

POLICY PROPOSALS – POLICY DEVELOPMENT PANEL C (Structural Reform)

Agenda Item: 3.3

Summary: To provide details of the emerging policy proposals relating to the structural reform elements of local government reorganisation, including proposals which may require primary legislative provisions.

Action required: that the SLB

- **agrees the current policy proposals for the structural reform elements of local government reorganisation; and,**
- **notes that further policy, to be developed by Panel C, will be presented to the SLB for discussion at a later date.**

1. OVERVIEW

1.1 In response to Minister Foster’s statement of 31 March 2008, to the Northern Ireland Assembly, on the future shape of local government, the Strategic Leadership Board agreed the establishment of three Policy Development Panels to support the reform and modernisation programme. Panel C has been charged with the development of recommendations on policy and implementation proposals in relation to structural reform work strands.

2. INTRODUCTION

2.1 The objectives of Policy Development Panel C, as agreed with SLB, are: -

“To lead the development of policy, for the structural reform work strands of the local government modernisation programme, to facilitate the effective and smooth transition from the current configuration of 26 council areas to the 11 new council areas which are to be in place in 2011. These structural reform work strands embrace Human Resources, Capacity Building, Finance, Estates, Regional and Sub Regional Design and the Transfer of Functions from central to local government.”

2.2 At the inaugural meeting of Panel C, on 31 July 2008, it was agreed that working groups should be established to assist in the development of policy and implementation proposals for each of these work strands or projects as listed below:

- Assessment of Options for Local Government Service Delivery
- Human Resources
- Finance/Estates
- Capacity Building

Assessment of Options

2.3 The Assessment of Options for the Local Government Service Delivery project, which embraces the transfer of functions, is being taken forward by way of a consultancy assignment. The other projects are being taken forward by three working groups comprising central and local government officers

Human Resources, Finance, Estates and Capacity Building

2.4 The transfer of functions and staff from central to local government and the restructuring of local government from 26 to 11 councils, which is due to take place in May 2011, is the overarching policy for which the intervention recommended in the attached annexes is a consequence of.

2.5 A substantial number of staff, including approximately 11,000 in local government over 1,000 in central government will be affected by the reorganisation of local government in May 2011. Significant changes will also be experienced by local government when amalgamation of existing council functions takes place and a range of central government functions and expenditure of around £116m transfers to the new 11 council structure. The Annexes to this paper present the emerging policy and implementation proposals of Panel C in relation to the Human Resources, Finance, Estates and Capacity Building elements of the restructure of local government.

3. METHODOLOGY

- 3.1 Working groups, formed during August 2008, held their first meetings in September 2008. The emerging proposals of these groups, endorsed by the Panel, were submitted to the Strategic Leadership Board for their meeting held on 7 November 2008. Further work was undertaken on the initial policy proposals during November 2008 and further details are now attached.
- 3.2 As part of its deliberations Panel C and its working groups have commissioned two pieces of work:
- i) the collection of financial (including % spend across the 26 councils) and staffing information from transferring departments to help inform human resources, finance, estates and capacity building policy; and
 - ii) a consultancy assignment, which will help inform how effective and efficient services can be delivered by councils post May 2011, ensuring an appropriate balance of cost and benefit.
- 3.3 The collation of information from transferring departments should be completed before the end of the year and the outcome of the consultancy assignment is anticipated to be complete by the end of the first quarter of 2009. Following consideration of this information by the Working Groups and the Panel, further policy and implementation proposals will be submitted to the SLB.
- 3.4 It should be noted that until consideration can be given to the outcome of the work highlighted in 3.2 above, the Panel can only make its recommendations on the basis that all services will be delivered by an 11-council model. The Panel urges that everything possible is therefore done by central government to ensure that no further delays occur in the appointment of consultants which could hold up this vital piece of work.
- 3.5 The SLB will note from the above dates that both the Panel and its working groups have had very little time to consider the vast range of issues under its remit, particularly issues of such enormity relating to human resources and finance.

3.6 The Working Group papers, attached (as Annexes A-C) include the Panel's proposals in comment boxes for the consideration of the SLB. The Panel would wish to emphasise that it reserves the right to revisit these recommendations when out outcome of the consultancy exercise on the Assessment of Options for Local Government Service Delivery is known.

POLICY DEVELOPMENT PANEL C (Structural Reform)

5 December 2008

ANNEX A

FINANCE AND ESTATES WORKING GROUP EMERGING POLICY PROPOSALS

1. BACKGROUND

1.1 The overarching policy for the Finance and Estates Working Group is the transfer of functions from central to local government and the restructuring of local government from 26 to 11 councils which is due to take place in May 2011. The need for the policy intervention recommended by the Group is a consequence of this much wider policy.

