



**MINISTERIAL ADVISORY GROUP**  
FOR ARCHITECTURE AND THE BUILT  
ENVIRONMENT FOR NORTHERN IRELAND

**LOCAL GOVERNMENT REFORM  
CONSULTATION ON POLICY PROPOSALS  
MAG RESPONSE  
11 MARCH 2011**



**RAISING EXPECTATIONS**

## LOCAL GOVERNMENT REFORM CONSULTATION ON POLICY PROPOSALS

The following are the comments of the Ministerial Advisory Group for Architecture and the Built Environment Northern Ireland in response to Local Government Reform Consultation on Policy Proposals



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**Ministerial Advisory Group for  
Architecture + the Built Environment Northern Ireland**

11 March 2011

### LOCAL GOVERNMENT REFORM CONSULTATION ON POLICY PROPOSALS

2.2. At the Executive meeting on 13 March 2008, the recommendations from the Sub-Committee were agreed. In summary, the SubCommittee recommended:

- rationalising the current 26 district councils to create 11 new district councils;
- introducing new governance arrangements for councils to ensure the protection of the rights of all people and also provide for fair, transparent and efficient decision-making;

### RESPONSE OF THE MINISTERIAL ADVISORY GROUP FOR ARCHITECTURE AND THE BUILT ENVIRONMENT FOR NORTHERN IRELAND (THE MAG)

Northern Ireland's six counties form an excellent basis for the appreciation and enhancement of the intrinsic nature of these real places which have evolved over hundreds of years in terms of culture, sport, environment, agriculture, poetry, legend, song and (of course) governance. We have had the counties for over 90% of the



**Antrim**



**Down**



**Armagh**



**Fermanagh**



**Londonderry**



**Tyrone**

last four **centuries**. Their boundaries are mapped and well established.

- developing a new council-led community planning process and introducing a power of well-being;

- transferring a range of functions from central to local government; and

- developing appropriate performance management systems for district councils.

Their landscapes and character are famous around the world. There is pride in those counties and in their elegant, time-honed names. There is therefore much to commend a reinstatement of the counties as administrative units alongside up to five city administrations. Smaller town and district arrangements based on wards can work to provide strong community involvement as required, along the lines of the Scottish Community Councils which are statutory but independent.

The consultation paper recommends in paragraph 10.6 that the Northern Ireland Library Authority, should be used as a model for the local government transfer schemes for transfer of staff, property rights and liabilities.

There is also a very useful model available in Northern Ireland for community planning and community involvement. This is the Northern Ireland Housing Executive's Strategy for Community Involvement which includes an updated operational handbook, the Housing Community Network and Supporting Communities NI. This model of community involvement already integrates, in a place-based way, the functions of many different statutory agencies. The Community Involvement Strategy is presently limited to places originally laid out as areas of public sector housing, but could form an excellent model for community planning in the whole of a council area.

This is most welcome and should make reference to the opportunity to protect and enhance local places as well as people's lives and lifestyles.

There are plenty of quality assured management systems available

2.3. In addition to the specific recommendations, the review signalled the desire of the Executive to work in partnership with local government to deliver the priorities and actions set out in the Executive's Programme for Government and thereby improve outcomes for everyone.

2.4. While the Review of Public Administration was progressing, the Department of the Environment was developing proposals to modernise certain procedures in councils. One of these related to providing a new ethical standards regime for local government.

2.5. Following Minister Foster's announcement of the Executive's decisions on the future shape of local government, structures were put in place to support the development of policy and implementation proposals, to give effect to those decisions. The top tier of the structure, and key driver of the programme, was the Strategic Leadership Board, chaired by the Minister of the Environment. The membership of this Board comprised elected representatives from the five main political parties, led by the Northern Ireland Local Government Association President (who was vice chair), senior advisers from local government and senior officials from those departments transferring functions to local government. The Strategic Leadership Board was supported by three policy development panels which also comprised representatives from the five main political parties and advisers from central and local government. The broad remit of each of the panels was:

- Panel A – Governance and Relationships;
- Panel B – Service Delivery; and

which can be specified by ISO (International Standards Organisation) numbers, for example ISO 9001.

2.3 Working in partnership requires a clear understanding of roles and an agreement to share risks and rewards. In my experience with a Neighbourhood Renewal Partnership, for example, no statutory body was willing to sign up as a partner.....

2.4 An ethical standards regime should not be new – it should have evolved and been refined over the last 38 years of the present system.

- Panel C – Structural Reform.

2.6. These panels, in the intervening period, developed policies for local government reform and this consultation document reflects their work.

2.7. Although it has not been possible to create the 11 new councils, or to transfer new functions to them in 2011, as had originally been planned, the Executive agreed, at its meeting of 18 November 2010, that in order to maintain momentum towards local government reform, the policy proposals contained in this document should be issued for public consultation.

#### POLICY PROPOSALS

##### Governance Arrangements

3.1. Good governance (i.e. management and control arrangements) lies at the heart of effective and efficient local government. It provides for best practice in policy development, decision-making and the delivery of quality services.

Governance arrangements must ensure that district councils:

- operate to high standards;
- pursue equality and fairness within a framework of checks and balances; and
- conduct their business with openness and transparency.

3.2. The existing framework for the role of elected representatives in political decision-making in district councils is set out in the Local Government Act (Northern Ireland) 1972 (as amended). This framework is, therefore, almost 40 years old and needs to be updated.

3.3. The objectives underpinning the proposals for new political governance arrangements for district councils after reorganisation, are that they should provide for:

- efficient and effective decision-making;

3.1 Good governance is about more than management and control arrangements. It is about inspiration, excitement, enjoyment and answerability to an electorate as much as policy development, decision making and delivery of services. It is about people's pride in their counties, cities, towns, villages and townlands.

3.2 Age is not necessarily an indication of a need for updating. Other and more substantial reasons must be articulated.

"Inefficient and ineffective" are not a good option

- checks and balances to support equality and fair treatment;
- proportionality in allocating key positions;
- transparency and oversight of decision-making; and
- the effective and efficient creation of new local government.

3.4. Research has been carried out on local government decisionmaking in other regions. This has been used to inform the proposals set out in this consultation document. The research includes the executive arrangements introduced in England and Wales by the Local Government Act 2000, and the streamlined committee structure adopted by the majority of councils in Scotland. The local government sector and the main political parties have also had a significant involvement in the formulation of the proposals through their engagement in the Policy Development Panel on Governance and Relationships.

