
(Clause 11+12) A council may have any of its functions discharged by a committee, sub-committee, and officer of council or another council. Committees and sub-committees can also delegate to lower tiers. However making district rates, borrowing money, disposing/acquiring of land cannot be devolved to a committee and must be done by	A number of councils expressed the view that councils should be able to add to the list of decisions to be made by the full council.	The Department stated that it accepts the view that councils should be able to add to the list of decisions and will address this through subordinate legislation on the functions of devolved decision-making structures.

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
the full council. This is the same for all executive arrangements.		
Permitted forms of Governance		
<p>(Clause 23 +24) These set out the forms of political governance a council may operate for its decision-making. These are: executive arrangements (creation of an executive of the council under which executive decisions are made), committee system (for the discharge of functions under Part 4 or prescribed arrangements (which involves the Dept. prescribing alternative forms of governance to be adopted by a council)).</p> <p>Executive Arrangements (Clause 25) The executive must be either: A committee to be known as a "cabinet-style executive" where executive decisions are taken by a committee of councillors or where specific decisions are taken by more than one committee known as a "streamlined committee Executive"</p>	<p>The consultation also suggested the traditional committee structure as a possibility as well. Some respondents expressed concern about the cabinet style model. Some preferred a single model across all councils to keep consistency. It was also suggested that options should not be limited to the models suggested.</p>	<p>The Department responded that concerns with the cabinet style may diminish as councils get used to new ways of operation. A single structure would remove the autonomy for councils to determine the most appropriate arrangements for their circumstances. Defining specific models in legislation will ensure that appropriate safeguards are also put in place. The Department will provide further information in guidelines.</p>
Functions which are responsibility of an executive		
<p>Clause 26 and 27 This provides the mechanism for determining which council functions are to be the responsibilities of the executive.</p>	<p>There was widespread support for this, however respondents suggested the following should be included in the list:</p> <ul style="list-style-type: none"> • agreeing the governance arrangements; • agreeing the corporate, operational and community plans; 	<p>The Department responded that it accepts the idea of letting councils add to the list, and will address this in subordinate legislation.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Allocation and discharge of executive functions (Clause 28 to 30)</p> <p>These set out how decision making taken under executive arrangements (i.e. by the streamlined committee model or the cabinet-style model), can discharge/devolve executive functions to committees. Functions can also be discharged by another council or joint committee.</p> <p>Overview and Scrutiny (Clauses 31 to 37)</p> <p>These require a council to set up overview and scrutiny committees²⁹.</p> <p>Clause 32 describes how they may carry out their functions and can appoint sub-committees. Clause 33 requires the council to designate an officer to perform these functions. Clause 34 and 35 allows for members and non-members of the scrutiny committee to refer</p>	<ul style="list-style-type: none"> • setting budgets; • striking the rate; and • requests for borrowing, acquisition/disposal of land or property etc. <p>A number of councils expressed the view that councils should be able to add to such a list.</p> <p>The consultation document gave options of a single model for decision making or the use of alternative structures. Therefore it was suggested by respondents that flexibility would be needed for the determination of the scrutiny process.</p> <p>The consultation suggested the use of a call in</p>	<p>In the light of comments received, the Department proposes to provide flexibility for councils to determine the nature and operation of their scrutiny arrangements where they choose to introduce devolved decision-making. The Department considers that it should be a matter for a council to determine whether it appoints a single committee or a small number of thematic committees.</p>

²⁹ A committee established under the principle of checks and balances to scrutinise the work of devolved decision-makers and make recommendations in relation to council policy review.

