



Department of the  
**Environment**

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## **Local Government Reform**

# **Establishment of Transition Committees in Statute**

## **Consultation Document**

April 2009

**LOCAL GOVERNMENT REFORM  
PROPOSED ARRANGEMENTS FOR THE ESTABLISHMENT OF  
TRANSITION COMMITTEES IN STATUTE.**

This Consultation Document seeks views on the Department's proposals for the establishment of Transition Committees in statute

**Comments should be sent by 31 May 2009 to:**

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**LOCAL GOVERNMENT REFORM  
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TRANSITION COMMITTEES IN STATUTE**

**PURPOSE OF THE CONSULTATION DOCUMENT**

1. The Department of the Environment is seeking views from consultees on its proposals for the creation of statutory Transition Committees which will be tasked with managing the transition from the existing 26 councils to the new 11 district councils. Enabling powers will be included in a forthcoming Local Government Bill.

**BACKGROUND**

2. The need for the provision has arisen as a consequence of the Reform of Local Government, under which the number of district councils in Northern Ireland will reduce from 26 to 11. The Northern Ireland Executive agreed in July 2007 to the detailed proposals for a review of the local government aspects of the Review of Public Administration in the context of Devolved Government and wider decisions on the RPA implementation programme.
3. The review considered what local government is expected to deliver in the context of a fully-functioning devolved Assembly and Executive, and was undertaken via three distinct but interlinking strands. The first strand focused on developing a shared vision for local government in Northern Ireland. The second on the numbers of councils and the third looked at the functions to transfer to local

government. The review also looked at the decisions of the previous administration to develop a council-led community planning process and the complementary power of well-being.

4. The review was overseen by a sub-committee of the Executive, reporting to the Executive as a whole. The sub-committee was chaired by the then Minister for the Environment, Arlene Foster MLA, and included the DRD, DSD, and DHSSPS ministers, given their interest in significant transferring functions. The DFP minister was also a member of the group given the significant financial implications of what was considered. The sub committee was designed to deliver the involvement of the four parties represented on the Executive, but also involved those Ministers with the most significant interest in the RPA decisions being reviewed.
5. Local government reform will also result in the new councils taking on additional duties and powers and in the transfer of certain functions from central government to local government control. Details can be found in the Statement to the Assembly made by then Environment Minister Arlene Foster on 31 March 2008 [[http://www.doeni.gov.uk/minister\\_s\\_statement\\_to\\_the\\_assembly\\_-\\_31\\_march\\_2008.pdf](http://www.doeni.gov.uk/minister_s_statement_to_the_assembly_-_31_march_2008.pdf)]
6. A critical issue which has been addressed in the implementation of the reform of local government is whether the new councils should operate in shadow form for a period after the May 2011 elections before assuming full power and responsibility. Under such an arrangement elections would take place to the new council in 2011, but the full range of powers and duties would not immediately pass to

the new body, but would instead follow during the proceeding period (i.e. the “shadow” period) of up to one year.

7. The Minister of the Environment, Councillor Sammy Wilson MP MLA, has determined that a shadow period will not apply. Power and responsibility will transfer to the new councils on the fourth day after polling day, in accordance with Part III of the Electoral Law (Northern Ireland) Act 1962. The Minister’s overriding consideration in reaching this decision is that the public expect to see modern, efficient services, including those transferred from central to local government, in place as soon as possible and that this should be achieved without delay.
8. Consequently, Transition Committees will be responsible for a significant programme of work to ensure that the new Councils will be in a position to take full executive responsibility for services from the outset. This in turn means that the Transition Committees require statutory powers.

## **GOVERNANCE, POWERS AND DUTIES OF STATUTORY TRANSITION COMMITTEES**

9. There are a number of duties which a Transition Committee must undertake in preparation for the establishment of the new council. It is also necessary to establish the governance arrangements under which the Transition Committees will operate, and how they will reach their decisions.