#### Decision-making Structures

3.5. At present, in most councils, an issue that requires a decision is delegated to a committee of the council which considers all the relevant material and ultimately makes a recommendation to the full council. The committee has no responsibility or authority to make the final decision (unless the council has specifically delegated a decision-making power to it). It is for the council to consider the recommendation from the committee when the minutes of that committee come before the council for ratification. The ratification of the minutes of the committee signifies the council's endorsement of the recommendation. There is, therefore, a delay between a recommendation being made and a final decision being taken.

"checks and balances" can be excuses to do nothing or to delay decision making

"Ineffective and inefficient" are not a good option

3.6. In considering proposals for the new arrangements, the Department takes the view that it is important to build in choice and permit flexibility in relation to the development of new decision-making structures by councils, rather than introducing a single structure for all councils. The Department proposes that a short list of decisionmaking structures should be available to councils. A council would then be able to select the most appropriate structure. The decisionmaking structures which the Department proposes should be available to councils are:

- the cabinet-style model: executive responsibility for all operational decisions would be devolved from the full council to a relatively small committee of councillors;
- the streamlined committee model: a central policy committee and a limited number of other committees would be established with executive responsibility for specific decisions being devolved from the full council to those committees; and
- the traditional committee structure: individual committees would be established to consider specific issues and make recommendations on appropriate courses of action, for decision by the full council.

3.7. To provide a check and balance on the operation of the cabinetstyle and streamlined committee models, which devolve decisionmaking from the full council, the Department proposes that structures should be supported by effective internal scrutiny arrangements. These arrangements will include the provision of a call-in procedure, which will allow decisions taken under devolved arrangements to be reviewed. It is also proposed that councils which choose to operate one of the systems of devolved decisionmaking should be required to

establish a scrutiny committee. Flowing from the principle of checks and balances, this committee will be able to scrutinise the work of the cabinet-style model or streamlined committees and will consider the outcome of the review of any decision subject to a call-in, in defined circumstances.

Further details on the operation of the call-in procedure are outlined in paragraphs 3.18 to 3.23.

3.8. To provide for the eventuality that a district council cannot agree the adoption of a particular decision-making structure, the Department proposes that a default model should be provided for. The key elements of the default model will be:

- the operation of a committee-based system;
- the opportunity to devolve powers from the full council to a committee or committees;
- the establishment of a scrutiny committee, if powers are devolved from the full council to committees; and
- the establishment of a central policy committee.

3.9. For the operation of the devolved decision-making systems, the Department also proposes specifying a list of core issues on which decisions must be taken by the full council. This list will cover strategic issues that would have an impact across the whole local government district and include, for example, striking the rate, borrowing, governance arrangements, the corporate plan, the community plan, etc.

Question 1:

Do you agree that a list of alternative decision-making structures should be available to councils?

Question 2:

Where decision-making is devolved to a

Answer 1:

Yes, Councils are elected by local people and should be allowed to determine their decision making structures.

Answer 2:

Yes.

committee of the council, do you agree that effective internal scrutiny arrangements should be required?

Question 3:

If a list of decision-making structures, as set out, is provided, do you support the proposal that a default option should be available?

Question 4:

Should a list of core issues, for which decisions must be taken by the full council, be specified? If so, what are your views on the issues that should be included in this list?

#### Sharing of Power and Responsibility

3.10. The members of a council, when it is established and on an annual basis after that, are required to select a councillor to act as chair of the council; they may also choose to select another councillor as vice-chair. They will also select individual members to take on the roles of chair and vice-chair of any committees that they create to have responsibility for specific issues. In addition, a number of public bodies appoint councillors to their management boards, and in so doing, seek nominations from the relevant councils.

3.11. To ensure that power and responsibilities are shared amongst elected members, it is proposed that a number of methods should be available to councils for the allocation of these key positions within the council and for its representative positions on external bodies. The methods which the Department proposes should be available are:

- the D'Hondt and Saint-Lague divisor systems which use a formula for determining the order in which political parties will make their selection of the

Answer 3:

Yes.

Answer 4:

No. Councils are elected by local people and should be allowed to determine their decision making structures.

3.10 The "accidental" six year councils have been good. The longer period has allowed elected members to become better known and more approachable. One year is too short for effective chairing of a council. It was changed from three years pre-1972, which gave time to settle in and get things done. The three year chair was removed, I understand, because of a lack of trust by government of local government politicians in 1972. The MAG advocates at least two years in the chair and preferably three.

3.11 This is ok, but not every year please – fast rotations give no time for job satisfaction or accountability. Process takes precedence over results, which is the opposite of what should happen.

<p>position that they wish to hold; and</p> <ul style="list-style-type: none"> <li>• the Single Transferrable Voting system, where each councillor will vote for the individual that they wish to hold a position.</li> </ul> <p>3.12. The D'Hondt system will be the default approach if the political parties on a district council fail to agree on the system to be adopted. The Department proposes to set out the precise method of application of each the systems that will be available to ensure consistency of approach across councils.</p> <p>Question 5: Do you support the proposal that a limited number of methods for ensuring the sharing of positions on a council, its committees, and external appointments should be made available? Are the methods identified appropriate?</p> <p>Question 6: Should the D'Hondt system be specified as the default model, for use in the absence of agreement?</p> <p>Question 7: Do you support the proposal that the Department specifies the method for applying each of the available systems?</p> <p>3.13. The key positions to which the process for the sharing of power and responsibility will apply will include:</p> <ul style="list-style-type: none"> <li>• mayor / council chair;</li> <li>• deputy mayor / council vice-chair;</li> <li>• committee chairs;</li> <li>• committee vice-chairs; and</li> <li>• positions on a cabinet-style executive (where that model of decision-making is adopted).</li> </ul> <p>3.14. The Department does not propose to specify that the cabinet-style model should require the inclusion of elected members from each of the political parties represented on the council. It will be a matter for a political party to determine whether it wishes to participate in such</p>	<p>Answer 5: Yes, but not every year please.</p> <p>Answer 6: Yes, but not every year please.</p> <p>Answer 7: Give Councils a chance to do things for themselves. There may be a great opportunity for discovery.</p> <p>3.13 The MAG agrees with this.</p> <p>3.14 The MAG agrees with this.</p>
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a committee or select other positions of responsibility on the council.

