



**SYNOPSIS OF RESPONSES TO
CONSULTATION ON THE REGULATIONS
TO BE MADE UNDER PART 3 OF THE
LOCAL GOVERNMENT FINANCE BILL**

AND

DEPARTMENTAL RESPONSE

- **the Local Government (Payments to Councillors) Regulations (Northern Ireland) 2011**
- **the Local Government (Councillors' Remuneration Panel) Regulations (Northern Ireland) 2011**

**Department of the Environment
March 2011**

CONSULTATION ON REGULATIONS TO BE MADE UNDER PART 3 (PAYMENTS TO COUNCILLORS, ETC) OF THE LOCAL GOVERNMENT FINANCE BILL

SYNOPSIS OF RESPONSES AND DEPARTMENTAL RESPONSE

INTRODUCTION

1. The Local Government Finance Bill ("the Bill"), which was introduced in the Assembly on 19 April 2010, completed its Assembly progress on 15 February 2011 and is currently awaiting Royal Assent.
2. Part 3 of the Bill (Payments to councillors, etc) updates the legislative framework for councillors' remuneration. It repeals the current provisions in the Local Government Act (Northern Ireland) 1972 which deal with payments to councillors, and re-enacts them, with some amendments.
3. Part 3 of the Bill also gives effect to the recommendations made in June 2006 by the Councillors' Remuneration Working Group ("the CRWG") which required provision in primary legislation:
 - the introduction of provisions requiring councils to make and publish a scheme of allowances; and
 - the establishment of an independent remuneration panel for Northern Ireland to make recommendations to the Minister on councillors' allowances.

The other recommendations which the CRWG made in its report - *Review of Councillors' Remuneration in Northern Ireland (issued June 2006)* - did not require any changes to primary legislation and were taken forward in the Local Government (Payments to Councillors) (Amendment) Regulations (Northern Ireland) 2007.

4. The Department of the Environment has prepared two sets of draft regulations to be made under Part 3 of the Bill:
 - the Local Government (Payments to Councillors) Regulations (Northern Ireland) 2011 ("the Payments to Councillors Regulations"); and

- the Local Government (Councillors' Remuneration Panel) Regulations (Northern Ireland) 2011 ("the Remuneration Panel Regulations").

5. A consultation document on the draft regulations was issued for comment on 17 December 2010, with a closing date for responses of 24 February 2011.

SUMMARY OF RESPONSES

6. The Department received a total of 17 responses to the consultation. The breakdown was as follows.

Category	Number
Individual District Councils:	12
Antrim Borough Council	
Ards Borough Council	
Armagh City and District Council	
Ballymena Borough Council	
Banbridge District Council	
Belfast City Council	
Castlereagh Borough Council	
Craigavon Borough Council	
Down District Council	
Fermanagh District Council	
Limavady Borough Council	
Lisburn City Council	
Local Government Representative Body	1
National Association of Councillors (NAC)	
Government department or agency	1
Department of Agriculture and Rural Development (DARD)	
Others	3
Disability Action	
An individual	
Northern Ireland Judicial Appointments Commission (NIJAC)	
TOTAL	17

7. None of the respondents opposed the proposed regulations.

8. 18% (3) of all respondents noted the proposals but had no comments to make on particular aspects.
9. 6% (1) of all respondents fully supported the proposals but had no further comments to make on particular aspects.
10. 76% (13) of all respondents provided responses to some or all of the specific questions posed by the Department, as well as making comments of a general nature.
11. In the consultation document the Department posed five questions in relation to the proposed Payments to Councillors Regulations and two questions in relation to the proposed Panel Regulations. Consultees were also invited to give general comments on the proposed regulations and the underlying policy.

THE DRAFT LOCAL GOVERNMENT (PAYMENTS TO COUNCILLORS) REGULATIONS (NORTHERN IRELAND) 2011

Background

12. The proposed Payments to Councillors Regulations will replace both the Local Government (Payments to Councillors) Regulations (Northern Ireland) 1999 (as amended¹), and the Local Government (Travelling and Subsistence Allowances to Councillors) (No. 2) Regulations (Northern Ireland) 1973 (as amended²). The regulations will bring forward the powers currently available to councils to pay basic allowance, special responsibility allowance and dependants' carers' allowance to their members and to allow for the payment of travel and subsistence allowance to council members in relation to approved duties.

