

# FINAL REPORT OF THE GOVERNANCE SUB GROUP - 10 JULY 2006

## Executive Summary

- A. The Department of the Environment (DoE) has been overseeing a programme of work in response to the need to both modernise local government and implement decisions flowing from the Review of Public Administration (RPA) that were announced by the Secretary of State on 22 November 2005.

To help develop detailed proposals and draft new legislation for modern and effective local government the DoE established a Local Government Taskforce. The Governance Sub Group was one of 9 sub groups created to inform new legislation being developed for local government.

- B. The terms of reference for the Governance group are as follows:

- \* examine each of the specific areas that make up the confines of local governance, (*such as political structure, roles and responsibilities, allocation of posts, key decisions, accountability and safeguards, standards, role of the citizen and civic councils*) and identify those areas where change is required. Decisions taken should reflect the principles set out in the Government's vision of "A Shared Future" – Policy and Strategic Framework for good relations in Northern Ireland.
- \* identify and critically examine best practice working models of local governance elsewhere.
- \* consult with relevant stakeholders where required and develop formal and timely recommendations on the optimum approach to taking forward a range of options / the preferred option of local governance in Northern Ireland which will inform policy and the drafting of the new Local Government legislation.
- \* where appropriate, produce an action plan for consideration by the Taskforce setting out the key actions necessary to

deliver each recommendation, the timescale for delivery and taking account of resource implications along with an identification of any catalysts and constraints.

- C. Given the time constraints (10 week delivery framework) the governance sub group was unable to carry out any primary research into the subject of governance in local authorities in Northern Ireland. To compensate the group undertook extensive desk research, consultation with the relevant government departments in neighbouring jurisdictions and considered existing relevant academic thinking.
- D. The process adopted for delivering on the terms of reference began with the appointment of a Chairperson/Project Leader. A project team made up of representatives from five political parties considered issues arising from research and consultation and information contributed by a consultative forum, made up of officers from local government, voluntary/community sector and government departments.
- E. The following outlines the recommendations the project team made for each issue, indicating the matters that need legislative prescription and identifying those that will require more detailed explication by way of separate guidance:

#### **Equitable representation/ sharing of civic responsibility**

- Councils must employ proportionality in allocating positions of responsibility and in appointing to all internal and external committees and organisations and this should be applied over the full term of the Council.

#### **Safeguards/ checks & balances**

- The role of the Ombudsman to remain.
- The role of the Local Government Auditor to remain. Consideration needs to be given to his duties in respect of assessing the general performance of Councils. The Auditor's surcharge powers to be reviewed in light of proposal to give 'power of wellbeing' to Councils.
- Existing Equality obligations to remain – though there is a need to review the efficacy of the arrangements for ensuring that public bodies fulfil these obligations.

- A new Performance Assessment framework should require Councils to demonstrate adherence to best practice in corporate governance – this should be reviewed and reported upon regularly. There should be penalties for failure.
- The Performance Assessment should also review Councils' adherence to the implementation of regional policies.
- Reference should be made to the mandatory 'Code of Conduct' – adherence to it should be clearly spelt out in the 'declaration on acceptance of office' that all Councillors must sign after the election. There should be penalties for any breaches.
- Each Council should have a protocol on the relationship between Councillors and officers – this should be reviewed through performance assessment of corporate governance arrangements.
- Each Council must establish an Internal Standards Committee. This will investigate complaints regarding alleged misconduct by Councillors. The Committee should include independent members (i.e. non-Councillors) whose combined numbers should exceed the Councillor members by 1 and one of whom should Chair the Committee.
- Provision must be made to allow reference of concerns over conduct, behaviour or actions by individuals or groups of Councillors to an external Commissioner for Local Government. This will not replace existing organisations (see above) nor prevent recourse to legal action/judicial review but is designed to be a quicker, less costly means of resolving concerns.
- The key officer roles of the Head of the Paid Service/ Chief Executive, Chief Financial Officer and Monitoring Officer should be explicitly referred to.
- Councils must each establish an Audit Committee, to agree the internal audit plan, monitor its implementation and consider reports from the Local Government Auditor.