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>matters to it. Clause 36 and 37 refers to the production and publishing of reports and recommendations made by the scrutiny committee.</p> <p>Executive meetings and access to information</p> <p>Clause 38 and 39</p> <p>The executive can choose whether to meet in private or public, however, through regulations the Department can specify which meetings of the executive or its committees must be open or closed to the public. Decisions made in private must be recorded along with supporting information and must be made available to the public.</p>	<p>procedure to review decisions made under devolved arrangements.</p>	
Meetings and Proceedings		
<p>General and standing Orders (Clauses 40 – 42)</p> <p>These clauses make provision for the timing and general arrangements for meetings of the council, details of which are set out in Schedule 7. Councils are required to make standing orders to regulate proceedings and business of councils and committees.</p> <p>Decision –making(Clauses 43 – 45)</p> <p>These specify the voting mechanisms to be used by councils for decision making, which are: simple majority (> 50 per cent votes) and qualified majority voting (80 per cent votes)for decisions on standing orders.</p>	<p>The consultation suggested the use of qualified majority voting for specified strategic decisions such as decision-making structures; major capital projects; and programmes that impact across a number of wards. While respondents agreed with this, some felt that simple majority should also apply.</p>	<p>The Department stipulated that further clarification would be provided in guidance.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
Access to meetings and documents of the Council		
<p>Clauses 46-51 These clauses make provisions in relation to public access to council meetings, reports, minutes etc. Exclusions for public access are applied to meetings discussing confidential information. However all material discussed at a meeting is to be accessible by any council member</p> <p>Clause 53 Sets out the offences for obstructing access to information etc</p>	<p>The consultation linked the production of a constitution (provided in clause 2) with increasing transparency and openness to council operations.</p> <p>Under the Local Government Act 1972, subject to conditions, all meetings are to be open to the public. Respondents suggested that private meetings should be kept to a minimum.</p>	<p>The Department responded that primary legislation will specify the limited circumstances when council meetings can be closed to the public.</p>
Code of conduct		
<p>Clause 56 Issued by the Department the NI code of Conduct for Councillors specifies the principles governing councillor's conduct. It must be consulted on with councils, officers, councillors etc and approved by the Assembly.</p> <p>Clause 57 The Commissioner for Complaints will issue guidance in relation to councillor's conduct.</p>	<p>The majority of respondents were in agreement of similar proposals in the consultation; however some highlighted the situation in England since the introduction of the Localism Bill, where one of the original aims was to streamline the standards regime while maintaining high ethical standards whereby a code of conduct is no longer compulsory. Respondents also suggested that the code should expand to council officials due to the transfer of planning to local councils.</p>	<p>The Department was of the opinion that the principles suggested in the consultation document, which mirror those used in the Northern Ireland Assembly, are appropriate and will be in place before functions are transferred to councils. The Localism Bill removes the need for councils to adopt a model code of conduct, however, each local authority must adopt their own code to maintain high standards of conduct.</p> <p>The Department informed that training and guidance will be addressed by the Department in due course.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Clause 58-61 Breaches of code are to be investigated by the Commissioner who must produce a report on the findings. The subject of investigation must be given opportunity to comment on allegations put to the commissioner.</p> <p>Clause 62-64 On making a decision, the Commissioner can decide whether a councillor should be censured, suspended, or disqualified from being/becoming a councillor. The Commissioner can make recommendations to a council upon which the council must report the actions it will take from the recommendations and provide this to the Commissioner and the Department.</p> <p>Clause 65 The Clerk of the council must maintain a register of interests of councillors that must be publically available.</p> <p>Clause 67 The estimated amount of the expenses of the Commissioner's office is to be apportioned between all councils in NI. Timing and methods of payment will be covered in regulations.</p>	<p>There was general approval of the Commissioner having involvement in investigation of breaches. However respondents were in favour of the proposal in the consultation of a two tier system where the Commissioner would be responsible for an initial sift to determine whether a case should be referred to the council for local resolution or retained by the Commissioner's Office (serious/high profile cases). Others wanted the Commissioner to make decisions on all cases as a safeguard to vexatious complaints, and felt it would be undesirable to have the council or committee adjudicating issues with other councillors.</p> <p>It was also suggested as an alternative that a new shared legal service could be set up through the Improvement, Collaboration and Efficiency (ICE) programme.</p> <p>The consultation also asked whether the code of conduct should apply to co-opted members. In response, respondents asked for clarity on "co-opted member" and the additional principle of stewardship was suggested to be included.</p>	<p>In relation to the work of the Commissioner, more detail will be provided in guidance and subordinate legislation which will be consulted on. The Department agreed that all complaints should be sent firstly to the Commissioner for Complaints to determine how they should be investigated as it would be the use of an existing and experienced skill.</p> <p>In relation to the Commissioner having the monopoly over decisions, the Department informed that other jurisdictions within the UK have confirmed that an ethical standards system is more readily accepted if those it applies to are involved in its application and development. It detailed that for complaints of a serious nature, adjudication would be retained by the Commissioner, and therefore there would be no direct involvement by the council or a council committee.</p> <p>The Department informed that a definition of the term "co-opted members" will be included in the proposed mandatory Code of Conduct, which will be issued for consultation; this will also include levels of sanctions.</p> <p>Stewardship, which generally means imposing a duty of prudent use of resources within the law, may be covered under the principles of</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
		accountability, integrity and honesty.
Community Planning		
<p>Clause 69 places a duty on councils and community planning partners (to be defined by the Department in Clause 70) to initiate, maintain, facilitate and participate in community planning for their area.</p> <p>Community planning is also defined as developing long term objectives for improving economic, social and environmental well-being to achieve sustainable Development (also see Research Paper 'Community Planning' NIAR... which discusses community planning in more detail).</p> <p>The council and community planning partners must produce a community plan with objectives and actions (Clause 71). The plan must be reviewed every 4 years (Clause 72 and 73). The Council and partners must monitor the progress towards meeting the objectives and should publish a statement every 2 years on the progress being made.</p> <p>Clause 76 requires a council and partners to take all views into account such as local residents, non-residents who receive council or partner services, voluntary organisations and those with business interests.</p> <p>The Department will produce guidance that councils must have regard to (Clause 77).</p>	<p>It was felt that clarity is needed on what community planning entails and what adequate resources are required, and that a financial limit should be placed on community planning so as not to waste public money to ensure that actions remain focused.</p> <p>Some respondents were disappointed with the suggestion that councils would only have to 'have</p>	<p>In relation to resources, community planning will provide the opportunity for councils, departments and statutory bodies to more effectively align existing funding streams to free up resources. The Department feels that placing a financial limit on community planning could inhibit the ability of councils and their strategic community planning partners.</p> <p>The Department suggested that the scope of community planning and engagement will be addressed in the legislation and through the guidance</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
	regard' to the detail provided in guidance. It was also suggested that it should allow for flexibility at local level, that it should include material on standards of engagement with the community, provision for local and thematic community plans, and steps to ensure all plans are represent all community bodies.	that will be issued by the Department.
Clause 78 places a duty on all Departments in NI to promote community planning. The Department can establish corporate bodies to co-ordinate and further community planning (Clause 79)	Respondents to the consultation were of the opinion that the role of departments and statutory bodies should be strengthened and extended from just "participating" in community planning to "delivering" it. It was suggested that they should bring resources and senior management commitment to the process and those that fail to participate and engage should be liable to sanctions.	The Department stated in its response to the consultation that more detail on the scope of the duties on participants will be set out in community planning guidance. The role of departments in supporting community planning will be underpinned through the Partnership Panel.
Clause 80 Amends the Planning Act 2011 and creates a statutory link between community planning and spatial planning.	Respondents highlighted the need for a clear statutory link between community planning and land-use planning. They expressed the view that the integration of both processes can help achieve more sustainable and cohesive communities. This issue was also raised during the consultation on the Reform of the Planning System.	The Department agreed that a link with local development plans is important. As indicated during the Assembly passage of the Planning Act, a statutory link between community plans and local government development plans will be provided in the Local Government (Reorganisation) Bill.