¹ Amended by the Local Government (Payments to Councillors) (Amendment) Regulations (Northern Ireland) 2007 (SR 2007 No. 168).

² Amended by Councillors (Travelling and Subsistence Allowances) (Amendment) Regulations (Northern Ireland) 1979 (SR 1979 No. 25), Local Government (Travelling and Subsistence Allowances to Councillors) (Amendment) Regulations (Northern Ireland) 1981 (SR 1981 No. 114), Councillors' (Travelling and Subsistence Allowances) (Amendment) Regulations (Northern Ireland) 1997 (SR 1997 No. 431) and Councillors (Travelling and Subsistence Allowances) (Amendment) Regulations (Northern Ireland) 2003 (SR 2003 No. 125).

13. In the consultation the Department proposed amending the provisions in the Payments to Councillors Regulations regarding special responsibility allowance (SRA), restricting payment of that allowance to no more than half of the members of a council and providing that no member should receive more than one special responsibility allowance. Where a council pays an SRA to its chairperson and vice-chairperson, this will be excluded when calculating the maximum number of councillors who may receive an SRA.
14. It also proposed introducing new provisions requiring a council to make a scheme of the allowances it intends to pay to its members and to publish that scheme on its website and elsewhere, as the council considers appropriate.

Comments on specific questions posed in consultation

Q1: Do you agree that a special responsibility allowance should be made to no more than half of the councillors of a council? If you do not agree with this restriction, what alternative would you suggest?

15. Fourteen respondents answered this question.
16. Eight of these respondents agreed fully with the Department's proposal.

Reasons given for supporting the proposal

- Three respondents considered that restricting the number of councillors to whom an SRA may be paid will ensure payment is made to those most involved in significant additional work for the council.
- One respondent stated that, in principle, a restriction on the number of councillors in receipt of SRA is a good idea because it ensures that there is a cap within the system.

Other comments

- One respondent suggested that it may be a better approach to specify a general limit of 50% in the regulations but add a codicil that this could be varied for specific councils by the Department/Minister on advice from the

Remuneration Panel if good cause can be shown. This respondent noted that this might become a non-issue in the longer term with the setting up of the new district councils as 50% may be more than enough to ensure council business is effectively supported.

- Five respondents stated that SRA should not be limited by numbers but should be allocated where significant additional responsibility is undertaken.
- One respondent considered that, provided the total payments made did not exceed the maximum determined by the Department, no further restrictions should be required.
- One respondent stated that the SRA should not be restricted to half of the councillors of a council because the number of standing committees, along with the significant additional work required when representing the council on outside bodies, would make this limitation unworkable. In addition the CRWG had recommended that SRA should be shared amongst the parties represented on the council on an equitable basis.
- One respondent stated, in response to all of the questions regarding the SRA, that it would prefer no restrictions on the payment of SRA and that it should be left to the discretion of each council.

Departmental response

The Department notes that the majority of respondents were in favour of the proposal, which is intended to ensure that payment of SRA should be made only where significant additional responsibility is undertaken. The Department considers it is appropriate that this should normally apply to a minority of councillors, rather than the majority.

The Department does, however, recognise that there may be circumstances where it may be appropriate to pay an SRA to more than half of the members of a particular council and proposes an amendment to the Payments to Councillors Regulations that will allow councils to apply to the Department for approval to do so. It should be noted that this will not affect the maximum amount for SRA available to a council, only its distribution to more than half of the members of that council.

Q2: Should the special responsibility allowance paid to the chairman or the vice-chairman be excluded from the restriction of payment of that allowance to no more than half the members of a council?

17. Fourteen respondents answered this question.
18. Ten of these respondents agreed with the proposal to exclude any SRA paid to the chairman or the vice-chairman from the restriction of payment of that allowance to no more than half the members of a council.