### **Decision-making and accountability**

- A group comprising at least 20% of the total membership of a Council can 'call-in' a decision and trigger the requirement for a 75% voting majority in favour to proceed.
- General presumption in favour of public access to all Council and Committee meetings, with exceptions detailed in guidance.
- Each Council should have a written constitution.
- The regulatory and quasi-judicial responsibilities of the Council should be made explicit and Councils be required to establish the necessary mechanisms for carrying out these roles – e.g. planning, licensing.

- Explicit reference should be made to the need for the Council to have effective mechanisms for taking decisions and scrutinising their impacts/outcomes, co-ordinating the corporate interests of the Council, monitoring performance, developing policy, consultation arrangements and holding other bodies to account for the services delivered to citizens within the Council area.
- Councils should be required to publish an annual report.

### **Citizen engagement**

- There is considerable cross-over with Community Planning. It may be helpful to take the current Best Value legislation, strengthen it and incorporate it into the new Order. The performance assessment regime should consider the effectiveness of a Council's arrangements for engaging with its citizens.
- Councils should be enabled to establish forums at a more local level.

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## Acknowledgements

The Sub-Group on Governance of the Local Government Taskforce had a wide range of expertise available to it spanning elected members, officers from the 5 main political parties, officials from central government departments, local authority officers, the voluntary and community sector (NICVA), SOLACE, the IDeA and academia (Queen's University, University of Ulster, University of Birmingham). Those involved gave of their time and expertise generously, particularly given the demands of the task and the short timescale involved to complete it.

As Chair, I wish to record my sincere thanks to all my colleagues for their input to this report, which details our findings and provides practical recommendations on the appropriate legislative requirements for a modern and inclusive approach to governance in the new Councils.

I am particularly grateful to Nora Winder and Gerry Millar who offered much support in developing our thinking and also for helping me with the practical management of the project. In addition Jonathan Huish and Stewart Ashurst from the IDeA provided a most helpful perspective to our deliberations, and I am particularly grateful to Jonathan for facilitating our steering group comprising of the political party nominees.

Thanks are also due to Janet Cooper and Greg Magee from the Department of the Environment for their administrative support throughout the process.

Victor Brownlees  
Chair  
Chief Executive, Armagh City & District Council

June 2006

## Background

The Department of the Environment (DoE) has been overseeing a programme of work in response to the need to both modernise local government and implement decisions flowing from the Review of Public Administration (RPA) that were announced by the Secretary of State on 22 November 2005.

To help develop detailed proposals and draft new legislation for modern and effective local government the DoE established a Local Government Taskforce. The Taskforce has two components – the Political Panel chaired by the Minister and designed to engage politicians in the strategic management of the overall process, and the Working Group chaired by the DoE Permanent Secretary and comprising practitioners and other stakeholders. The programme of work was organised into 9 separate groups, Governance being one of the 9, with a lead officer appointed to project manage each group. The primary focus of this work is to inform the new legislation being developed for local government. A secondary output will be the identification of issues that require detailed guidance rather than legislative prescription.

## Terms of reference

The terms of reference for the Governance group are as follows (full project initiation framework at appendix one):

- \* examine each of the specific areas that make up the confines of local governance, (*such as political structure, roles and responsibilities, allocation of posts, key decisions, accountability and safeguards, standards, role of the citizen and civic councils*) and identify those areas where change is required. Decisions taken should reflect the principles set out in the Government's vision of "A Shared Future" – Policy and Strategic Framework for good relations in Northern Ireland.
- \* identify and critically examine best practice working models of local governance elsewhere.
- \* consult with relevant stakeholders where required and develop formal and timely recommendations on the optimum approach to taking forward a range of options / the preferred option of local governance in Northern Ireland which will inform policy and the drafting of the new Local Government legislation.
- \* where appropriate, produce an action plan for consideration by the Taskforce setting out the key actions necessary to deliver

each recommendation, the timescale for delivery and taking account of resource implications along with an identification of any catalysts and constraints.