1.2 The Terms of Reference of the Finance and Estates Working Group are to:

“Identify and make recommendations on the implications for the future financing arrangements for local government and for the central and local government estate, arising as a consequence of the implementation of the decisions announced by the Environment Minister on March 2008. The project will consider issues related to the reform of local government, including the transition to a reduced number of councils, with additional key functions being transferred from central government. This work will include, as a starting point, consideration of the issues raised and recommendations made by the previous Local Government Taskforce Finance and Estates Sub-Groups.”

2. TRANSFER OF FUNCTIONS

Categories of Transfer

2.1 Functions of the new 11 council structure will fall into various categories e.g. those transferring from:

- the existing 26 councils to the new 11 council structure;
- central government to local government; and
- other bodies (e.g. NIHE)

2.2 Primary legislation will be required to enable the transfer of functions, assets and liabilities (including assets under construction/lease commitments) in the three categories mentioned above. The legislation should enable existing councils, central government departments and other bodies to make one or more schemes for the transfer of designated property, rights and liabilities to the 11 new councils. This would provide a mechanism whereby any ambiguity could be clarified over whether or not interests in, or rights over property should have transferred.

The Panel notes the comments in 2.1 - 2.2 and endorses the recommendations made.

Liabilities

2.3 Local Government will not be able to insure against past liabilities. Legislation should therefore provide for the protection of local government from liabilities arising, prior to the date of transfer, from the services transferring from a transferor, such as central government or other bodies. Further consideration will be required on the handling of liabilities and long term commitments across the three categories mentioned above.

The Panel endorses the recommendation of the Working Group in 2.3 but would wish to add:

- *“legislation should provide for the protection of local government from liabilities howsoever arising”;*
- *Assets should be fit for purpose and meet legal requirements;*
- *Local government should have the option not to accept an asset from central government and receive compensation in lieu.*

Cost of Services

- 2.4 At the time of setting the rate for 2011/2012 the full cost of the service being provided would have to be known to councils in order for this to be built into the calculation of rates.

The Panel notes the point made at 2.4 but would wish to query whether the full costs will be known in sufficient time. If this is not achieved, a financial assistance package would be required, from central government, to meet any shortfall in district rates income for 2011/2012 that has occurred as a result of this lack of information.

3. FINANCIAL CONSIDERATIONS

District/Regional Rates

- 3.1 Public Services in Northern Ireland are funded from general taxation, local revenue raised through the regional and district rates and from fees and charges made for specific services. The main sources of funding for local government are the district rate revenue; the rates revenue support grant; specific grants and fees and charges. The main sources of funding for central government are funding allocations from the Barnett formula, regional rate revenue and borrowing.
- 3.2 Local government restructuring, together with the transfer of central government functions, will result in a requirement for new arrangements for the

allocation and redistribution of these resources. It was previously agreed that the transition to the new arrangements should not increase the overall rate burden, simply as a consequence of transferring functions under reorganisation. Adjustments to the 11 district and 2 regional (domestic and non-domestic) rates should ensure that there is no increase to the overall rate liability as a result of transfer of functions. The Group appreciates that ratepayers in existing councils will experience increases or decreases in rates as a direct consequence of the amalgamation.

- 3.3 The Group recognises that, at the point of transfer, there will be an ‘averaging’ of rates across the amalgamating council when the district rate for new councils is struck. This will not be a simple ‘averaging’ as it will take account of other factors such as the redistribution of the Rate Support Grant which will inevitably occur when reorganisation takes place. Financial modelling will be undertaken to assess the extent of district rate changes resulting from amalgamation.
- 3.4 The Group agrees that the majority of local government expenditure should be funded through revenue from the district rate with a corresponding reduction in the regional rates and associated departmental expenditure. Initial financial modelling, however suggests that there may be an imbalance in the district rate to be determined for functions transferring to the individual new councils. Before a final recommendation can be taken on how to address this anomaly, further work is required to establish the costs of transferring functions across the new council boundaries, to enable further detailed modelling on the generation of revenue through district rates and to ascertain how grants may operate under the new council structure.
- 3.5 Legislation may be required to achieve a transfer of funds from central to local government to cover those functions transferring to district councils. Departments have been asked to provide essential information on transferring functions to enable recommendations to be made on district and regional rates issues. It should be noted that detailed policy cannot be formulated prior to the publication of the final recommendations of the Local Government Boundaries Commissioner.