3.15. The use of divisor methods, such as D'Hondt and Saint-Lague, for allocating positions would potentially favour bigger political parties within a council, if selection is applied in each year of the council.

To minimise this potential, the Department proposes that the agreed method will be applied to all positions of responsibility within a council (including nominations to external bodies) over its full four year term. A list of the key positions covering each year for the full council term of office will be used to allocate all positions whenever the council is first established.

3.16. The order in which positions should be allocated will not be specified, but rather the selection of a position and the year of appointment will be matters for each political party in the council to determine, against its own priorities. The allocation of additional positions, where a new committee is established or a new appointment to an external body is identified following the initial allocation of positions, will use the agreed approach starting from the point at which the last position was allocated.

Question 8:

Do you agree that the Department should specify the list of positions that would be allocated using these methods?

3.17. It will be important to ensure that the membership of council committees

3.15 The MAG agrees with this.

3.16 The MAG agrees with this.

Answer 8:

No, leave this to each council. The MAG would favour **all purpose** committees based on **places** – towns, villages or neighbourhoods – rather than committees based on council-wide functions (such as economic development, for example, or tourism) which retain the silo mentality (“It’s not my job”) even in small councils. There would thus be a committee for each particular place (based on wards perhaps).

reflects the representation of the various political parties on the council. The Department proposes that councils should be given a choice of two methods to determine the number of positions to be allocated to each party. These are the Quota Greatest Remainder and Droop Quota methods which use slightly different formulae for calculating the basis for the sharing of positions across the political parties.

Question 9:

What are your views on the proposal for ensuring proportionality in the membership of council committees?

Are the methods to be used appropriate?

Checks and Balances

3.18. In order to ensure the fair treatment and representation of everyone served by a council, the Department considers that there is a need for a system that provides checks and balances in relation to the council decision-making processes.

3.19. The Department, therefore, proposes that a call-in procedure should be introduced. This would apply to decisions taken but not yet implemented under devolved arrangements and decisions waiting to be endorsed by a council through the ratification of minutes from a committee. The call-in procedure would be used in the following circumstances:

- where procedures used in reaching a decision are questioned, i.e. to ensure that all the established steps were followed and account was taken of council policies; and
- where there is an issue in relation to the protection of political minorities in the council district.

3.20. The call-in procedure would operate in a similar manner to the 'petition of concern' procedure in the Assembly, in other words, a number of councillors

Answer 9:

The MAG agrees with the proposals.

Yes.

would be able to join together to request that a specific decision is reviewed. It is proposed that the trigger for a call-in will be set at 15% of the total council membership, with the resultant figure always rounded up to the nearest whole number. For example, in a council with 40 members, a call-in would require the support of 6 councillors.

3.21. It is further proposed that, where a decision is the subject of call-in on procedural grounds (see paragraph 3.19), the outcome of the subsequent investigation will be considered, as appropriate, by either:

- the scrutiny committee (where one has been established because the council has opted to devolve a range of decisions); or
- the full council.

3.22. A scrutiny committee would have no authority to overturn a decision. It would only be able to confirm the original decision or refer it back to the committee that made the decision for further consideration. Council committees would, however, be required to have regard to any report from a scrutiny committee. In cases where a council has opted to retain the traditional committee system, any decision that is called in on procedural grounds would be considered by the full council.

3.23. Where the call-in procedure is used in seeking to protect political minorities from adverse impact in the council area (see paragraph 3.19), the Department proposes that a process to assess if the call-in is valid would be put in place. This process would be external to the council to avoid the potential for disputes between councillors. It is further proposed that all decisions subject to call-in on this basis would be referred to the full council for a final decision.

3.24. As a further safeguard to council

3.22 If a scrutiny committee cannot overturn a decision, it should not be able to confirm one either. In both cases it should be able to make a recommendation only, for a decision to be made by Council.

decision-making, the Department also proposes to introduce qualified majority voting (or weighted majority voting) for specified strategic decisions to be made by district councils. Examples of these decisions would include:

- decision-making structures;
- major capital projects; and
- programmes that impact across a number of wards.

The use of qualified majority voting would also be available to councils for decisions that had been the subject of a legitimate call-in.

3.25. Decisions relating to the statutory duties of a council, e.g. striking the rate, and those of a quasi-judicial nature, e.g. making bye-laws, will be excluded from qualified majority voting. For the operation of qualified majority voting, it is proposed that a straightforward threshold, set at 80% of council members present and voting, will apply, rather than a system of cross-community voting (such as the one operated by the Northern Ireland Assembly).

Question 10:

Should a call-in procedure be introduced to provide a check and balance for council-decision making?

Answer 10.

Yes.

Question 11:

Do you support the proposal for such a call-in to be available in the two circumstances outlined, and for how it would operate?

Answer 11.

Yes

Question 12:

Do you agree that 15% of council membership should be the trigger for a call-in?

Answer 12.

Yes

Question 13:

Should the use of qualified majority voting be introduced to provide safeguards in the council's decision-making processes?

Answer 13.

Yes

Question 14:

Do you agree that 80% of council membership should be the threshold for qualified majority voting?

Transparency

3.26. Section 23 of the Local Government Act (Northern Ireland) 1972 provides that, subject to certain conditions, every meeting of a council shall be open to the public. To ensure the continued transparency of the decision-making process and take account of the proposed new structures, these provisions will be updated to provide for improved access to council meetings and documents.

3.27. In addition to updating the provisions in relation to the transparency of the decision-making process, the Department proposes that a council will be required to prepare and publish a constitution that sets out details of how it operates. This constitution would provide details of:

- the council's decision-making structures and how decisions are reached;
- the council's standing orders, the production of which will be mandatory;
- the scheme of delegation in operation for decision-making by officers; and will provide links to the Corporate and Business Plan.

Question 15:

What are your views on the proposed steps to enhance transparency and openness in the operation of a council and its decision-making?

Ethical Standards

Background

4.1. Northern Ireland is the only jurisdiction in the United Kingdom which does not have a mandatory code of conduct for district councillors. The current Northern Ireland Code of Local Government Conduct was introduced in April 2003 and

Answer 14.

80% seems high. Two thirds (66.7%) would seem a reasonable majority.

Answer 15.

DoE should provide a model constitution for use at the start of the new councils. Councils should then be able to change this from experience as time goes by.