Reasons given for supporting the proposal

- One respondent explained that this is currently the position and stated that it was felt that a change is not necessary.
- Three respondents stated that the proposal would allow some degree of flexibility to the smaller councils by allowing an additional member to receive an SRA.

- Two respondents stated that the proposal reflects the unique role and responsibility and the significant additional work associated with the roles of chairperson and vice-chairperson.
- One respondent stated that it agreed with the proposal as it considered there should be no restrictions on payment of the SRA.

Other comments

- One respondent noted that there will still be a need to arrange for council chairpersons and vice-chairpersons to be able to draw against a budget or defined sum of money to meet out of pocket operating expenses.
- One respondent stated that the allowance paid to the chairperson or vice-chairperson should not be included in the SRA and should be considered a separate allowance as per section 12 of the Local Government Act (Northern Ireland) 1972; also, that each council should have the ability to determine the appropriate allowance payable to the chairperson in relation to the duties undertaken, which will be different for each council.
- One respondent stated that it is unclear if the SRA paid to the chairperson or vice-chairperson will be specified separately and stated that these posts should not receive any additional allocation of SRA.

Departmental response

The Department notes that the majority of respondents supported this proposal.

Councils will be able to decide if they wish to use SRA for the positions of chairperson and vice-chairperson and to determine the amount to be paid. The SRA to be paid to the chairperson and vice-chairperson is excluded from the restriction on paying an SRA to no more than half the members of the council.

Clause 32 of the Bill will repeal and replace section 12 of the Local Government Act (Northern Ireland) 1972, so that a council will retain its powers to pay an

allowance to its chairperson and vice-chairperson for expenses arising from those positions. This will be in addition to any other allowance provided for in the proposed Payments to Councillors Regulations.

Q3: Do you agree that no councillor should be paid more than one special responsibility allowance?

19. Fourteen respondents answered this question.
20. Nine of these respondents agreed that no councillor should be paid more than one special responsibility allowance.

Reasons given for supporting the proposal

- One respondent stated that it currently only pays the higher SRA in situations where a councillor would be entitled to two or more allowances.
- One respondent stated that the proposals would ensure that workload undertaken by councillors demanding a significant input of time is more equitably balanced throughout the council membership.
- One respondent stated that the proposals would ensure that no individual has excessive influence and is in line with the SRA being shared amongst the parties represented on the council on an equitable basis.
- One respondent stated that it agreed in principle that no councillor should be paid more than one allowance, but believed that the amount paid should be variable depending on the quantum of additional work undertaken by each councillor.
- One respondent stated that the allowance should be paid in recognition of a special responsibility and, where more than one has been identified, the council should have the ability to decide the appropriate allowance.

- One respondent stated that, in principle, this was an important restriction as it helps militate against the concentration of power and the politics of collecting SRA and also provides for a much more transparent scheme.

Other comments

- One respondent disagreed with the proposal, stating that there might be very good reasons why, within a party grouping on the council, it might be considered appropriate to pay more than one such allowance to an individual, and that a regulation which restricts the operation of reasonable control by a party within its own grouping on the council would be viewed as unnecessary and overly restrictive. This respondent noted that the current consultation on policy proposals for Local Government Reform deals with the requirement for all councils to appoint members to their committees, etc. on the basis of proportionality. This respondent (a district council) currently uses the d'Hondt system of proportionality when appointing its chairpersons and vice-chairpersons, and also the party group leaders, deputy leaders and secretaries, which leads to complete fairness and transparency in the allocation of SRA.
- One respondent stated that it should be noted that consideration is being given to remunerating chairpersons of the new Police and Community Safety Partnerships out of the council's SRA maximum as provision for separate remuneration is being removed as part of the Justice Bill.
- One respondent noted that in the Northern Ireland Assembly, more than one allowance for special responsibilities can be paid to an individual.

Departmental response

The Department notes that most respondents were in favour of the proposal that no councillor should be paid more than one SRA.