The Panel notes the comments made in 3.1-3.5 but would wish to add the following:

- *There must be a guiding principle that the ratepayer should not be any worse off as a result of any switch between regional and district rates due to the transfer of functions. The Panel would wish to emphasise that this remains the strong view of local government.*
- *The Panel considers that paragraph 3.4 should reflect that there is a high chance that some councils will experience a shortfall in the first year which will require central government to compensate/fund.*
- *It is recommended by the Panel that transitional relief is provided by central government to assist those councils who suffer a financial loss through a reduction in the Rate Support Grant as a direct result of the reorganisation of local government.*

Differential Rates

- 3.6 Domestic and non-domestic district rates are currently struck using the same formula. The Group recommends that a provision is made to enable councils to strike a differential rate for domestic and non domestic properties to vary the balance of income between the sectors.

District Rate Relief

- 3.7 It is proposed that a discretionary provision for district rate relief on specified non-domestic properties, which would be at a cost to individual councils, is introduced.

The Panel endorses the recommendations in 3.6 and 3.7

Legal, Regulatory and Accounting Requirements

3.8 The current framework applying to local government finance is split into 3 levels: legal requirements; regulatory requirements; and accounting requirements. The changes to the future financing of local government do not significantly change the component parts of the current system, therefore the requirements for primary legislation are minimal. Some modifications have been highlighted as follows:

- The Chief Financial Officer for local government body is required to prepare a statement of accounts in the form directed by the Department. The Department also requires councils to comply with all relevant accounting and disclosure requirements. The Group considers that, in line with Chartered Institute of Public Finance and Accountancy (CIPFA) guidance that legislation will require under the new council structure, the designation of a Chief Financial Officer and the separation of the Chief Executive and the Chief Financial Officer roles. These provisions should not change the position of the Chief Executive as the Accounting Officer, they merely relate to improved governance arrangements through the segregation of duties. It is understood that Panel A with responsibility for Governance issues, will consider this recommendation.

- In the transition period in the run up to May 2011, there will be a requirement for the existing 26 councils to incur expenditure on behalf of the 11 new councils such as that associated with the funding of the local government elections in 2011. For this reason, primary legislation will be required to enable councils to incur expenditure on behalf of the new councils prior to their establishment and to subsequently recover that expenditure.

The Panel notes the comments made in 3.8 but would wish to add that the second bullet point needs to reflect that some of the expenditure incurred in the transition period in the run up to May 2011 will be expenditure incurred on behalf of the new councils and should therefore be recovered when they are

established. However, other expenditure will be incurred in the transition period which will fall within the scope of the funding provided by central government and all such expenditure would therefore be recoverable from the central funding provided and not from the new councils.

Financial Planning

- 3.9 For the first year of the new councils, guidance should be issued relating to the preparation of estimates, agreeing budgets and setting district rates for 2011/2012.

The Panel endorses the recommendations in 3.9.

VAT

- 3.10 In the transfer of assets and liabilities between councils and from central government and others, there could potentially be significant VAT implications for councils. It would, therefore, be necessary to engage with HM Customs and Excise to ensure that the transfer of assets to the new council structure does not adversely impact financially on any of the bodies concerned as a result of VAT.

The Panel endorses the comments made in 3.10 and understands that this engagement with HM Customs and Excise would be undertaken by the Department of Finance and Personnel (DFP). The Panel understands that DFP have given assurances that Stamp Duty would not be an issue during reorganisation. However, the Panel recommends that a reference to Stamp Duty is included in legislation along the same lines as in the Local Government (NI) 1972 whereby it states that "Stamp duty shall not be chargeable on this Act or on an order made under this section" This would ensure that the issue of Stamp Duty is clear.

Insurance

- 3.11 Central Government self insures whilst local government is more risk averse and tends towards insurance. Within local government various degrees of policy excess exist and some councils accept a higher risk than others. It is accepted by the Group that the requirement to insure by local government could create additional costs for the new councils as a result of the transfer of functions. It is recognised that this is an area that requires more detailed consideration to clarify the budget implications for transferring functions and also to consider whether there is a requirement, and the extent to which, local government could self insure.

The Panel notes the comments made in 3.11 and agrees that further work is required. There is a need to establish the cost of self-insuring for local government and the Panel would be keen to get actuarial figures for this. The Finance and Estates Working Group will be asked to explore this further as part of their future work programme and the Panel will make recommendations on this at a later date.