## **Process**

The process adopted for delivering on the terms of reference began with the appointment of a Chairperson/Project Leader. A project steering group made up of representatives from five political parties considered issues arising from research and consultation and information contributed by a consultative forum, made up of officers from local government, voluntary/community sector and government departments.

The project steering group met on 4 occasions and was facilitated by Jonathan Huish, a serving Councillor from Wales and an associate with the Improvement and Development Agency (IDeA). The steering group used a collaborative approach to explore their joint understanding of the core conceptual areas. This involved processes of iterative enquiry, to ensure linkage and commitment from the political parties, and of incremental dialogue, to find a point on a continuum between legislative prescription and guidance. Thanks are due to the following for fulfilling this role:

- Ald. Peter Robinson MLA, MP
- Cllr. Jim Wells MLA
- Cllr. Paul Butler
- Cllr. Alex Maskey MLA
- Cllr. Danny Kennedy MLA
- Ald. Arnold Hatch
- Billy Armstrong MLA
- Cllr. John O’Kane
- Ald. John Mathews
- Cllr. David Ford MLA

## **Research**

Given the time constraints (approx 10 weeks) the governance sub group was unable to carry out any primary research into the subject of governance in local government. This was not a major obstacle as there were a number of important sources of research and innovation relating to this area that the group were able to reference these included the following:

- European Charter for Local Government (attached at appendix two)
- The Report of the Lyons Inquiry, Sir Michael Lyons – 8 May 2006 (attached at appendix three)
- Checks, Balances and Safeguards, Bronagh Hinds and John Loughlin, November 2005 (attached at appendix four)
- Checks & Balances, NILGA RPA Working Group Report, July 2005 (attached at appendix five)
- The Good Governance Standard for Public Services, Office of Public Management, CIPFA, Joseph Rowntree Foundation (attached at appendix six) In addition interviews were carried out with representative from the following organisations to establish current thinking in relation to systems of governance in local authorities:
  - Department of Communities and Local Government, London
  - Finance and Central Services Department, Scottish Executive
  - Dept of Environment, Heritage and Local Government, Dublin
  - School of Governance, Queens University Belfast
  - University of Ulster
  - Institute of Local Government Studies, University of Birmingham

The officer's consultative forum was convened on only one occasion (Minutes attached at appendix 7). This proved to be a very positive meeting with a number members submitting supplementary information. In particular Frances McCandless (NICVA), Denver Lynne (Local Government Audit), Damien McMahon (Derry City Council), Liam Hannaway (Banbridge District Council), Robin Wilson (Democratic Dialogue).

The information gathered from the sources outlined above was distilled and presented to the political steering group.

## **Findings**

In considering revised governance arrangements for local Councils in the context both of the review of public administration (RPA) and local government modernisation 4 broad issues were identified:

- Equitable representation/ sharing of civic responsibility
- Safeguards/ checks & balances
- Decision-making & accountability
- Citizen engagement

These issues were considered by the political steering group informed by the research detailed above (minutes of these meetings are attached at appendix eight). The following is a summary of the key findings relating to each.

### **Equitable representation/sharing of civic responsibility**

The sharing or distribution of power among elected representatives was identified through research and consultation as a key issue in relation to governance in local government. Academic research and views of political parties indicated strongly that sharing or distribution of power should be an underpinning principle of new local governance arrangements at all levels. The degree to which this should be prescribed was an issue of debate. This debate centred on the issues of local flexibility, future proofing the legislation to ensure arrangements would not be dictated by what had happened in the past and ensuring that all elected representatives were able to contribute to local governance in direct relation to their electoral position. The method by which posts would be allocated was identified as an area which would be best addressed in detailed guidance with a general agreement that primary legislation should require a council to demonstrate proportionality in allocating all positions.