## THE PRIMARY ENABLING POWER

10. The primary enabling power will make provision to require councils to set up Transition Committees to work towards the effective merging of the 26 councils to the new 11 councils, and enable the Department to issue directions to Transition Committees. The Department will also require the power to wind-up the Transition Committees when their task is complete, and the enabling power will include the provision for the Department to make payments to Transition Committees, should this be required for any purpose as determined by the Department. Regulations will specify the detail in relation to any such funding.
  
11. In order to provide the necessary legislative cover for the full range of tasks to be undertaken by the Transition Committees it is proposed that the primary enabling power includes provision in relation to the:
  - development and management of convergence plans;
  - development of strategies for estates and accommodation;
  - management of the transfer of assets and liabilities;
  - development of a short term corporate vision for the new council area;
  - trialling of initial community planning arrangements;
  - development of a preliminary staff structure for the new council;
  - appointment of the Chief Executive designate and senior staff for the new council;
  - preparation of the budget and making the rate for the new council; and
  - management of local communications with staff and ratepayers.

## COMPOSITION OF THE TRANSITION COMMITTEES

### Level of membership

12. Given the major change management process that needs to be taken forward by the Transition Committees, the committees need to be limited in size to allow for efficient and effective decision making without preventing appropriate debate. Based on the experience of transition management in local authorities in other regions it is proposed that 9 of the 11 Transition Committees should comprise a maximum of 16 members. The two exceptions will be the transition committees for the Causeway Coast group of councils, where four councils are coming together, and Belfast City Council where it is proposed the membership should be a maximum of 20 members. With the exception of Belfast this means that each of the existing councils will be able to appoint a minimum of five members to the relevant Transition Committee.
  
13. In order to support a partnership approach, which we consider is necessary for an effective transition process, we propose that the membership of the individual Transition Committees would be drawn equally from the constituent councils.

### Question

- Q1: Do you agree with the proposed size of the Transition Committees?**
- Q2: Do you agree that representation from district councils in a group should be equal?**

## **Inclusivity in representation**

14. Ensuring proportionality and inclusivity in a council's representation on a Transition Committee will be a key factor in the arrangements for the committees. A number of approaches are available to achieve this such as D'Hondt and Saint Lague which would allocate seats on the Transition Committee in proportion to the number of councillors a political party has on the council, by maintaining the ratio of councillors to seats allocated as closely as possible. An alternative approach would be for councillors to vote for the representatives using a Single Transferrable Vote.
  
15. There are merits and disadvantages in each of these approaches. D'Hondt and Saint Lague are very structured and parties with few representatives can be excluded, depending on the number of representatives to be appointed, although the larger divisor in Saint Lague can go some way to resolving this. The Single Transferable Vote approach provides the opportunity for a council to consider who can best represent them, and take account of the balance of the parties in the council.
  
16. Against this background, it is proposed that the councils should have the flexibility to choose from these approaches the one that best suits their circumstances. In the event that a council cannot agree an approach D'Hondt would be specified as the default. It is further proposed that provision will be made to ensure that the individual approaches are applied consistently across the councils. This provision, in relation to the divisor methods, would be based around the legislative framework for the allocation of Ministerial positions in

the Executive, as set out in the Northern Ireland Act 1998, Section 18.

### Question

- Q3: Should district councils have flexibility in their approach to nominating members to a Transition Committee?**
- Q4: Do you support the approach to achieving consistency in the application of the divisor methods?**