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
General powers of councils		
<p>Clause 82 gives a general power of competence to councils. This means that a council can carry out innovative actions that a council would not normally do. There are no limits to how this power can be used, only that it can't be used outside NI.</p> <p>There are however boundaries to this power (Clause 83) requiring councils to act in accordance with statutory limitations/ restrictions, for example, councils cannot contract out/delegate their functions.</p> <p>Under clause 84 councils cannot charge for providing a service under the general power. However councils can charge up to full cost recovery for services they are not required to provide, where the person has agreed to those services being provided.</p> <p>The Department can free up the use of the general power if a council is restricted due to legal reasons. However the Department can also restrict what a council can do under the general power or enforce conditions (Clause 85). The Department must consult with those affected before using these powers. The Department must also ensure whether certain conditions listed under clause 86 have been met before using these powers.</p>	<p>The consultation document set out proposals for the introduction of a 'power of well-being' which would enable councils to take actions they aren't authorised to do to promote or improve the well-being of their district. Similar to the power provided in the Bill a council would not be able to use the power to do anything it is legally restricted to do.</p> <p>While there was general support for a power of well-being, suggestions were made for a general power of competence as an alternative.</p>	<p>Making reference to the general power of competence introduced in England under the Localism Act, and replacing the power of well-being, the Department stated that it proposes to introduce a similar power for councils here.</p> <p>Concerns were expressed in England that the power of well-being was not being used effectively. An evaluation in 2008 found that early uses of the power tended to emphasise economic and environmental goals. There was no evidence of local authorities balancing the economic, social and environmental impacts and in line with sustainable development principles.³⁰</p> <p>The Department explained that in relation to the use of the power it will be up to the individual council to ensure that there are no legislative restrictions to taking the proposed action. The council will be responsible for examining any resourcing implications.</p>
Performance improvement		

