

POLICY PROPOSALS FROM POLICY DEVELOPMENT PANEL (GOVERNANCE, COMMUNITY PLANNING & CENTRAL / LOCAL RELATIONS)

Agenda Item: 3

Summary: **Outlining the Policy Development Panel's proposals in relation to representation on the statutory transition committees and the governance arrangements for those committees.**

Action: **For consideration and endorsement.**

Background

1. The Minister in his letter of 27 November 2008 asked the Policy Development Panel on governance and relationships to bring forward proposals for arrangements to provide for fair transparent decision making by the transition committees. He also asked for the Panel's views on whether the membership of the statutory committees should reflect the relative size of the constituent councils rather than the current arrangement of equal representation on the voluntary transition committees.
2. The Minister subsequently, at the Strategic Leadership Board meeting on 23 January 2009 asked the Panel to consider if and how inclusivity could be achieved on transition committees across the constituent council group.
3. This paper outlines the Panel's proposals on these important issues, and the rationale behind them. On some matters a consensus view could not be reached, and where appropriate the positions of the political parties are reflected in the paper.

Representation on Statutory Transition Committees

Level of membership

4. The Minister did not specifically ask for the Panel's view on the size of the statutory transition committees. However, members considered that it was important to look at this issue in order to inform and provide a baseline for their deliberations on representation and achieving inclusivity.
5. In considering this issue members recognised the need to provide for efficient and effective decision making during the statutory transition phase, and took the view that the committees should not be overly large. Against this background members agree that the level of membership set out in the initial guidance issued by the Department is appropriate, i.e. a maximum of 16 members, with the exception of the Causeway Coast group and Belfast which should have a membership of 20 to ensure that the constituent councils in this group have a similar minimum level of representation to other councils.

Level of representation from constituent councils

6. On the issue of the level of representation from the constituent councils members agreed that the arguments in favour of both equal representation, and proportionality to take account of the relative councils sizes are finely balanced. On the one hand equal representation is more likely to engender the partnership approach required for an effective transition process, whilst on the other larger councils could argue that they will bring a greater asset and budget base to the process.
7. In order to inform their deliberations and examine the potential application of a proportionate approach members considered analyses of representation based on:
 - population size for the council areas; and,
 - number of elected members on the councils

8. Following detailed discussions on the issues involved the Alliance party, DUP and Sinn Fein representatives on the Panel support the option of equal representation from constituent councils on the statutory transition committees. The UUP representatives take the view that a proportionate approach based on the population for the council areas would be more appropriate. The SDLP representatives reserve their position at this stage.

Inclusivity in representation

9. In considering this aspect members agree that the determination of councils' representation on a statutory transition committee should provide for proportionality and inclusivity, in accordance with the democratic process. They also agree that councils should have the flexibility to determine how this will be achieved, taking account of the determination of representation on the voluntary transition committees.
10. Consequently, the Panel proposes that the methodologies put forward for the allocation of positions in councils post 2011, i.e. d'Hondt, Saint Lague and Single Transferable Vote, should be available to councils to determine their representation. The application of d'Hondt should be the default position if a council cannot agree on the methodology to adopt. Members also agree, based on current experience, that provision should be made to ensure that these methodologies are applied consistently across the councils.
11. Given the range of interpretations on the application of d'Hondt advice was sought on the matter. This advice pointed to the process set out in the Northern Ireland Act 1998 Section 18 for the allocation of ministerial positions in the Executive. Whilst some members highlighted that this legislation does not apply to local government there was a broad recognition that this provides a legislative model that is currently operating in Northern Ireland.
12. In considering the application of this model, and by association the application of the Saint Lague divisor methodology, the DUP, Sinn Fein and SDLP representatives agree that a political party's level of representation, for the purposes of the divisor should be taken as its level of registered representatives

at the 2005 Local Government Election or where there has been a by-election. Changes of political affiliation, for whatever reason, do not alter the initial electoral mandate for the respective political parties and would not impact on the determination of the level of representation. The Alliance Party and UUP representatives do not support this position.

13. In the context of the level of representation Alliance party representatives propose that provision be made for the formation of coalitions within a council for the purposes of achieving representation on a statutory transition committee. This proposition is support by the UUP representatives on the Panel. The representatives from the DUP and Sinn Fein take the view that such a proposition moves away from the democratic principle and the outcome of the local government election. The SDLP representatives reserve their position pending consideration of the application of d'Hondt elsewhere.