4.1 Northern Ireland is also the only jurisdiction in the United Kingdom without a system of local community councils (sometimes known as parish councils). Legislation should be provided to allow these to be formed

provides guidance to councillors on the standards of conduct expected of them in carrying out their official duties and in maintaining working relationships with fellow councillors and council employees. It is a guidance document only and there are no formal mechanisms for dealing with cases where the Code might not have been adhered to.

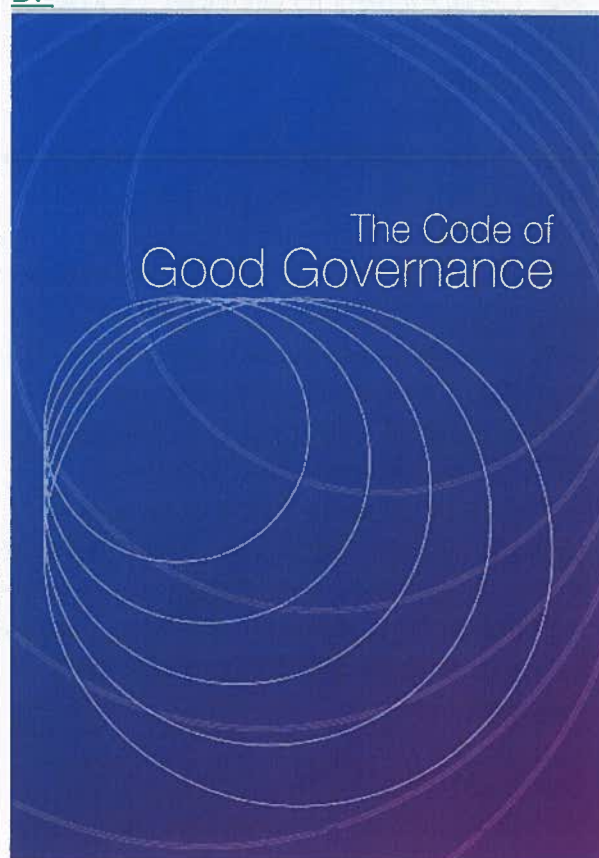
4.2. The administrations in England, Wales and Scotland have each developed and introduced ethical standards frameworks for local government to encourage appropriate levels of conduct and to build public confidence. These frameworks include mandatory codes of conduct for elected representatives of local authorities, with associated processes for investigating and adjudicating on alleged breaches of the codes.

4.3. The Committee on Standards in Public Life's Tenth Report entitled "Getting the Balance Right - Implementing Standards in Public Life" (published in January 2005) included two recommendations in relation to local government in Northern Ireland which were agreed by the United Kingdom Government, namely:

- Recommendation 15: Following the Review of Public Administration, and upon the restoration of the Assembly in Northern Ireland, a Statutory Code of Conduct for Councillors should be introduced with a proportionate and locally-based framework for enforcement, drawing upon experience of other parts of the United Kingdom; and
- Recommendation 29: The three principal regulators (the Standards Board for England, the Local Government Ombudsman for Wales, and the Standards Commission for Scotland) should put in place formal arrangements for the sharing of experiences and best practice. This should be extended to include the body with designated responsibility for

as part of statute with elections on the same basis as the district councils. Smaller groups should not merely be regarded as constituted or unconstituted community groups. There is a good model for this in the DSD's Housing Community Network. This includes guidance on good practice and requires groups to conform to protocols. There is a code of good governance for the voluntary and community sector:

[http://www.nicva.org/sites/default/files/Code%20of%20Good%20Governance\\_1.PDF](http://www.nicva.org/sites/default/files/Code%20of%20Good%20Governance_1.PDF)



enforcement of a new statutory framework in Northern Ireland.

4.4. In 2005, a Code of Conduct Working Group (CCWG) was set up by the Department to review the current Code of Conduct and to consider options for monitoring the application of the Code, including investigation, enforcement and appeals procedures.

4.5. The CCWG compared the current ethical standards arrangements for local government in Northern Ireland with those in England, Scotland, Wales and Ireland and also with the Northern Ireland Assembly.

4.6. As ethical standards and the Code of Conduct are governance issues, the policy development and recommendations of the CCWG were subsequently presented to the policy development panel on governance and relationships for consideration.

4.7. The Department proposes to introduce a new ethical standards regime for local government which would include the introduction of a mandatory Code of Conduct for councillors with supporting mechanisms for investigation, adjudication and appeals. This would initially involve all complaints regarding breaches of ethical standards in district councils being referred to the Northern Ireland Commissioner for Complaints (the Commissioner) to decide whether a case should be referred to the relevant council for local resolution or whether the matter should be retained for investigation by the Commissioner's Office.

Question 16:

Do you agree that a statutory ethical standards framework should be introduced for members of district councils in Northern Ireland?

Code of Conduct

Answer 16:

Yes and with the re-introduction of decision making powers in planning and regeneration, specific mention should be made of the issue of conflict of interest. There should be criminal offences for becoming

4.8. The Department proposes to introduce a mandatory Code of Conduct to replace the current Northern Ireland Code of Local Government Conduct. The Code will set out the conduct which is expected of all councillors and co-opted members in Northern Ireland.

4.9. The Department proposes to specify in the Code the general principles which will provide a guide for councillors' behaviour in the execution of their duties and which will underpin the mandatory Code. It is intended that the principles to be specified in the Code will be:

- the seven principles of public life (the Nolan Principles) which are a recognised set of principles used across the public sector i.e. selflessness, integrity, objectivity, accountability, openness, honesty and leadership; and
- four additional principles which were adopted by the Northern Ireland Assembly on 12 October 2009, i.e. respect, equality, good working relationships and promoting good relations.

Question 17:

Do you agree that the principles mentioned above should apply to councillors and co-opted members?