Existing Loans

- 3.12 Although not crucial to the reorganisation of local government in 2011, it is strongly recommended that an opportunity is taken to:
- restructure outstanding council loans - there is no legislative requirement but a case would need to be made to the Department of Finance and Personnel to permit the restructuring / consolidation of loans and to ensure that this would result in a minimum cost to councils; and
 - transfer the Northern Ireland Housing Executive (NIHE) loans which have been carried and administered by Local Authorities since the reorganisation in 1973. The current practice is considered by local government to be an unnecessary administrative burden for both organisations and currently incurs additional unnecessary cost. Local government considers it to be imperative that this opportunity is taken

The Panel endorses the recommendations in 3.12.

4. ESTATES CONSIDERATIONS

Data Information Collation

- 4.1 In order to ensure that there is a commonality and consistency of data information on assets and liabilities transferring to the new councils, guidance is required on a standard/consistent approach for the collation of information on assets and liabilities.

The Panel endorses the recommendations in 4.1.

Disposal and vesting of land

- 4.2 Although not strictly required to be in place for May 2011, it is highly desirable that legislation is made to enable the 11 new councils to acquire, hold, manage, develop and dispose of land and buildings in connection with their range of functions, including environmental and social improvement or well being of their districts or in connection with their other statutory functions. In addition to this, it is desirable that central government, in conjunction with the transferring departments, review and update the legislation on vesting land, making reference to statutory limits, relating to the change of use.

The Panel notes the comments made in 4.2 but would wish to replace this paragraph as follows:

4.2 It is considered essential that legislation is in place by 2011 to enable the 11 new councils to acquire, hold, manage, develop and dispose of land

and buildings in connection with their range of functions. This would include environmental (e.g. open spaces) and social improvement such as social housing provision or well being of their districts or in connection with their other statutory functions. In addition to this, it is essential that central government, in conjunction with the transferring departments, review and update the legislation on vesting land, making reference to statutory limits, relating to the change of use. This is critical for 2011 to ensure that the power of wellbeing and community planning can be effectively utilised.

- 4.3 Although not crucial to enable the restructuring of local government in May 2011, it is proposed that a review and consultation should take place on whether to provide the new councils with powers to dispose of land and property “at less than best consideration”, without reference to the Department, subject to capital limits and conditions. Current legislation requires Departmental approval for the disposal of land “at less than best price”.

The Panel notes the comments made in 4.3 but would suggest this is critical for 2011. The removal of the Departmental role would be in keeping with the power of well being as announced by Minister Foster in her statement to the Assembly in March 2008. The Minister suggested that this new power would allow councils to take action that would improve the well being of the local community or local area. She further suggested that it would enable councils to respond creatively to local needs. The Panel considers that the Department’s role in the above does not fit well with this new power and should be removed. Removal would require amendment to current legislation and this is recommended by the Panel.

ANNEX B

HUMAN RESOURCES WORKING GROUP EMERGING POLICY PROPOSALS

1. BACKGROUND

- 1.1 The overarching policy for the Human Resources Working Group is the transfer of functions from central to local government and the restructuring of local government from 26 to 11 councils which is due to take place in May 2011. The need for the policy intervention recommended by the Human Resources Working Group, is a consequence of this much wider policy.
- 1.2 The Terms of Reference of the Human Resources Working Group, as agreed by the panel are to:-
- Formulate policy options on the delivery of new staffing structures necessary to deliver the new local government arrangements.
 - Develop policy proposals for the transition of staff affected by the new arrangements.
 - Identify the key human resource issues relating to the new arrangements as a means of informing both the new restructuring legislation and the way forward in delivering the new arrangements from 2011.
 - Identify the legislative provision necessary to take forward the necessary changes and
 - Comply with the overarching requirement to take full account of the Public Service Commission (PSC) guiding principles

2. TRANSFER OF STAFF

2.1 Taking account of the Public Service Commission Guiding Principles, Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), additional commitments given in relation to the transfer of pensions (TUPE Plus) and following the principles for the Scheme of Transfer of Officers as outlined in the Libraries Act 2008, it is recommended that legislation should include provisions to:

- enable the transfer of staff from central government to the new council structure;
- enable the transfer of staff from the existing 26 councils to the new council structure;
- enable the transfer of staff from the other bodies, e.g. NIHE to the new council structure; and
- enable the transfer of staff from joint committee structures to the new council structure (where appropriate).

The Panel endorses the recommendation in 2.1.