### **Safeguards/checks & balances**

It was generally accepted that the application of proportionality in relation to the allocations of positions within the council would not be sufficient in preventing the abuse of power. During the process it became apparent that there was no common definition of checks and balances. There was however an acceptance of the need for an external point of reference where there were genuine concerns around standards and decision making. However there was also agreement that this particular safeguard would not

replace existing mechanisms e.g. judicial review. It was further felt that whilst existing arrangements, particularly equality obligations, were in themselves safeguards there was a need to ensure that they are fit for purpose.

### **Decision-making & accountability**

There was much discussion over the use of weighted majority voting and the ability of a minority of Councillors to 'call in' decisions. Consideration was given to specifying a range of issues that would require a weighted majority to approve them. However, it was finally agreed that the call-in power should be the trigger for a weighted majority vote. Thus, where a specified proportion of the membership (20%) is concerned about a particular course of action it can ask for a further review, prior to action being taken. The Council would then require a weighted majority (75%) of those voting to carry any subsequent proposal. It was also accepted that arrangements would need to exist to prevent ongoing deadlock.

It was accepted that new governance arrangements should be designed to improve decision making and take greater cognisance of the various and potentially conflicting roles and responsibilities of councillors. While detailed models including executive and scrutiny roles were considered there was no support for an overly prescriptive approach such as that found in England. The view taken was that a range of models be detailed in guidance, to help councils establish appropriate structures. There was also a strong view that remuneration arrangements be flexible enough to recognise the increased responsibilities of Councillors.

### **Citizen engagement**

There was overwhelming agreement on the need for the new councils to have effective mechanisms for engaging with their citizens. It was recognised that existing Best Value legislation provided some obligation for consultation however it was also found that an obligation to engage was required, and that this should be reviewed through the performance assessment regime for Councils. There was overall agreement that possible vehicles for engagement should be detailed in guidance to support a strengthened legislative requirement. There was mixed views on whether area committees and/or civic councils should be required. It was concluded that legislation should be enabling in this regard with guidance available to those councils who wish to adopt such arrangements.

## Conclusions

Issue	Options Considered	Comment
Equitable representation/sharing of civic responsibility	<p>No requirement in the legislation to ensure proportionality but guidance developed</p> <p>Detailed prescription within legislation</p> <p>A requirement in the legislation to ensure proportionality with detailed guidance on methodology to support</p>	<p>No political support</p> <p>No cross party support</p> <p>Full cross party support – addresses the need for proportionality but allows limited local flexibility</p>
Safeguards/checks and balances	<p>Status quo</p> <p>New system prescribed for local government</p> <p>Review of the effectiveness of existing legislative provision e.g. Sec 75 of Northern Ireland Act and in addition new legislation should address the following:-</p> <ul style="list-style-type: none"> <li>• A significant role for new</li> </ul>	<p>No cross party support</p> <p>Discounted as there is already substantial legislation in place, accepted that the associated powers and structures are still developing.</p> <p><i>Advantages:</i> Provides a clean sheet</p> <p><i>Disadvantages:</i> Ignores all work achieved and unrealistic time frame</p> <p>Cross party support.</p> <p><i>Advantages:</i> Uses existing structures and bureaucracy.</p> <p><i>Disadvantages:</i> Needs detailed codification.</p>

	<p>performance assessment regime</p> <ul style="list-style-type: none"> <li>• A mandatory code of conduct for both members and officers</li> <li>• A member officer protocol</li> <li>• An Internal Standards Committee</li> <li>• Provision for reference of concerns over conduct, behaviours, actions and decisions to a 'Commissioner for Local Government' appointed by the Minister</li> <li>• Defined roles for senior officers e.g. Head of the Paid Service, Chief Financial Officer and Monitoring Officer</li> <li>• An Audit Committee</li> </ul>	
<p>Decision-making and accountability</p>	<p>Weighted majority voting for key decisions.</p> <p>Call-in by set proportion of Councillors, similar to Petition of Concern in Assembly.</p> <p>Status quo on structures</p> <p>Detailed prescription on structures, e.g. English Local Government Act</p>	<p>No cross party support.</p> <p>Cross party support.</p> <p>No cross party support</p> <p>No cross party support <i>Advantages:</i> Would provide uniform structures</p>