## **GOVERNANCE ARRANGEMENTS FOR STATUTORY TRANSITION COMMITTEES**

### **Decision making structure**

17. Given the range of tasks to be completed to prepare for the creation of the new councils it is perhaps unrealistic to expect the Transition Committees themselves to examine all the issues in the detail necessary to reach a considered decision. It is, therefore, proposed that a Transition Committee should have the legal authority to establish a sub-committee or sub-committees to consider specific issues if it considers this to be an appropriate approach. All decisions would, however, remain matters for the full Transition Committee except where this would conflict with legal requirements, e.g. employment law.
18. In order to ensure proportionality and inclusivity in the overall transition process, it is proposed that the Chair and Vice-Chair of a Transition Committee and any sub-committee(s) it establishes should be allocated across the political parties represented on the Transition Committee. This allocation would be across two equal time periods

over the operational term of the Transition Committee, with it having the flexibility to allocate these positions using either D'Hondt, Saint Lague or STV, (as outlined in para. 16 in relation to a council's appointments to a Transition Committee). Any sub-committee Chair and Vice-Chair positions created following the initial allocation would be allocated using a continuation of the initial process.

19. Continuing the theme of proportionality and inclusivity, it is proposed that the membership of any sub-committee(s) established by a Transition Committee should be proportionate to the representation of political parties on the relevant statutory transition committee. The two generally accepted approaches for achieving proportionality in these circumstances are Quota Greatest Remainder or Droop Quota, and it is proposed that these will be available to Transition Committees.
  
20. It is generally accepted practice that in a meeting the Chair will have a 'casting vote' in the event that consensus cannot be reached and that the members are split equally in their views. This 'casting vote' is often used to maintain the position of no change but such an approach is not viable for this change management process. Therefore, given the nature and possible timing of decisions it is proposed that the Chair of a Transition Committee or of a sub-committee established to consider a specific issue(s) would not have a 'casting vote'.

## **Question**

**Q5: Do you agree that a Transition Committee should be able to establish sub-committees?**

**Q6: Do you support the process for the allocation of the Chair and Vice-Chair positions, and for determining the membership of sub-committees?**

**Q7: Do you agree that the Chair of a Transition Committee or sub-committee (if established) should not have a 'casting' vote?**

### **Checks and balances**

21. In addition to ensuring proportionality and inclusivity in a council's representation on a Transition Committee it is considered that a system of checks and balances to protect the interests of unionist and nationalist communities in the new council areas should be a feature in the operation of the Transition Committees. It is proposed that these checks and balances would provide for a specified number of members on a Transition Committee to be able to 'call-in', or request, that a particular issue would need to have a fixed level of support for it to be implemented. This is known as a Qualified Majority Voting procedure.

22. The level or trigger for 'call-in' would be set at 15% of the membership of the Transition Committee (with the number of members always rounded up to the nearest whole number). The level or threshold for a decision to be implemented would be set at 80% of the members of the Transition Committee present at the meeting and voting.

23. Decisions in relation to the striking of the rate for the new council and those relating to personnel matters, or others with a legal basis,

would be excluded from the 'call-in' and Qualified Majority Voting procedures.

### **Question**

**Q8: Do you agree that the 'call-in' and Qualified Majority Voting (QMV) procedures should be available for the operation of Transition Committees?**

**Q9: If so, do you agree that the levels set for the trigger for 'call-in' and threshold for QMV are appropriate?**

### **Standards and transparency**

24. During this change management process it will be important to ensure that members of Transition Committees adopt appropriate standards of conduct in carrying out their official duties and in maintaining working relationships with fellow councillors and council officers. In the circumstances we propose that the Northern Ireland Code of Local Government Conduct should extend to members of Transition Committee.

25. The reform of local government, and the change process that will take place over the next two years, is likely to be of significant interest to ratepayers, the media, councillors who are not members of Transition Committees and other interested groups. In order to ensure that the process is open to wider input and scrutiny it is proposed that the operation of the Transition Committees, and their discussions, should where practicable be open to the public.

26. There will, however, be occasions when Transition Committees will be discussing issues relating to staffing matters or of a commercial

and confidential nature. In these circumstances it would not be appropriate for members of the public or media to be present. It is, therefore, proposed that Transition Committees should have the ability to close such sessions to the public. Councillors who are not members of the Transition Committee would, however, have the right to attend sessions to which the public are excluded.