The distribution of responsibilities and posts (which may inform decisions on the payment of SRA) is a matter for each council to determine according to local circumstances. The Department's Guidance on Councillors' Allowances, issued

in April 2007, encourages councils, as good practice, to adopt safeguards to ensure a fair distribution of duties which would attract an SRA across a representative sample of political parties. It is recommended that councils should continue to operate within the safeguards they have established for this purpose.

The Department's 'Local Government Reform – Consultation on Policy Proposals', which is due to close on 11 March 2011, considers future arrangements for political governance. The regulations relating to SRA will be reviewed in the light of decisions made on future governance arrangements.

Q4: Do you support the Department's proposal to simplify the scheme for travel allowance by the introduction of a single category for all motor cycles and a single category for all motor cars?

21. Fourteen respondents answered this question.
22. Eleven of these respondents supported the proposal to simplify the travel allowance scheme.

Reasons given for supporting the proposal

- One respondent stated that this would simplify current processes and would follow the existing practices in Scotland and Wales. This respondent recommended that a similar scheme be introduced for officers.
- Two respondents stated that this proposal would ease administration of the allowance.
- One respondent stated that it would be significantly easier, from an administrative perspective, if HMRC approved mileage rates were adopted by the Department and in turn implemented across local government as a whole to include officers as well. The respondent went on to state that this action would remove tax, national insurance, and VAT from the whole area of mileage.

- One respondent stated that in the majority of cases the allowance is paid at the highest rate, which reflects the general increase in car engine sizes since the allowance was originally set.
- One respondent stated that it would support the proposals if the average was based around 1600cc.
- One respondent stated that it supported the proposal in principle but in the interest of equity wished to see it as part of a universal policy adopted by the whole of the public sector. The respondent went on to state that in the interim it proposed that the existing travel classifications are carried forward without amendment.

Other comments

- One respondent agreed with the proposal and noted that the current rates attract a tax and National Insurance liability and are out of kilter with the rates payable in the rest of the public sector. This respondent stated that the proposals also have the advantage of being somewhat more “green” than officer casual user rates in that a claimant is not rewarded for having a larger car and there is provision for a passenger supplement.
- One respondent stated that there should be more flexibility in how this allowance may be applied to suit local circumstances and that there should be provision to vary mileage arrangements and whether it is payable at all depending on the nature of councils.
- One respondent stated that it did not support the Department’s proposal as this would have an adverse impact on councillors in a rural area.

Departmental response

The Department notes that the majority of respondents supported the proposals to simplify the scheme for travel and subsistence.

The current arrangements for travel and subsistence allowances for councillors are broadly consistent with those for officers. The travel and subsistence allowances for officers of councils are determined by the Northern Ireland Joint Council for Local Government Services.

It is considered that further research and consultation would be needed before changes could be implemented. This would include consideration of the outcome of the review by the National Joint Council for Local Government Services of car allowance rates, which will be undertaken in the near future.

Q5: Do you support the proposal that councils should publish their scheme of allowances to councillors on the council website and, at the end of the year, the payments made to councillors? If you do not agree, what alternatives would you propose to encourage transparency?

23. Fourteen respondents answered this question.

24. All of these respondents supported the proposal that councils should publish their scheme of allowances to councillors and, at the end of the year, the payments made to councillors.

Reasons given for supporting the proposal

- One respondent observed that this had been recommended by the CRWG, who also recommended that a common template should be used by all councils in Northern Ireland to illustrate their scheme of allowances.
- One respondent stated that it already publishes the annual return to the Department on its website showing details of payments made to councillors in the previous financial year.
- One respondent stated its understanding that some councils already do this.

Other comments

- One respondent stated that the requirement to publish on the council web site and at the end of the year is the minimum requirement. This respondent suggested that a more proactive approach might have merit, such as publishing in a local newspaper, but recognised that there are disadvantages to this suggestion, such as cost. The respondent further suggested that expenses should be broken down into categories and any remunerated posts should be listed against a councillor to show that it could be a committee chairperson who has claimed high mileage rather than a backbencher (or vice versa).

Departmental response

The Department considers it appropriate that the prescribed manner of publication should specify the minimum requirement, and that a council should have the discretion to make such other arrangements for publication within the district of the council as it considers appropriate.