	<p>Requirement in legislation for councils to address the roles and responsibilities of councillors in terms of decision-making, monitoring performance, policy development, exercising quasi-judicial functions etc. Minimum prescription in terms of structures with detailed guidance on various models available and possibility for local flexibilities, subject to Ministerial approval.</p>	<p><i>Disadvantages:</i> Gives limited flexibility and not practical given the time constraints for introducing new legislation</p> <p>Cross party support:-  <i>Advantage:</i> Allows for local flexibility while ensuring that the different roles and responsibilities of Councillors are recognised and accommodated within governance structures  <i>Disadvantages:</i> Lack of uniformity</p>
<p>Citizen engagement</p>	<p>Status quo – no regulation</p> <p>Uniform structure and prescribed methodology</p> <p>General requirement/responsibility for citizen engagement and enabling legislation in relation to local area committees/ civic councils.</p>	<p>No support</p> <p>No support</p> <p>Cross party support</p>

## Recommendations

<b>Issue</b>	<b>Context</b>	<b>Legislative requirements</b>	<b>Need for guidance</b>
1.0 Equitable representation/ sharing of civic responsibility	1.1 Custom & practice in most existing Councils; NI Assembly model for distributing posts	1.1.1 Councils must employ proportionality in allocating positions of responsibility and in appointing to all internal and external committees and organisations and should be applied over the full term of the Council.	1.1.1a It is anticipated that guidance will detail a range of models that may be used, e.g. d'Hondt, St Lague, STV, 'Quota Greatest Remainder' etc. There will need to be a clear procedure by which a Council agrees on the model to be used, including a possible 'default' if no agreement is reached and a requirement that any variations from a particular model must be signed-off by the Minister.
2.0 Safeguards/ checks &	2.1 Concerns regarding	2.1.1 The role of the	2.1.1a Should consider

<p>balances</p>	<p>permanent majority/minority status for communities in 7 Council model; international standards for corporate governance; need to clarify Councillor v Officer relationship</p>	<p>Ombudsman to remain.</p> <p>2.1.2 The role of the Local Government Auditor to remain. Consideration needs to be given to his duties in respect of assessing the general performance of Councils. There will also need to be a review of the Auditor's power of surcharge in light of the 'power of wellbeing' that is being proposed for the new Councils.</p> <p>2.1.3 Existing Equality obligations to remain – though there is a need to review the efficacy of the arrangements for ensuring public bodies fulfil these obligations.</p> <p>2.1.4 New Performance Assessment framework should require Councils to demonstrate adherence to best</p>	<p>including in guidance clearer definitions of the respective roles/responsibilities of these external bodies.</p> <p>2.1.4a Detailed guidance on best practice in corporate governance. Explanation of the sanctions/penalties for</p>
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		<p>practice in corporate governance – this should be reviewed and reported upon regularly. Sanctions should exist to penalise any failing Council.</p> <p>2.1.5 Performance Assessment should also review Councils’ adherence to implementation of regional policies.</p> <p>2.1.6 Reference should be made to the mandatory ‘Code of Conduct’ – adherence to it should be clearly spelt out in the ‘declaration on acceptance of office’ that all Councillors must sign after the election. Should also apply to senior Officers.</p> <p>2.1.7 Each Council should have a protocol on the relationship between</p>	<p>failing Councils.</p> <p>2.1.5a Guidance on relevant policies, e.g. Sustainable Development, Shared Future etc.</p> <p>2.1.6a Code should be part of statutory guidance. This should include an explanation of the penalties for breaches of the code.</p> <p>2.1.7a Guidance should provide template for protocol.</p>
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		<p>Councillors and officers – this should be reviewed through performance assessment of corporate governance arrangements.</p> <p>2.1.8 Each Council must establish an Internal Standards Committee. This will investigate complaints regarding alleged misconduct by Councillors/Officers. The Committee should include independent members (i.e. non-Councillors) whose combined numbers should exceed the Councillor members by 1 and one of whom should Chair the Committee.</p> <p>2.1.9 Provision must be made for an external point of reference to hear concerns over conduct, behaviour or actions by</p>	<p>2.1.8a Guidance on the operation of Committee, to include sanctions/penalties.</p> <p>2.1.9a Guidance should clarify what outcomes issue from such a reference – including any sanctions</p>
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		<p>individuals or groups of Councillors. This will not replace existing organisations (see above) nor prevent recourse to legal action/judicial review but is designed to be a quicker, less costly means of resolving concerns. It is suggested that a Commissioner for Local Government be appointed by the Minister to act in this regard.</p> <p>2.1.10 The roles of the Head of the Paid Service/ Chief Executive, Chief Financial Officer and Monitoring Officer should be explicitly referred to.</p> <p>2.1.11 Councils must each establish an Audit Committee, to agree the internal audit plan, monitor its implementation and</p>	<p>available.</p> <p>2.1.10a Guidance should identify good practice in the operation of each role.</p> <p>2.1.11a Guidance on the operation of the Committee.</p>
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		consider reports from the Local Government Auditor.	
3.0 Decision-making & accountability	3.1 Increased responsibilities and powers; greater numbers of Councillors; increasing tensions in the various roles of a Councillor	<p>3.1.1 Where 20% of the total membership of the Council is concerned by a decision of the Council the relevant Councillors may use the power of 'call in', similar to a Petition of Concern in the Assembly. This will delay the enactment of the decision in question and necessitate a 75% voting majority in favour to proceed.</p> <p>3.1.2 The presumption must be that all meetings are open to members of the public to meetings.</p> <p>3.1.3 Requirement for a written constitution.</p>	<p>3.1.1a Guidance should clarify timescales and procedures for resolving deadlock.</p> <p>3.1.2a Guidance should clarify the circumstances where meetings are held in private, e.g. when dealing with staffing matters and where an issue is commercially sensitive.</p> <p>3.1.3a Guidance to include template/ advice on</p>