³⁰ Evaluation of the take-up and use of the well-being power; Research summary; Dept for Communities and Local Government, 2008, p1

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Under an improvement general duty, Clause 87 requires councils to make arrangements to secure continuous improvement when exercising its functions in terms of strategic effectiveness; service quality; fairness (equity); sustainability; efficiency etc. (all of which are defined in clause 89).</p> <p>Clause 88 proposes that each council set itself improvement objectives for each financial year, covering the aspects defined in clause 89. Explanations of the aspects and how they will operate will be provided in guidance. The Department has the power to amend, add or remove aspects.</p> <p>When setting improvement objectives, councils must consult with rate payers, service users, and those with an interest in the district (clause 90).</p>	<p>The consultation referred to a 'best value duty' to secure best value through continuous improvement of council's performance of functions. Suggesting a balance be maintained between quality of performance and the cost with regard to efficiency, economy and equity; and duties should contribute to achievement of sustainable development etc.</p> <p>Respondents suggested that a framework should be driven by local government rather than central. Some councils felt that such a duty is not required for the delivery of continuous improvement.</p>	<p>The Department considers that, in order to ensure the effective delivery of continuous improvement across all councils a broad legislative framework is necessary. This framework will build on relevant duties on councils that already exist including sustainability and social clauses.</p>
Performance indicators and standards		
<p>Clause 92 gives the Department the power to prescribe performance factors (performance indicators) and standards against which a council's performance will be measured. Different indicators and standards can be set for different councils. The department must consult with councils, bodies etc before making these specifications.</p>	<p>Similar proposals for performance indicators and standards were put forward in the consultation. There was majority support from respondents; however some expressed that PIs should be kept to a minimum with councils having freedom to add to PIs. It was felt by some that this is a local issue.</p>	<p>Department intends to undertake further research to determine the most appropriate mechanisms for developing and agreeing any regionally determined performance indicators with local government. Individual Ministers will determine if a regional Performance Indicator should be applied to a function that has been transferred to local government but for which they retain policy responsibility. The comments made about keeping these to a minimum are noted. Councils have, and will continue to have, the freedom to determine local PI's.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
Improvement planning and information		
<p>Clauses 93 to 95</p> <p>These clauses require councils to collect information each financial year to measure their performance against a previous year and compare it with other councils/ public bodies.</p> <p>Information on performance must be published before 31 October following each financial year. Councils must also publish any report by the Local Government Auditor (see Clause 96)</p> <p>Council's must publish an improvement plan which covers the general duty, objectives, and performance indicators and standards.</p>	<p>There was majority support for the publishing of an improvement plan; however concerns were expressed in relation to the Department's role in specifying the form and content of such reports. It was expressed that the Department should have an advisory role rather than prescriptive.</p>	<p>Ensuring a measure of consistency and comparability in the reports across all councils is a key feature of the new framework to provide accountability to ratepayers.</p>
Improvement audits and assessments		
<p>Clauses 96 to 100</p> <p>The Local Government Auditor is required to carry out an audit to assess whether a council has carried out its duties of publication of improvement information (clause 95), and whether a council is likely to meet the requirements in the coming year i.e. a forward-looking assessment (clause 97). This is to be published by way of a report for each council each year (clause 98). The council must respond to the report stating the actions it will take and when, which must go into the next</p>	<p>In relation to the Auditors role over auditing the improvement plan, responses were mixed. Half supported the idea while others were concerned over the impact on local democracy and addition of unnecessary bureaucracy and costs.</p> <p>Of those who supported the proposal, some felt that the role of the auditor should include recommendations as to performance indicators, and ensuring council plans include promotion of equality.</p>	<p>The Department is of the opinion that the role would not inhibit local democracy or add to bureaucracy as councillors will retain control of the strategic direction of their council and setting of local performance indicators. The role of the auditor will give external assurance that any Improvement Plan was prepared within legislative requirements, and ensure a consistent approach across councils.</p> <p>In relation to the suggestion that the auditor should make recommendations about performance indicators the Departments feels that in fact the auditors contribution to performance improvement would strengthen the framework by providing the opportunity for shared learning.</p>