Transfer of staff from Central Government

Transfer Scheme(s)

2.2 In line with the precedent already established in previous RPA related staff transfers, a scheme or schemes should make provision for all staff, who have to transfer, to have the statutory protection of TUPE.

2.3 In order to give effect to the transfer of staff from central government to 11 new councils, legislation is required to provide that a responsible authority may make a scheme or schemes which would set out how staff employed in the NICS will transfer to the new councils. The responsible authority should ensure that it meets all the relevant statutory obligations concerning consultation with employees and trade unions in developing its schemes. Transition Committees

- Identify the transferring employees (whether by name or otherwise);
- Include the date of transfer, post and location;
- Include the requirement for contractual terms and conditions to be protected;
- Include a provision securing pension protection for transferring employees;
- Include provision for dispute resolution; and
- Include a provision for the payment of compensation to any transferring employee who suffers a loss or detriment in consequence of the scheme.

2.4 In the event where an employee cannot be readily assigned to a transferring function (for example where only a part of the work of that person attaches to a function that is transferring), it is proposed that transfer should take place on the basis of whether or not the employee's work was 'wholly or mainly' related to the function transferring. It is recognised that, although this term has been used in previous staff transfers, there is no clear definition. Detailed guidance would be required on how this should operate and should recommend that Departments take every opportunity to reorganise prior to transfer to minimise potential staff transfer problems.

2.5 Before making a scheme or schemes a responsibility authority shall consult:

- In the case of a scheme or schemes identifying transferring employees by name, those employees; and
- In the case of a scheme or schemes identifying transferring employees in any other way, such persons as appear to the responsible authority to be representative of the transferring employees.

2.6 For the purposes of the preceding paragraphs provision needs to be made to define a "transferring employee" and "pension protection".

The Panel is broadly content with the proposals in 2.2 – 2.6. It is the Panel's understanding that these are in line with the PSC guiding principles and would like to emphasise that it is important to have consistency with all Transfer Schemes. The Panel would seek further information from the HR Working Group on the steps required in relation to the development and implementation of transfer schemes eg that consultation will be handled centrally and that transition committees will be provided with transfer schemes to be agreed.

2.7 A decision, on whether secondment will be a method of transfer for some or all of central government staff transferring to the new council structure, has not yet been taken by the Executive. Further consideration, and discussion with the local government sector, will need to be given to this by the Group before final recommendations can be made. The policy proposals in this paper do not therefore reflect transfers on a secondment basis.

The Panel would like to add the following comments to 2.7:

- *There is a need to balance the interest of the NICS staff transferring with those of local government;*
- *There is a need to consider whether secondments could be time bound;*
- *There is a need to seek a legal opinion; and*
- *Some members of the panel are not totally opposed to secondments under certain circumstances, other members do not support a secondment option and their preference would be for a full transfer of staff on a permanent basis.*

The Human Resources Working Group has been asked to produce an options paper on the benefits and otherwise of secondments. The Panel will make its recommendation on this issue following consideration of this paper.

Central Government Pensions

2.8 In accordance with Cabinet Office guidance on Staff Transfers in the Public Sector, the Executive has given a commitment that staff transferring to the new

organisations will, in addition to the protections afforded by TUPE Regulations, have their pension arrangements protected. The level of protection provided will be measured by the extent to which the new employers will offer transferring staff membership of a scheme, the benefits of which will be **no less favourable, taken as a whole**, when compared to the scheme of which they were a member immediately before the transfer, i.e., broad comparability.

- 2.9 There are a number of options available which could to a greater or lesser extent achieve “broad comparability” and provide pension benefits that meet the Cabinet Office guidelines:
- Create a bespoke scheme that to all intents and purposes mirrors the PCSPS(NI), and transfer staff to that scheme;
 - Allow transferring staff to remain in their current scheme, the PCSPS(NI); or
 - Provide transferring staff with access to a scheme which is broadly comparable, i.e. no less favourable when taken as a whole to their current scheme provisions.
- 2.10 It is understood that the issue of staff pensions in respect of staff transferring from central government will be considered by the Executive. The preferred option of the Group would be to allow NICS staff to remain in their current scheme with the caveat that this will be a closed group and that any new staff recruited to the same position will be subject to local government pension provisions. The legislation required to enable this option would be the responsibility of the Department of Finance and Personnel.
- 2.11 The Group would like to highlight the importance of early communication with scheme members on how their pension provisions will be affected by a transfer.
- 2.12 Following the outcome of an Executive decision on pensions, consideration will be required on a number of issues such as the need to adapt software systems to facilitate administration of pensions and the funding of this additional administration cost to local government. The training needs of HR and payroll staff and the implementations of other contractual matters such as terms and

conditions and compensation terms applicable in a redundancy situation will also need some further consideration.