4.10. It is proposed that the Department should be required, before issuing the Code of Conduct, to consult with councils and bodies representative of councils, councillors and council officers.

involved in the giving or receiving of inducements in regard to decision making in planning or regeneration schemes where the decisions taken by local councils will in future have very large financial costs and benefits for individual land owners and companies. It is vitally important to put in place in the legislation being drafted the correct protocols for continuously involving local people in the decision making processes about their areas. This would include, for example, legislation on pre-application planning discussions about which the MAG believes neighbours should be notified in the same manner as when applications are formally submitted, creating openness and transparency from the beginning, and "front loading" participation as called for by Professor Greg Lloyd in his paper on planning reform. In the same way, community plans should be locally prepared within the guidelines of the regionally based regulatory system, with all interested parties invited to participate in the preparation and not be excluded and merely "consulted" or brought in at the stage of "examination". Such means are also very effective in resource terms and offer greater certainty for developers and community alike. Clearly defining and insisting upon best practice in these mechanisms are just as important as - and can be more important than - the mechanisms for voting, or appointing chairs of committees and should receive equal or greater attention at this earliest stage of the legislative process. They are too important, the risks of maladministration are too high and the potential rewards for deliberate malpractice are too great to leave these as details to be sorted out later. In this respect, the Planning Bill does

4.11. In addition, it is proposed that, before taking up office, a councillor should be required to serve on the clerk of the council a declaration of acceptance of office which would include an undertaking that the councillor will observe the Code.

4.12. It is proposed that the Code should include sections dealing with:

- the key principles of the Code of Conduct and general obligations expected;
- interests – personal, financial and prejudicial interests;
- registration of interests, gifts and hospitality;
- declaration of relevant interests and dispensations;
- lobbying and access to councillors;
- a protocol for relations between councillors and officers of councils; and
- dealing with planning applications (after land-use planning has been transferred to local government).

Question 18:

Do you agree that a mandatory Code of Conduct should be introduced and that all council members should give a written undertaking to comply with it before accepting office?

Complaints

4.13. It will be the responsibility of councillors to make sure that they are familiar with the provisions in the Code and that they comply with those provisions.

4.14. The Department proposes that all complaints regarding alleged breaches in

omit the details, depending on the Local Government Bill to write these. The Local Government Bill must therefore be comprehensive and detailed in these matters.

Development control or development management, where much detailed discussion has traditionally been conducted in small offices with only officers and applicants present carry a high risk of corruption, potentially much higher than that attached to the office of mayor or chair of council or a committee where there is a higher degree of public transparency in decision making. This is an area which was much discussed in the Planning Reform public consultations but which has been left by the Planning Bill for take up by the Local Government Bill. This vitally important matter must not be left to regulation but must be embedded in best practice Local Government legislation.

Answer 18:

Yes and it should be rigorous, include detailed procedural points such as public and neighbour accessibility to all discussions between planning officers and applicants (as noted above), even at pre-application stage. It should be enshrined in legislation and should carry criminal responsibility with heavy fines and imprisonment as penalties for breaches.

ethical standards in district councils would initially go the Commissioner for consideration. An advantage of placing this role with the Commissioner is that the Commissioner's Office is already well established and trusted and this is likely to increase public confidence in the new system.

4.15. A complaint would be assessed to determine whether there appeared to be any case to answer or whether it appeared to be a minor or a serious breach in standards. This would then determine how the subsequent investigation and adjudication of the case would be taken forward i.e. either referred to the relevant council for local resolution (which should happen in the majority of cases) or retained by the Commissioner's Office (i.e. serious, complex or high profile cases).

Question 19:

Do you agree that all written complaints concerning alleged breaches of the Code should be sent in the first instance to the Commissioner for Complaints to determine how they should be investigated?

Question 20:

If you do not agree, what other suitable alternative would you suggest?

Investigation and Adjudication

4.16. As indicated above, the Department proposes that the duties of the Commissioner should be extended in relation to the new ethical standards framework and that the Commissioner should receive all complaints of alleged breaches of the Code. We would propose that the Commissioner's Office should investigate more serious, complex or high profile cases and should report and make recommendations on the outcome of the investigation. Where a breach of the Code has occurred, the

Answer 19:

Yes, and the Commissioner should have access to the Police and Public Prosecutions Service for potential criminal acts to be identified and dealt with through the courts.

Answer 20:

Not applicable – the MAG agrees.

Commissioner would also adjudicate on what sanction is to be taken against the councillor or co-opted member. The Commissioner would also facilitate the hearing of any appeals relating to cases that have been adjudicated on by a council standards committee (see paragraph 4.24).

Question 21:

Do you agree that the Commissioner for Complaints should only deal with those cases that are deemed to be serious or high profile?

Question 22:

Alternatively, would you prefer the Commissioner for Complaints to be responsible for all types of cases? What would you consider to be the advantages of this?

4.17. The Department proposes that each council should have an independent monitoring officer and a standards committee to deal with complaints referred to it by the Commissioner. Where a complaint appears to be a less serious breach of the Code or where there may be no case to answer, it is intended that the Commissioner would refer the matter to the relevant council's standards committee for local resolution.

4.18. If a case is referred to a council for local resolution, the independent monitoring officer would investigate and report to the standards committee to assess whether a breach had occurred and, if necessary, to adjudicate on the matter.

4.19. The Department proposes that an independent monitoring officer should be appointed or assigned for each council. The main roles of an independent monitoring officer would include:

- providing advice and guidance on the ethical standards framework and Code of

Answers 21 & 22:

It is right that all complaints should be to the Commissioner's office in the first instance and that the Commissioner should determine whether to deal with them directly through his or her own office, send them to a council or to police and public prosecutions service.

4.17 This should be dealt with initially by the Council's chief executive, who may be the best person to chair a standards committee which would include councillors and independently appointed external members.

Conduct within the council, including establishing contact with other monitoring officers within Northern Ireland and the Great Britain to share and develop best practice;

- carrying out investigations of relevant complaints and supporting and assisting the council's standards committee in the processing of cases and maintaining appropriate records;

and

- ensuring that the council establishes and maintains a register of members' interests and a register of gifts and hospitality and has procedures for dealing with declarations of interest.

4.20. The Department proposes to specify in legislation the way in which independent monitoring officers should deal with matters referred to them.

4.21. It will be the duty of each council to establish a standards committee to promote and maintain high ethical standards. The Department proposes that the functions, procedures and membership of standards committees should be specified in legislation. The Department further proposes that:

- a standards committee's role in considering the reports and recommendations of independent monitoring officer;

- the actions which the committee may take against any councillor who is subject to such a report or recommendation;

and

- the committee's adjudication function and the penalties which it can hand out; should also be provided for in legislation.

4.22. In order to gain public confidence in the system and to promote openness and fairness, it is proposed that standards committees should include independent members.

Question 23:

Do you agree that each council should be required to establish a standards committee? If so, do you agree that each Standards Committee should include independent members and that an independent member should chair the committee?