### **Question**

**Q10: Do you agree that a Code of Conduct should apply to members of a Transition Committee?**

**Q11: Do you agree that meetings of Transition Committees should where practicable be open to the public?**

## **GENERAL PROVISIONS**

27. As Statutory Transition Committees will be local government bodies they will be subject to the relevant provisions in the Local Government Act (Northern Ireland) 1972, and subsequent Local Government legislation, amended as appropriate to reflect the status and role of the new committees. These provisions will include those relating to such issues as Members, Meetings and Procedures, Officers, Financial and Audit procedures, and shall be specified in detail in the Regulations.

## **APPOINTMENT OF CHIEF EXECUTIVE AND SENIOR TEAM DESIGNATE**

28. It is proposed that each Transition Committee will be required to appoint a Chief Executives designate to the new council. The appointment of the Chief Executive designate is a vital step in the

preparation for the new council, as the appointee will be responsible, reporting to the Transition Committee, for leading and delivering the necessary change and convergence to establish the new council as a fully functioning entity to commence operation in May 2011. The Transition Committee will also be required to make appointments designate of the key Directors in the senior management team for the new council, to assist the Chief Executive designate. It is expected that the senior appointments should include at least the directors responsible for finance and human resources, as it is recognised that these will be the key areas in the establishment of the new council. The Transition Committees should also have the flexibility to make such other designate appointments as they determine necessary to carry out their duties in preparation for the new councils.

## **ROLE OF THE LOCAL GOVERNMENT STAFF COMMISSION**

29. The Local Government Staff Commission, under the provisions of the Local Government Act (Northern Ireland) 1972, has responsibility for oversight of matters connected to recruitment, training and terms and conditions of employment of council staff. As a key task of the Transition Committees will be the selection and appointment of the Chief Executives and Senior Teams designate for the new councils, it is proposed that the Regulations make provision for the role of the Local Government Staff Commission to be extended to support the Transition Committees in the appointment of staff. This provision would cover the full range of functions and duties of the Staff Commission and its role in relation to the appointment and qualification of officers of district councils.

**Question:**

**Q12: Do you agree that the role of the Local Government Staff Commission should be extended to provide support to the Transition Committees?**

**RELATIONSHIP BETWEEN STATUTORY TRANSITION COMMITTEES AND COUNCILS**

30. In order to ensure that the new councils are in a position to exercise their functions fully and effectively following the Local Government elections in May 2011, there are a number of critical decisions which must be taken by statutory Transition Committees. These include the setting of an operating budget for the first year of the new council, and the setting of the rate that will apply for the first year when the new council is established.

31. So that this can be carried out in a manner which will ensure a smooth transition from the outgoing bodies to the new council, it is proposed that a statutory Transition Committee has a power of approval over the budgets of constituent councils for the financial year immediately preceding the coming into being of the new council. This is an important requirement to provide a mechanism to ensure that constituent councils do not act in a manner which would have an adverse impact on the setting of the budget and striking of the rate for the new council

**Question**

**Q13: Do you agree that Transition Committees should have a power of approval over the budgets of constituent councils in the year preceding the coming into operation of the new council?**

## **POWER OF DIRECTION**

32. Again, as a consequence of the need for Transition Committees to take decisions to ensure that the new councils are in a position to function effectively in May 2011, it is proposed that a Power of Direction is provided for the Department to step in where a Transition Committee is failing to take the key decisions in relation to the preparation for the new council.
33. This power would be exercised in relation to all the decisions necessary to ensure transition, including the appointment of a Chief Executive designate, the setting of the budget for the new council and the making of the rate for the new council. The setting of a budget and making of a rate are fundamental to the operation of a council.
34. This power would be in addition to the application of Section 129 of the Local Government (Northern Ireland) Act 1972 in relation to action by the Department if a council is in default of its responsibilities, which it is proposed should also apply to statutory Transition Committees. This approach will provide the Department with the legislative cover to intervene if required to ensure that the actions are taken to ensure that the new councils can operate effectively when they are created, and immediately begin delivering services to ratepayers.