The Panel notes the report in 2.8 – 2.12 and would wish to add that there is a need to highlight the views of local government that additional costs for the administration of pensions for NICS staff who are transferring should be funded by central government.

Transfer of staff from a 26 to 11 council structure

- 2.13 In order to give effect to the reorganisation of local government from the existing 26 councils to a new 11 council structure, legislation is required to provide that a responsible authority may make a scheme or schemes which would set out how staff will transfer to a new council.
- 2.14 The scheme or schemes should be sufficiently flexible so as to allow the transfer of staff from an existing council affected by a change in boundary and to take account of the final recommendations of the Local Government Boundaries Commissioner. Detailed guidance would be required on how this should operate and should recommend that councils take every opportunity to reorganise prior to transfer to minimise potential staff transfer problems.
- 2.15 In line with the precedent already established in previous RPA related staff transfers, a scheme or schemes should make provision for all staff, who have to transfer, to have the statutory protection of TUPE. A scheme or schemes should:
- Identify the transferring employees (whether by name or otherwise);
 - Include the date of transfer, post and location
 - Include the requirement for contractual terms and conditions to be protected;
 - Include provision securing pension protection for transferring employees;
 - Include provision for dispute resolution; and

- Include provision for the payment of compensation to any transferring employee who suffers a loss or detriment in consequence of the scheme

2.16 Before making a scheme or schemes a responsible authority shall consult:

- In the case of a scheme or schemes identifying transferring employees by name, those employees; and
- In the case of a scheme or schemes identifying transferring employees in any other way, such persons as appear to the responsible authority to be representative of the transferring employees.

2.17 For the purposes of the preceding paragraphs, provision needs to be made defining a “transferring employee” and “pension protection”. In addition, provision needs to be included to enable the transferor or transferee to consider dispute resolution.

2.18 Transfer schemes for local government should be prepared by the responsible authority and Transition Committees should act on behalf of the new councils as the receiving employers in this regard. The responsible authority should ensure that it meets all the relevant statutory obligations concerning consultation with employees and trade unions in developing its schemes.

2.19 Each individual employee’s preferences and personal circumstances should play a part in any reasonable consideration and the responsible authority will therefore wish to ensure the employee and their trade union representatives are given the opportunity to make their views known and are kept informed.

The Panel is broadly content with the proposals in 2.13 – 2.19 and understands these are in line with the PSC guiding principles. Again, the Panel suggests that It is important to have consistency across Transfer Schemes.

Local Government Pension Schemes

- 2.20 In April 2010 the minimum age at which pension benefits can be paid to Members of the NILGOSC Scheme will change from age 50 to 55. This has an obvious impact on those officers who fall between the ages 50 and 55 at April 2010 and in the period up to May 2011 and who may wish to avail of any severance package which includes immediate entitlement to pension benefits.
- 2.21 This change will potentially limit the scope for managing the transition of a number of employees through the reorganisation process and may impact adversely on the potential of councils to achieve a reduction in the numbers of staff where there may be a surplus (specifically at senior levels). This matter requires further consideration.

Model Transfer Scheme

- 2.22 The Local Government Staff Commission is in the final stages of drafting a model transfer scheme and expects to go out to consultation with this in early 2009.

The Panel notes the comments in 2.20 – 2.22.

Transfer from other bodies to 11 council structure

- 2.23 Transfer schemes for other employees transferring to the new councils from other bodies should be prepared by a responsible authority. Again, Transition Committees should act on behalf of the new councils as the receiving employers and the responsible authority should also ensure that it meets all the relevant statutory obligations concerning consultation with employees and trade unions in developing its schemes.

The Panel is broadly content with the proposals in 2.23 and understands these are in line with the PSC guiding principles. The Panel wishes to reiterate that It

is important to have consistency across all Transfer Schemes.

Requirements of 11 new councils

- 2.24 It is vital that each new council receives, on the reorganisation date, an appropriate number of employees (whether from central government, existing councils or other bodies) with the right expertise to enable continuity of public services delivery to the highest standard.

The Panel endorses the view in 2.24.

Fixed Term Contract staff and others

- 2.25 There are groups of staff who may not be subject to standard local government terms and conditions of service and therefore are not protected by TUPE e.g. contracted staff or staff who may be employed by a Transition Committee. There is a requirement that contract staff are afforded the same protection as any others under standard employment rights. It is considered that issues relating to these groups should fall under the remit of the Transition Committees.