The Department will issue guidance on schemes of allowances, which will include a template.

Other comments on the draft Local Government (Payments to Councillors) Regulations (Northern Ireland) 2011

25. Two respondents made further comments on the draft Payments to Councillors Regulations.
26. One respondent noted that the Regulations provide for the dependants' carers' allowance (DCA) to be discretionary rather than mandatory and stated that as the allowance is not always made available by councils, it should be mandatory.
27. One respondent raised a number of points in relation to the draft Payments to Councillors Regulations. These were as follows.

- Clarification was needed of the term “year”, which should mean the municipal year (i.e. from the date of the council annual meeting to the date of the next annual meeting) rather than the financial year. This would synchronise the remuneration with the term in which the office was held.
- The basic allowance is the one allowance, if any, that should be mandatory; however, the regulations state that it is discretionary. Regulation 4(2) should also clarify that the amount of basic allowance determined by the council is up to a maximum amount specified by the Department.
- There should be a defined list of approved duties for payment of a DCA so that it would not become a self-generating allowance and a maximum, should be specified by the regulations; also, that the payment of DCA should not be restricted to one carers’ allowance, as there was a need to provide for a councillor with dependants who need differing care, e.g., child care and care for an elderly parent.
- The regulations should clarify the terms and conditions of the payment of the dependants’ carers’ allowance as much as possible and specify that receipts are required otherwise there may be an inconsistent application of how it is paid across Northern Ireland – which would undermine the principle of having a national framework. Clarification is needed on anyone that would be excluded from being a carer, such as immediate family members.
- The regulations contain no provision for indexation of allowances unlike other jurisdictions.

Departmental response

Clause 31 of the Bill and the draft Payments to Councillors Regulations are permissive, giving councils the power to pay allowances to councillors, and allowing the Department to make regulations about the categories of

allowances and to determine the maximum rate of each allowance. Although the Department currently determines the maximum rates of all allowances, it is a matter for each council to determine the amounts payable to its members.

There is one maximum rate of basic allowance applicable to all councils in Northern Ireland. Subject to that maximum, a council has discretion over the rate of basic allowance paid to its members, provided that it is the same for all members of that council. In practice councils pay the maximum basic allowance.

Clarification of the term "year" will be provided in guidance under clause 31(5)(c) of the Local Government Finance Bill.

The Department is content that the interpretation of approved duties in the Regulations provides councils with sufficient flexibility to pay DCA in accordance with the local circumstances of councils.

The administrative arrangements for claiming DCA, set out in regulation 8, require a councillor to complete a declaration that the care had been provided and the cost incurred. The Department does not, at this time, propose to introduce a requirement for claims for DCA to be receipted.

The Department considers there is no need to include provision on an index at present. This will be an issue for the future and the Minister may wish to direct the remuneration panel to consider and make recommendations on this.

DRAFT LOCAL GOVERNMENT (COUNCILLORS' REMUNERATION PANEL) REGULATIONS (NORTHERN IRELAND) 2011

Background

28. The proposed Remuneration Panel Regulations 2011 provide for the establishment of an independent remuneration panel to consider and make

recommendations to the Minister of the Environment regarding the framework and level of allowances payable to councillors. Establishment of a panel was recommended by the CRWG, taking into consideration the work of the Scottish Local Authorities Remuneration Committee and the Independent Remuneration Panel for Wales. The aim of establishing a panel is to ensure that allowances for councillors are considered impartially by persons independent of the Department and local government.

29. The remuneration panel will conduct its reviews in accordance with directions given by the Minister of the Environment, which will include a deadline for the submission of any report or recommendations to the Minister. In carrying out its functions, the panel will have the power to seek information and advice from any person or body.
30. The proposed Remuneration Panel Regulations provide for the panel to have a chairperson and at least 2 but no more than 4 members, to be appointed by the Minister of the Environment for a term of up to 4 years. Anyone who is a member of the Northern Ireland Assembly, a member of the Westminster or European Parliaments, a member of a council, or anyone who is disqualified from being a councillor will be excluded from membership of the panel.
31. In the interests of best practice, the Department intends to follow the public appointments process when appointing the panel.