4.23. It is proposed that, when a case is referred by the Commissioner to a standards committee, it will be for the committee to decide if the matter should be investigated by the independent monitoring officer and, if so, the monitoring officer will submit a report on his/her findings to the standards committee for consideration. The standards committee will decide whether any sanction should be taken against the council member.

Question 24:

Do you agree that complaints concerning less serious breaches of the Code should be dealt with by the relevant council's standards committee;

Do you agree that the council's independent monitoring officer should undertake any necessary investigation;

Do you agree that the standards committee will consider all cases on the basis of the monitoring officer's reports and on the evidence presented; and

Do you agree that the council's standards committee should decide what sanctions, if any, should be taken against the members concerned?

Question 25: .

Do you agree that monitoring officers should be independent of councils or do you think that they should be council officers who, in addition to investigating less serious complaints, might be better placed to support the development of an ethical culture within councils?

Answer 23:

Yes, but The MAG suggests this is chaired by chief executive and includes independent members as well as councillors

Answer 24:

Yes, but the Commissioner for Complaints should receive a report and sign off the action taken as being satisfactory or otherwise recommence the investigation and include police as considered necessary.

Answer 25:

This should be the council's chief executive.

Do you agree that an independent monitoring officer should be appointed to each council?

If not, what alternative would you propose?

4.24. The Department proposes that, where a councillor is found to be in breach of the Code, either the Commissioner or the council's standards committee (depending on how serious the complaint is) may impose a sanction. The Department further proposes that a councillor may appeal:

- to the Commissioner concerning a decision taken by the standards committees; and
- through the Court system concerning a decision taken by the Commissioner.

Question 26:

Do you agree that sanctions should be available to standards committees and the Commissioner for Complaints where breaches of the Code have occurred?

Answer 26:

Yes.

Question 27:

Do you agree that members should have a right of appeal to the Commissioner for Complaints concerning decisions taken by standards committees and to the Court system concerning decisions taken by the Commissioner for Complaints?

Answer 27:

Yes

Service Delivery & Performance Improvement

5.1. The Local Government (Best Value) Act (Northern Ireland) 2002, (the 2002 Act) placed a duty on councils for continuous improvement in the delivery of their services. The overriding purpose of best value is to establish a culture of good management for the delivery of efficient, effective and economical services that meet users' needs. The principle of continuous improvement is the ongoing effort to seek incremental improvements in the delivery of these services over time.

5.2. The 2002 Act, however, provides no

specific mechanisms to enable councils to demonstrate their accountability to ratepayers or Ministers for the delivery of their services or improvements to those services. The reorganisation of local government, the transfer of functions from departments to councils, and the introduction of community planning and the power of well-being provide an appropriate opportunity to strengthen the framework for councils' service delivery and performance improvement.

5.3. Performance management (and within it, best value), community planning and the power of well-being are closely linked. Local government should view them as such in seeking to plan and deliver quality services that are responsive to the needs of the people who use them. For example, use of the new flexibilities and freedoms offered by the power of well-being (see paragraphs 7.1 – 7.3) should be influenced significantly by issues identified through the community planning process. Similarly, best value considerations should influence a council's choices in using the power of well-being and how it engages with its community planning partners.

5.4. The Department proposes that a new service delivery and performance improvement framework should be introduced for local government. This would include a broader duty in relation to securing best value and continuous improvement. This would be supported by a requirement to publish an annual improvement plan to provide accountability to ratepayers and Ministers. The new framework would also enable Ministers, through the Department of the Environment, to:

- issue guidance on the delivery of continuous improvement;
- set performance indicators and standards for the delivery of services; and
- intervene in a council's delivery of a

service if its performance falls below acceptable standards.

#### Revised Best Value Duty

5.5. The Department proposes that the current best value provisions should be replaced and that:

- councils should be required to secure best value, which will be described in terms of the continuous improvement of the council's performance of its functions;
- councils, in securing best value, should be expected to maintain an appropriate balance between the quality of performance of their functions, the cost of performing those functions, and the cost to persons of any services provided on a wholly or partly rechargeable basis;
- in maintaining that balance, councils should be required to have regard to efficiency, effectiveness, economy and equity;
- councils should be required to discharge their duties in a way which contributes to the achievement of sustainable development; and
- councils should have regard to outcomes when measuring improvement in their performance.

#### Question 28:

Do you agree that a newly defined best value (continuous improvement) duty should be placed on councils?

#### Best Value Guidance

5.6. It will be important to ensure a consistent approach to service delivery and performance improvement across all councils. For that reason, the Department would propose to issue guidance to underpin the best value duty and the delivery of continuous improvement and to consult with councils and other representative organisations of local government in the preparation of the

#### Answer 28:

Yes, but it needs some joy in the process – these are places where people live and work and play and die. Please let us have some delight and not emphasise processes over outcomes....

guidance. It is anticipated that the guidance should cover:

- how to make best value arrangements;
- what is to be included in best value arrangements; and
- how to implement the best value duty.

5.7. It is proposed that councils should be required to have regard to any departmental guidance in the performance of its duties about best value. Councils would also be expected to have regard to other general guidance on arrangements for securing best value (unless it conflicts with the guidance produced by the Department).

Question 29:

Should the Department be able to issue guidance in relation to best value?

Question 30:

Should councils be required to have regard to any guidance issued?

Performance Indicators and Standards

5.8. It is proposed that departments should be able to specify performance indicators for the delivery of council functions. These would allow the measurement of councils' performance in exercising the functions. The performance standards which councils will be expected to meet in relation to those performance indicators would also be specified. We propose that departments should take account of the different circumstances that exist between councils when setting performance indicators and standards.

5.9. The aim in specifying performance indicators and standards would be to promote efficiency, effectiveness and economy in the way that councils carry out their functions.

Answer 29:

Yes, but as above, lighten it up and make it fun.

Answer 30:

If the Department(s) are doing anything in this area, let them inspire and share rather than guide. To try to guide, Departments may have to remember humility and follow the best councils.

Question 31:

Do you agree that the Department should be able to specify performance indicators for the delivery of council functions?

Public Performance Reporting: A Corporate and Improvement Plan  
5.10. The Department proposes to place a requirement on councils to produce a corporate plan, which would include an improvement plan for service delivery and performance improvement. Councils will be required to publish their performance indicators in this plan. This would enhance local accountability and enable comparisons to be made between councils.