Inclusivity across the council group

14. Members considered this issue in the context of the shared understanding of the Minister's request of those members who were present at the Strategic Leadership Board when it was raised. This understanding is the inclusion on a transition committee of a political party or parties which have a level of representation across the council group that would justify membership but which does not have a sufficient level of representation on the individual councils to achieve membership.
15. Members considered a number of ways in which inclusivity across the group could be achieved using a formula based approach to ensure consistency. Members were not supportive of any option that removed the selection of representation from the individual councils.
16. The consideration of an analysis prepared by the Joint Secretariat highlighted that the issue of inclusivity has the potential to occur in only two council groupings – Lisburn / Castlereagh and Ballymena / Carrickfergus / Larne. In both these groups the SDLP has a total of five councillors or around 9% of the combined membership of the councils. The level on individual councils within the

group would not however result in representation on the respective transition committees under the strict application of the d'Hondt allocation methodology.

17. Members noted that within both these council groups the largest political party on one of the constituent councils have, for the voluntary transition committees, made a position available to the SDLP thereby ensuring their representation. If these local arrangements continue to apply for representation on the statutory transition committees the inclusivity sought by the Minister will be achieved. The Panel would encourage the relevant councils to adopt this approach.

Governance arrangements for statutory transition committees

18. In arriving at its proposals in relation to the governance arrangements that should operate in statutory transition committees, the Panel considered the extent to which its proposals for the governance arrangements for the councils post 2011 would have a direct read across. If appropriate some modification may be required.

Decision making structure

19. The Panel proposes that provision be made for a statutory transition committee 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 be a matter for the full statutory transition committee except where this would conflict with legal requirements, e.g. employment law.

Allocation of positions

20. The Panel proposes that the Chair and Vice-Chair of the statutory transition committee and any sub-committees should be allocated across the political parties represented on each statutory transition committee. This allocation should be across two equal time periods over the operational term of the committee. Building on proposals for the new councils the Panel proposes that the statutory transition committee should have the flexibility to allocate these positions using either d'Hondt, Saint Lague or STV. Any sub-committee Chair

and Vice-Chair positions created following the initial allocation would be allocated using a continuation of the initial process.

21. The Panel also proposes that the Chair of a statutory transition committee or of a sub-committee established to consider a specific issue(s) would not have a 'casting vote'.
22. Membership of any sub-committee should be proportionate to the representation of political parties on the relevant statutory transition committee. This should be achieved using either the Quota Greatest Remainder or Droop Quota approaches.

Checks and balances

23. It is the consensus view of members that the issues for determination by the statutory transition committees should be circumscribed to those of a practical nature. Issues which are likely to have a bearing on the policy direction and ethos for the new council area should be excluded from the remit of the committees.
24. Against this background panel members however take the view that the 'call-in' and Qualified Majority Voting (QMV) procedures proposed for the new councils should be available for decisions to be taken by a statutory transition committee. The trigger and threshold proposed for these procedures in the councils post 2011, i.e. 15% of members (with the resultant figure always rounded up to the nearest integer) and 80% of members present and voting are deemed by the Panel to be appropriate for their operation in the statutory transition committees. Consideration is required on the mechanism to determine if a 'call-in' is legitimate.
25. Decisions in relation to the striking of the rate for the new council and those relating to personnel matters, or of a quasi-judicial nature (in the event that they arise during the transition phase) would be excluded from the 'call-in' and QMV procedures.

Dispute Resolution

26. Members considered the provision of a formal mechanism to resolve any disputes that may arise in the deliberations and decision making by the statutory transition committees. It is the consensus view of members that any such process would only be appropriate in the case of a critical decision that would prevent the effective operation of the new councils 4 days after the local government elections in 2011 and where Ministerial involvement would be required. All other matters which cannot be resolved through discussion to the mutual satisfaction of those involved should be deferred to the new council when constituted.
27. The Panel therefore proposes that statutory transition committees should have the option to engage a facilitator / mediator (at their own expense) as a mechanism of last resort, if agreement cannot be reached before the matter is referred to the Minister for direction.

Standards, Transparency & Reporting

28. Members are of the firm view that a Code of Conduct for councillors should be applicable to the operation of the statutory transition committees.
29. Members recognise that there is likely to be significant interest in the operation of the statutory transition committees, the discussions that take place and the decisions that are reached. Accordingly members agree that where practicable meetings should be open to the public. When issues relating to staffing matters or of a commercial and confidential nature are to be discussed the statutory transition committees should have the ability to close such sessions to the public.
30. Taking account of the implications of the transition process for the existing councils and councillors the Panel proposes that councillors who are not members of the statutory transition committee should have the right to attend meetings of statutory transition committees including those sessions to which the public are excluded. Councillors who are not members of the statutory transition committee should also have speaking rights at any meetings.

31. The Panel further propose that the parameters and conditions for attendance of non transition member councillors at closed sessions and engagement at the meetings should be a matter for the statutory transition committee to agree and set out in its Standing Orders. These Standing Orders should be circulated to every member of the constituent councils in the group.

**DOE / NILGA Joint Secretariat
March 2009**