Comments on specific questions posed in consultation

Q6: Do you agree with the proposed composition and tenure of the panel?

32. Twelve respondents answered this question.
33. Nine of these respondents agreed with the proposed composition and tenure of the panel.

Reasons given for supporting the proposal

- Two respondents stated that this would be in line arrangements in other jurisdictions. One of these respondents stated that it would be important that individuals appointed to a remuneration panel would need a sound knowledge of how local government works as well as experience of dealing with pay and remuneration issues.

Other comments

- Two respondents stated that the proposed composition of the panel, consisting of a chairperson plus two other members, is too few. One of these respondents further suggested that the regulations provide for a vice-chairperson to be appointed to the panel.

Departmental response

The draft regulations give the Minister of the Environment the discretion to decide whether the remuneration panel should consist of the minimum number of members (i.e. a chairman and two members) or if it would be more appropriate to have three or four members. The Department considers this to be sufficient but it may be subject to review in the light of practical experience gained when the panel has been in operation for a while.

Q7: Do you think that the regulations as drafted ensure sufficient impartiality and independence?

34. Twelve respondents answered this question.
35. Eight of these respondents agreed that the regulations as drafted ensure sufficient impartiality and independence.

Reasons given for supporting the proposal

- One respondent stated that it would support regulations which are consistent with the approach in Scotland and Wales.

Other comments

- One respondent asked if members of councillor representation groups, such as the Northern Ireland Local Government Association (NILGA) or the NAC, should be excluded from membership of the panel, as this would ensure further impartiality and independence.
- One respondent stated that the issue of impartiality and independence depends on panel members and the process of selection.
- One respondent noted that the panel will be set up through the public appointments process which has clear criteria for appointments and provisions for necessary support to be in place so stated that the panel should be independent and impartial. This respondent also recommended that serving local government officers should be added to the list of excluded persons, to avoid possible conflicts of interest.

Departmental response

Remuneration panel members will be appointed using the public appointments process.

Regulation 3 excludes anyone who is a serving councillor or is disqualified from being or becoming a councillor from membership of the panel. Local government officers are excluded from being members of the panel because section 4 of the Local Government Act (Northern Ireland) 1972 disqualifies them from being or becoming councillors.

Serving councillors who are members of the NAC and NILGA are therefore excluded from membership of the panel. Local government officers seconded to those organisations would also be excluded from membership of the panel.

Other comments on the draft Local Government (Councillors' Remuneration Panel) Regulations (Northern Ireland) 2011

36. Two respondents had further comments on the draft Remuneration Panel Regulations.

- One respondent urged the panel to give urgent consideration to reviewing the level of allowances paid to elected members in Northern Ireland on the grounds that considerable new powers will be given to councils over the next year, including significant planning powers. The respondent stated that a review of the level of allowances is necessary given the change in levels of responsibility which elected members will be expected to undertake.
- One respondent advised that the Department should not underestimate the amount of support in terms of officer/secretariat which the panel will need, particularly in the early years.
- One respondent suggested that the panel should have statutory powers to monitor the implementation of its recommendations/the Departments' determinations for the purposes of ensuring compliance and enabling it to understand the success or otherwise of any scheme a council implements.

Departmental response

The remuneration panel will be appointed to review and provide the Minister of the Environment with advice on the framework of allowances payable to councillors, and on the level of allowances for councillors. The timing, duration and scope for the review will be decided by the Minister. The Department will consider the amount of secretariat support required in the light of the experience of the secretariat to the Scottish Local Authority Remuneration Committee and the Independent Remuneration Panel for Wales.

Under clause 35(1) of the Bill, the role of the panel is an advisory one, to inform Ministerial decisions on both the framework of allowances payable and the level of allowances payable. The Department does not consider it necessary for the panel to have a statutory monitoring function. Monitoring of the amounts paid

and councils' adherence to the prescribed framework of allowances and the requirements for making and publishing schemes of allowances will be undertaken by the Department.