The Panel is broadly content with the recommendation in 2.25.

Compensation

- 2.26 It is recommended that a compensation package for the early release of local government staff is put in place, within the context of an agreed redundancy procedure. A number of issues need to be addressed including affordability consistency and timing as outlined below:

- Affordability - It is considered that an early decision is required as to whether a centrally funded compensation scheme will be made available and whether consideration has been given to other options.
- Consistency – Currently, compensation provisions within local government are regulated by the Local Government (Early Termination of Employment) (Discretionary Compensation) (Northern Ireland) Regulations. The discretionary nature of these provisions has resulted in varying approaches by the Councils. The group believes that a centrally funded compensation scheme would ensure consistency across the Councils.
- Timing - The Health Sector reform highlights the need to legislate to make voluntary redundancy available to local government staff in advance of the transfer.

2.27 It is further recommended that compensation is made available for a period before and after transfer to allow for a smooth transition period. The group sought a legal opinion on the legality of providing compensation before transfer and initial indications suggest there are no major issues with this. However, the Group would need to consider further advice in this area.

The Panel is broadly content with the proposals in 2.26 – 2.27 and endorses the recommendations made. The Panel would wish to add that compensation for Health Sector reform was centrally funded and there is a need to ensure consistency of approach for local government reorganisation.

Negotiating Machinery

2.28 The Northern Ireland Joint Council engages with the Trade Unions on an ongoing basis regarding progress on the implementation of the Review of Public Administration. It is recommended that, as agreed with the Trade Unions, formal consultation should take place on the recommendations of Policy Development Panel C.

The Panel endorses the recommendation in 2.28. It is the Panel's understanding that Trade Unions are currently preparing a paper which will outline their expectations in relation to communication and consultation, but would wish to recommend that early engagement with Trade Unions takes place.

Vacancy Control

- 2.29 The Group considers that there is a need for guidance on vacancy control to manage the impact of the re-organisation of staff structures. The Local Government Staff Commission is currently reviewing its guidance and intends to issue this for consultation in January 2009. The timing of implementing vacancy control measures is crucial and the Group considers that there are valuable lessons to be learned from the reform of the Health Sector. The overall aim is to ensure councils have flexibility to manage the circumstances in their own organisations but to ensure equality and a mechanism for recording decisions and the process.
- 2.30 The Group also considered vacancy control within the central government transferring departments. It is understood that there are policies in place due to other efficiency requirements which need to be reviewed.

Job Specifications

- 2.31 The Local Government Staff Commission has commenced work on model Job Specifications for senior staff which will take account of any recommendations from Policy Development Panel A regarding governance arrangements.

Model Terms and Conditions

- 2.32 The group recommends that the newly established Councils follow the 'National Agreement on Pay and Conditions of Service' (the Green Book).

The Panel is broadly content with the proposals and recommendations in 2.29 – 2.32.

Harmonisation

- 2.33 As a general policy objective, it is desirable that employees in each new council (whether from previous councils, NICS, new recruits or elsewhere) should work under the same schemes of conditions of service as their fellow employees. However, any statutory intervention to change conditions of service to bring about harmonisation would likely fall foul of national and EU legislation (TUPE and the Acquired Rights Directive) in that it would be seeking to alter contractual conditions for reasons connected with a relevant transfer.
- 2.34 It is considered that any legislative proposals that would limit rights under TUPE and the Directive would not command the support of employees or employee representatives. It is further considered that the new employing councils should put in place an action plan to establish the core conditions of employment that will apply to employees in the council and that these are based on the existing national local government agreements. It is recommended that those core conditions of service would be applicable to all new recruits and promotees and that the new councils move towards those as a key consideration in their ongoing development of human resources policy and reform in the new organisations.

The Panel endorses the recommendations in 2.33 – 2.34 and acknowledges that early harmonisation of terms and conditions could lead to industrial relations and equal pay issues.

Single Status

- 2.35 Currently six councils have agreed and implemented their Single Status Agreement. There are differing levels of progress made for the remaining twenty councils and serious consideration will have to be given by those remaining councils when working with transition committees, to include Single Status implementation in their programme of work in an attempt to minimise harmonisation issues before reorganisation.

The Panel is endorses the views of the Working Group in 2.35.