5.11. It is proposed that the Department should be able to specify the elements that must be included within a corporate plan and the associated improvement plan, and to issue guidance on the form and content of plans, including the manner in which they should be published.

5.12. This should ensure that a council's corporate and improvement plans achieve three primary aims:

- to summarise how successful the council was in meeting its objectives and performance targets for the previous year;
- to inform local people of the council's performance targets for the following year and future years; and
- to set out the council's progress in meeting any longer term targets and, where it is not on course to meet them, to give an outline of what action it is taking to remedy the situation.

The information to be reported in the plan would also enable comparisons to be made between councils.

Question 32:

Answer 31:

This is too heavy. Inspiration can be light touch, with encouragement and joy instead of heavy specification; the Councils have much experience in these matters and do not need to be overly guided.

Answer 32:

Do you agree with the proposals for the public reporting of a council's performance improvement?

#### A Statutory Audit of the Corporate and Improvement Plan

5.13. The Department proposes that the role of the local government auditor should be extended to include the audit of a council's corporate and improvement plan. This would ensure that the plan has been prepared in compliance with any future legislative framework and any supporting guidance issued by the Department.

This would provide Ministers and ratepayers with independent assurance that a council's improvement plan stands up to scrutiny and gives independent verification of any improvements.

5.14. We would propose that, in scrutinising a council's corporate and improvement plan, the auditor should:

- certify that the plan has been audited;
- consider the extent to which the plan meets specified requirements;
- recommend any remedial action that the auditor judges necessary for a council to take where its plan does not comply with the legislative requirements or guidance; and
- in cases where the auditor considers there to be serious deficiencies and failures in a plan, recommend the appropriate follow-up action. This may take the form of an examination by the auditor or, in the most serious cases, by the relevant government department (depending on the functions concerned) under its proposed powers of intervention.

The public and the media are often more alert than government departments to the performance of local councils. Legislation should encourage public and media attention with a free flow of raw data for external interpretation rather than trying to be a big government regulator with everything "reported" by councils which can mean "sterilised" by councils.

5.14 The public and the media, given the information, can be far better auditors than professional auditors and all councillors are subject to the ballot box anyway, whereas the auditors are not; auditors can be out of touch and out of date.

5.15. The auditor should also be required to report publicly on the results of his assessment. In turn, when a council receives an auditor's report on its corporate and improvement plan it will be required to publish the auditor's report.

5.16. The Department also proposes that the local government auditor should be able to carry out examinations aimed at assessing compliance with the requirements of the best value legal framework.

To enable the auditor to undertake these examinations, we propose that:

- the relevant government department should have the power to direct the local government auditor to carry out an examination of a council in respect of its delivery of functions transferred by that department;
- the auditor should have powers of access to documents and information and to have reasonable rights of access to premises; and
- a report outlining the auditor's findings would be published.

Question 33:

Should the local government auditor have a role in providing external assurance in relation to a council's improvement plan?

Question 34:

Is the proposed role for the local government auditor as comprehensive as might be required?

A Power of Intervention/Enforcement

5.17. We recognise that there may be occasions, albeit limited, when an inspection of a council makes information available to Ministers which gives them cause for concern about whether a council is discharging its responsibilities as required.

Answer 33:

Publish all the information and let the people decide. Audits are far too secretive and take too long.

Answer 34:

Value the press and the people more than the auditor.

5.17. This is not a secret society. "when an inspection of a council makes information available to Ministers". Council and Departmental information is open to the public under Freedom of Information. Inspections should be similarly open to public view and not restricted to

5.18. To provide for such occasions, the Department proposes that Ministers should be allowed to intervene if a council fails in delivering a particular service or services. The powers, which would be exercised by Ministers through their departments, would be wide ranging. These failures in service delivery would include matters which are of a procedural nature, and others which require more substantive action. This action might be either:

- on the part of the council concerned (for example, it might be required to arrange for another organisation to carry out a function on its behalf); or
- on the part of a department (which might, in extreme cases of failure, intervene to exercise a function of the council itself or through a nominee).

5.19. Where a department intends to take action against a council, it would normally be required to allow the relevant council to make representations both about the recommendation itself and the remedial action that is proposed. In exceptional cases, where a department judges the failure to be so serious or the immediate risk to sections of the community to be so great, it would have the power to give a direction to the council without allowing time for representations. If a department chooses to exercise this power, it would be obliged to inform both the council concerned, and any appropriate representative body, of the direction and the reason why it was given, without recourse to the normal procedure for representations.

5.20. In cases where a department intervenes directly in a council, and in doing so assumes responsibility for delivering a function, a regulatory power would be made available to the department. This power could be used to

Ministers please.

5.18. Ministers should not intervene. If an inspection finds issues of concern these should be reported in public and councillors and/or officers required to respond in public. If the matters are of a confidential nature, the Commissioner for Complaints should be invited to deal with the matter as described earlier (4.07, 4.14 etc. above).

5.19. Any such action (unless confidential and being dealt with by the Commissioner for Complaints) should be in the public domain.

make alternative provision for the delivery of the service. A department would then be able to make necessary alternative arrangements where it intervenes in a function which already provides recourse to that department, either through appeal or otherwise.

Question 35:

Do you agree that Ministers should be able to intervene if a council is failing to deliver services?

### Community Planning

6.1. A key theme underpinning the reform of local government is the Executive's vision of a strong, dynamic local government creating communities that are vibrant, healthy, prosperous, safe, sustainable and which have the needs of all people at their core. Central to this vision is the provision of high quality, efficient services that respond to the needs of people and continuously improve over time.

6.2. The introduction of an effective community planning process, led and facilitated by councils, is seen as critical to the delivery of this overarching objective. Community planning would enable councils to work in partnership with a full range of other sectors, for example public bodies, businesses, and community and voluntary organisations. This would facilitate linking the delivery of services in their districts to provide a joined-up approach to meeting the needs and aspirations of local communities. The

Answer 35:

Yes, and any such intervention (unless confidential and being dealt with by the Commissioner for Complaints) should be in the public domain.

6.1. Much detail has been given in other aspects of this consultation exercise on matters about which the Local Government Branch of DoE has specialist knowledge. Very little detail is supplied in relation to Community Planning, yet this is the most important contribution the new councils could make to the improvement of the quality of life in the neighbourhoods across their districts. Community planning is a new concept in Northern Ireland and therefore needs as much or more detail to be provided, including reference to realisable best practice models, as in the model for the transfer of deeds and leases for council property, for example, as detailed in paragraph 10.6.