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Improvement Plan (clause 99)</p> <p>Clause 100 requires the Auditor to also publish an annual improvement report summarising findings and determining whether a department needs to intervene and use powers should a council fail to perform (see clause 103)</p> <p>Special Inspections: Clauses 101 to 102</p> <p>These allow the Auditor to conduct a special inspection of a council where the Auditor believes a council has failed to comply with this Part. The Auditor must produce a report for each special inspection and may recommend that the Department uses its powers of direction where it believes a council has failed to comply.</p>		
<p>Powers of direction: Clause 103</p> <p>This gives the Department powers to intervene in and direct a council which is failing, or is at risk of failing to comply with this Part of the Bill. It includes the actions a Department may use such as directing a council to prepare/amend and improvement plan; conduct a review of its exercise of particular functions etc.</p>	<p>Majority were in support of this proposal in the consultation. However some felt it should be used as a method of last resort or that it should be limited to the Environment Minister. Others felt that powers under section 129 of the Local Government Act (Northern Ireland) 1972 are sufficient.</p>	<p>The Department stated that it would address issues in relation to the timeframe for the use of the power in the primary legislation.</p> <p>It was also stated that powers should be available to all Ministers as other Departments will have policy responsibility for functions being delivered by councils.</p> <p>The Department is also of the opinion that the 1972 Act is not appropriate for the new framework.</p>

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<p>Power to modify statutory provisions and confer new powers: Clause 104</p> <p>The Department can modify or exclude the application of enactments which apply to councils if they obstruct a council from complying with this Part.</p>	Not discussed in consultation	Not discussed in consultation
Partnership Panel		
<p>Clause 106</p> <p>Department is to establish a Partnership Panel and to appoint members who are to comprise NI Ministers and members of district councils. The Panel will advise Ministers on matters affecting their functions, make representations and give advice on matters affecting those involved in local government.</p>	<p>The consultation received widespread support for the proposal of a Partnership Panel to formalise relations between central and local government. Some respondents were of the opinion that the Panel should either include external representatives or engage with relevant interests on specific strategic issues. It was felt that the remit should include delivering customer focused services and collaboration across boundaries, and support arrangements should include professional advisors from local government.</p>	<p>In response the Department stated that it will work with local government in developing the practical operation of the Partnership Panel to ensure the collective consideration of strategic issues which will be strengthened by engagement with relevant organisations.</p> <p>The Department will also liaise closely with local government and other interested parties to develop a concordat to underpin a partnership approach between the Executive and councils.</p> <p>It is envisaged that the appointment of an elected representative, from each council (to represent their council as a whole) to the Panel will be made by the Department of the Environment following consultation with appropriate local government associations.</p>
Control of councils by NI Departments		
<p>Clauses 107-109</p> <p>The following clauses are concerned with extending sections 127-129 of the Local Government Act 1972 to all departments and not just the DOE.</p> <p>Clause 107: allows any department to require a council to make a report and give information on carrying out its functions, upon which the council has a duty to abide.</p>	<p>Responses to the consultation were mixed where majority were against the proposal as it was felt that such an extension could diffuse the supervisory powers and that the Department should act as a channel for other departments who could provide a supporting and advisory role.</p>	<p>The Department did not agree with these concerns and stated that the proposed Partnership Panel, and any concordat between the Executive and local government, can provide a mechanism for raising concerns about the specific uses of the powers. It will be important for the supervision powers to be made available to those departments transferring functions to local government and that the department which has policy responsibility should have the supervisory</p>