		<p>3.1.4 The regulatory and quasi-judicial responsibilities of the Council should be made explicit and Councils be required to establish the necessary mechanisms for carrying out these roles – e.g. planning, licensing.</p> <p>3.1.5 Explicit reference should be made to the need for the Council to have effective mechanisms for e.g. taking decisions and scrutinising their impacts/outcomes, co-ordinating the corporate interests of the Council, monitoring performance, developing policy, consultation and holding other bodies to account for the services delivered to citizens within the Council area.</p>	<p>content.</p> <p>3.1.4a Detailed guidance on the options for performing these roles, e.g. separate Planning Committee/ separation of responsibilities for development control from area planning etc.</p> <p>3.1.5a Guidance should provide a menu of options for Councils to choose from. These would provide options for streamlining committee structures; for a corporate co-ordination function for Councillors; strong accountability mechanisms; the delegation of authority to committees and /or officers; and role specifications for key</p>
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		3.1.6 Councils should be required to publish an annual report.	<p>positions. Should a Council wish to adopt any other approach this will require Ministerial approval. Remuneration must be flexible enough to recognise increased responsibilities and variations in structures between Councils.</p> <p>3.1.6a Guidance on report format and proposals on the manner in which it is disseminated.</p>
4.0 Citizen engagement	4.1 Responsibilities under existing Best Value legislation; best practice; larger Council areas	4.1.1 There is considerable cross-over with Community Planning. It may be helpful to take the current Best Value legislation, strengthen it and incorporate it into the new Order. A Council's effectiveness in engaging with its citizens should be included in the Performance	4.1.1a Guidance should identify options and models for effective citizen engagement and demonstrate the crucial links between governance and community planning. This should include consideration of possible technology-based approaches to increasing citizen

		<p>Assessment regime.</p> <p>4.1.2 Councils should be enabled to establish forums at a more local level.</p>	<p>participation.</p> <p>4.1.2a Guidance on establishment of area committees/ civic councils/ local community planning arrangements, including the applicability of partnership models.</p>
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