### **Question**

**Q14: Do you agree that the Department should have a Power of Direction in relation to Transition Committees?**

## **Human Rights**

35. The Department believes that the proposals are compatible with the Human Rights Act 1998.

## **Equality**

36. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the proposed legislation will not lead to discriminatory or negative differential impact on any of the section 75 groups. A copy of the screening form can be viewed on the Department's website [http://www.doeni.gov.uk/index/information/equality\\_unit.htm](http://www.doeni.gov.uk/index/information/equality_unit.htm).

## **Regulatory Impact Assessment**

37. The Department has not conducted a regulatory impact assessment as the proposed legislation does not give rise to any associated costs or savings on business, charities, social economy enterprises or the voluntary sector.

## **Rural Proofing**

38. The Department has assessed the proposed measures and considers that there would be no differential impact in rural areas or on rural communities.

## **Freedom of Information Act 2000 – confidentiality of consultations**

39. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read Annex A on the confidentiality of consultations. It gives guidance on the legal position about any information given by you in response to this consultation.

### **Alternative format**

40. This document is available in alternative formats. Please contact us to discuss your requirements.

### **Consultation**

41. Comments should be sent by 31 May 2009 to John Murphy at the address below or by e-mail to [john.murphy@doeni.gov.uk](mailto:john.murphy@doeni.gov.uk).

42. If you have any queries in relation to the proposals, you should contact either:

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Or

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Tel: 028 9025 6074

43. This Consultation Document is being circulated to persons and bodies listed in Annex B and is also available to view at: [http://www.doeni.gov.uk/index/local\\_government/lg\\_funding/local\\_government\\_consultations.htm](http://www.doeni.gov.uk/index/local_government/lg_funding/local_government_consultations.htm).

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## **The Freedom of Information Act 2000 – confidentiality of consultations**

1. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
  
2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.
  
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
  - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in

connection with the exercise of any of the Department's functions and it would not otherwise be provided;

- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
  - acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk> ).

**List of Consultees**

Age Concern NI

All Northern Ireland District Councils

An Munia Tober

Association of Local Government Finance Officers

British Chamber of Commerce

Belfast Solicitors Association

Carers NI

Chief Local Government Auditor

Church of Ireland

Civil Law Reform Division

Coalition on Sexual Orientation

Community Relations Council

Confederation of British Industry

Construction and Employers Federation

Disability Action

District Judge - Magistrates Court

Equality Commission for NI

Equality Forum NI

Federation of Small Businesses

Food Standards Agency for Northern Ireland

Gingerbread

Help the Aged NI

HM Revenue & Customs  
Human Rights Commission  
Irish Bankers Federation  
Law Centre (NI)  
Law Society of Northern Ireland  
Local Government Staff Commission  
MENCAP  
Men's Project  
MEPs  
Methodist Church in Ireland  
Ministry of Defence  
MLAs  
MPs  
National Association of Councillors  
NI Assembly / Committee for the Environment  
NI Association of Citizens Advice Bureaux  
NI Chamber of Commerce and Industry  
NI Chamber of Trade  
NI Council for Voluntary Action  
NI Gay Rights Association  
NI Political Parties  
Northern Ireland Court Service

Northern Ireland Judicial Appointments Commission  
Northern Ireland Law Commission  
Northern Ireland Local Government Association  
Participation and the Practice of Rights Project  
Presbyterian Church in Ireland  
QUB – School of Law  
RNIB  
RNID  
Save the Children  
Secretary – Catholic Bishops of Northern Ireland  
Society of Local Authority Chief Executives  
The Executive Council of the Inn of Court Northern Ireland  
The General Consumer Council for Northern Ireland  
The Law Society of Northern Ireland  
The Northern Ireland Council for Ethnic Minorities  
UU – School of Law  
Women’s Support Network  
Youthnet