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<p>Clause 108: provides power for any department to instigate an inquiry or investigation into administration of functions of any councils, committee or sub-committee.</p> <p>Clause 109: allows for any department to intervene in the operation of a council where it has failed to carry out its functions.</p>		<p>power. The DOE is of the opinion that it does not need to be involved in such circumstances.</p>
Amendments		
<p>Clause 110 amends the Local Government Order 2005 by providing for the designation of a member of staff of the NI Audit Office (NIAO) as the local government auditor, and for NIAO staff to assist with functions.</p> <p>Clause 111 provides power for the Department to repeal any provisions in relation to councillor surcharges</p>		
Miscellaneous		
<p>Rates convergence</p> <p>Clause 114 amends the Rates Order 1977 to give a transition scheme for managing rates convergence where there are wide disparities in the level of district rates between merging councils</p> <p>Clause 115 amend the Local Government (Boundaries) Order 2012 to give clarity on which hereditaments new councils will have power to make a rate before they take on full responsibility for all functions in April 2015.</p>	<p>There was concern expressed in relation to the effects of rates convergence and legacy debt issues and how these are going to be handled within the new councils.</p>	<p>In response to an Assembly question in relation to what progress has been made in funding rates convergence costs within the new councils, Minister Attwood stated that there will be a need for government assistance with rates convergence, and a need to provide soft loans, potentially with the interest being paid by central government, in respect of a council's funding for the transitional and transformative costs that fall to it. He also suggested the need for upfront assistance (around £40 million) where there are no cash-releasing benefits on the far side of RPA. Finally he explained that convergence will have to be managed so</p>

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<p>Non-commercial considerations Clause 116 allows the Department to specify a matter that should cease to be a non-commercial consideration for the purpose of council contracts.</p> <p>Disposal of contracts and finances Clause 117 amends the Local Government (Miscellaneous Provisions) Act 2012 to supplement the controls on existing councils in the run up to reorganisation. This includes controls of the borrowing and reserves on existing councils by the new councils whilst operating in shadow form (See Shadow Councils).</p> <p>Transfers of assets and liabilities Clause 121 and Schedule 10 requires the Department and any other department transferring a function, to make a scheme for the transfer of assets and liabilities and staff from a local government body or department to a new one.</p>	<p>The Department proposes that existing district councils should be able to incur expenditure on behalf of their relevant successor councils. This would be recoverable from the new councils once they are established.</p> <p>The consultation also proposed the issuing of a certificate by the department whereby interests in, or rights over property, could be clarified. Respondents commented that any provision for a continuing interest should contain limiting covenants for property, to allow a council to apply for change of use.</p>	<p>that it occurs over a period of time and in a way that does not place a burden on ratepayers.³¹</p> <p>The Department agreed that criteria and controls need to be put in place in relation to any expenditure to be incurred on behalf of the new councils. It suggested that these issues will be addressed through changes in the legislation.</p> <p>The Department responded that once asset transfer is affected, sole responsibility will pass to the new council. Where problems might arise with the transferee or recipient there will be a need to develop agreements or covenants to maximise and protect the assets in the broader Northern Ireland context. DSD is running local government reform workshops with new council clusters. The Department has begun a process of engagement events with council representatives from each of the 11 new local government districts.³²</p>

³¹ Assembly Question **AQO 3287/11-15** to the Minister of the Environment (21/01/2013) <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/04-February-2013/#AQO%203287/11-15>

³² For more information on the workshops see 'Reform Inform' Issue 11 (July 2013) http://www.doeni.gov.uk/index/local_government/local_government_reform/reform_newsroom.htm

Clause	Consultation response to corresponding policy proposal	Department's Response to consultation
<p>Compensation Clause 122 requires compensation to be paid to anyone suffering loss of employment or diminution of emoluments as a result of the new council or the transfer of functions from central to local government.</p> <p>Supplementary Clause 123 provide departments with power to make incidental, consequential, transitional or supplemental provisions for reorganisation and transfer of powers.</p>		