Recruitment and Selection

2.36 The Local Government Staff Commission Code of Procedures on Recruitment and Selection is currently being updated but the Group considers that it is generally fit for purpose until 2011. It is understood that the LGSC intend to update the Code to take account of the recommendations regarding the appointment of staff by Transition Committees.

The Panel notes the comments in 2.36 and would wish to add that it is the view of some members that recruitment should be done through open competition to ensure the best possible candidate.

The Panel further comments on the need to set out the arrangements for appointment of the Designate Management Teams and how recruitment will be managed e.g. whether this will be within the RPA affected group.

Location

2.37 The Group recognises that relocation will have a major impact on staff within councils as well as those transferring from central government. The Group recommends that that location issues for Day 1 are set out in the transfer scheme and understands that this would be dealt with primarily by the Transition Committees with some final decisions required by the new Councils post 2011.

2.38 It is recommended that Transition Committees consider any potential breach of staff 'mobility clauses' as a result of decisions regarding location. It is further recommended that, following the Group's review of the current local and central government regulations and contractual provisions with regard to location that guidance on the following is provided:

- options to mitigate relocation allowances (e.g., working practice relating to increased use of IT and remote working); and
- reasonable travel to work distances.

The Panel is broadly content with the recommendations in 2.37 – 2.38 but would wish to add that while the transition committees may be required to make decisions on staff location on Day 1 of the new council, final location decisions will ultimately rest with the new councils.

Qualification of Officers

2.39 It is strongly recommended that the Department reconsider the specification of qualifications of officers of the council eg Section 41(3) of Local Government (NI) Act 1972 states that “A person shall not be appointed to (a) the office of clerk of a council; or (b) such other office under a council as the Department may determine, unless he possesses such qualifications as the Department may determine

2.40 The application of this is considered to be out of date and of little value.

The Panel is broadly content with the recommendation in 2.39 – 2.40 but would wish for clarification on whether this should apply to officers above a certain level. The Panel notes that this has been passed to Panel A as it is considered to fall under Governance arrangements.

**HUMAN RESOURCES WORKING GROUP
NOVEMBER 2008**

ANNEX C

CAPACITY BUILDING WORKING GROUP EMERGING POLICY PROPOSALS

1. BACKGROUND

- 1.1 The purpose of this paper is to provide details of the emerging policy proposals relating to the capacity building elements of the local government structural reform that will require primary legislative provisions.
- 1.2 The objectives and Terms of Reference of the Capacity Building project are to:-
- Identify the key Capacity Building issues relating to the restructuring of local government and imperative to the delivery of the new arrangements by 2011 and beyond. This will include as a starting point, consideration of the issues raised and recommendations made by the previous Local Government Taskforce Capacity Building Sub-Group.

2. CURRENT POSITION

- 2.1 The Working Group has met on four occasions and has conducted an analysis of learning from local government across the UK and best practice examples from the Improvement and Development Agency (IDeA). Further to this, the Group has completed a baseline report which sets out the current situation across local government.
- 2.2 The Group has divided the Capacity Building requirements into three major strands –
- Enhancing the capacity of Elected Members, with priority being given to the Transition Committees - *Development of a competence and skill based capacity building process for elected members based on a model Political Skills Framework.*

- Enhancing the capacity of officers - *Development of an overarching model workforce development plan*
- Enhancing the capacity of organisations - *Development of a model Organisational Development approach to embrace improved service delivery*

2.3 The Group has further identified two distinct but not mutually exclusive stages –

- Capacity building for and during the transition
- Capacity building post transition (development of model frameworks and toolkits for the new councils)

2.4 The main issues still to be resolved are those of funding and the provision of effective support for capacity building.

2.5 The Group has requested from Central Government an indication of the type and level of capacity within staff transferring with functions - in order that Councils can forward plan capacity building activity , for example induction for transferring staff.

2.6 The Group is liaising with IDeA on the issue of Elected Member development & considering examples of best practice elsewhere before making final recommendations.

2.7 It is envisaged that the Group will be in a position to produce recommendations early in the New Year

3. RECOMMENDATIONS IN RESPECT OF PRIMARY LEGISLATIVE IMPLICATIONS

3.1 The Working Group has concluded that the emerging policy proposals for Capacity Building have no primary legislative requirements. However, the Group recommends that as work progresses within the other elements of the Structural

Reform process, the Working Groups are mindful of Capacity Building issues therein.

The Panel notes the Capacity Building Working Group's progress to date and looks forward to receiving a final report for consideration.

**CAPACITY BUILDING WORKING GROUP
NOVEMBER 2008**