6.2. Effective community planning could be modelled on the Housing Community Network which is operated by NI Housing Executive and Supporting Communities NI. Further investigation should also be considered in relation to the Scottish Community Councils model.

"Community Councils in Scotland are unique. They are:

- Statutory bodies, with rights, abilities and duties granted under the Local Govt Act 1973, The Race Relations Act 2000, The Local Government Act 2003

Department proposes that the community planning process to be introduced would not be overly prescriptive, to take account of the range of situations that exist across the region and within individual districts. This would provide individual councils with the flexibility to act at a local level to best meet local needs.

6.3. To ensure that councils are placed firmly at the hub of the process, the Department proposes that they should be required to make arrangements for community planning. To do this, councils would be expected to consult and co-operate with all bodies responsible for providing public services in the district. They would also be expected to engage with the community and other bodies and individuals in planning the provision of public services. Councils would also be required to ensure that their community plans are reviewed and revised, as appropriate, to meet changing circumstances and needs in their districts.

Question 36:

Do you agree that councils should lead and facilitate community planning and that a requirement should be placed on them to do so?

and laws & regulations of the European Parliament

- Not a tier of local government
- Not voluntary or community bodies."

A new community planning system could be built on either of the two models noted above. It is not enough to say that the process "would not be overly prescriptive". In truth, no process at all is described. Community planning should be included in the forthcoming legislation and at least samples of relevant detailed models such as those noted above should be provided.

Answer 36:

Yes, provided that it is not left hanging in the air as an idea. Two models are suggested above. Sample models should be provided in the legislation for councils to follow. This should be done in conjunction with the requirement, in the forthcoming Planning Bill, that all 11 proposed Councils and the Department should each prepare a "Statement of Community Involvement". To avoid wasteful duplication, please bring together (new) community planning, the (new) statements of community involvement and the (existing) Housing Executive model of its

6.4. The effectiveness of the community planning process and the delivery of improved outcomes will, to a very large extent, be grounded in the establishment and maintenance of effective relationships between councils, departments and other public sector organisations. This is the experience in Scotland, England and Wales, where community planning has been in place for a number of years.

6.5. Whilst effective working relationships already exist with public bodies, businesses and community and voluntary organisations in some districts, the Department proposes that these bodies/organisations should be required to support and participate in the process. It is proposed that government departments should be required to promote the use of community planning and have regard to community plans. Other identified public bodies would be required to participate in and assist community planning.

Question 37:  
What are your views on departments and statutory bodies being required to

Strategy for Community Involvement.

6.4 Community planning should not just be about “effective relationships between councils, departments and other public sector organisations”. Community planning should be the means by which councils positively enable and encourage the continuing involvement of people in each neighbourhood in bringing together needs, hopes and values into a series of neighbourhood based community plans for adoption by the Council. Annual reviews carried out by local people should similarly be adopted or ratified by the Council which should then use its local community plans to

- Contribute local issues, needs and aspirations to the proposed Development Plan and
- act on behalf of neighbourhoods as principal facilitators and integrators of the services and initiatives of the various statutory bodies required to implement the community plan.

Answer 37:

This is vital and must confirm community planning as a continuing process understanding and

participate in and support community planning?

6.6. The Department proposes that district councils should be required to publish reports on community planning. These reports would include information about improvements in public services. The form, content and frequency of such community planning reports would be specified by the Department.

Question 38:

Should councils be required to publish community plans for their districts, and to review these as necessary?

6.7. Experience in the other jurisdictions would indicate that delivering on the potential of community planning will present a range of challenges for district councils and the Department would therefore propose to issue detailed guidance to support the effective operation of the flexible approach that is being put forward.

Question 39:

Do you agree that the Department should be able to issue guidance to support community planning, and in relation to the format and content of a council's community plan?

Power of Well-Being

7.1. The transfer of responsibility for the delivery of a range of new functions, and the introduction of the community planning process will enable councils to begin addressing the needs and aspirations of local communities. However, councils can only do what legislation enables them to do. In responding to issues that may be identified through community planning, a council may wish to take an action that is not specifically provided for in legislation.

integrating, by design, the needs and aspirations of communities for the benefit of their local neighbourhoods.

Answer 38:

Yes, if community plans are based on communities in their neighbourhoods as described above.

6.7 The MAG response states that this is one of the most important areas of activity in the new process.

Community planning should be at the root of shaping issues and priorities for each neighbourhood in the council's area.

Answer 39:

This is essential, now as part of this consultation, and two models for detailed guidance are offered in section 6.2 above.

In order to provide for such an eventuality, the Department proposes that councils should have a new power of well-being.

7.2. The proposed new power would enable councils to take any action not already the responsibility of another agency (unless that agency has given explicit agreement) to promote or improve the well-being of their district. It would not, however, be an unrestricted power for councils. A council would not be able to use the power of well-being to do anything that it is unable to do because of any other legal prohibition, restriction or limitation on their powers.

7.3. As with the proposals for the introduction of community planning, the Department proposes to issue detailed guidance in support of the exercise of the power of well-being which councils would be required to have regard to.

Question 40:

Do you agree that a power of well-being should be introduced for councils, and that the Department should be able to issue guidance to support its operation?

A Partnership Panel

8.1. The Executive's vision for the future delivery of its Programme for Government recognises the need for a partnership approach between departments and local government if the desired outcomes for everyone are to be delivered. The proposed community planning powers will require departments and agencies to work with councils in developing and delivering on the themes and targets identified in community plans. A partnership approach to the delivery of

Answer 40:

Yes, there are examples of issues which are apparently falling between the remits of various departments. These include making good the poor condition of areas of land which appear to have no owners (for example back lanes). Vesting may be required and a clear methodology for this should be included in the legislation or a method referred to.

the Executive's Programme for Government will also require a mechanism for government departments to agree and monitor a number of regionally determined performance indicators for service delivery by district councils.

8.2. The existing relationships between departments and their agencies and the local government sector, whether at a representative level through the Northern Ireland Local Government Association or at a local level with individual councils, are informal, ad hoc and inconsistent. They do not provide a firm foundation for a more strategic approach to the delivery of joined-up services.

8.3. Against this background, the Department proposes that a Partnership Panel for Northern Ireland should be established. This panel would formalise the relationships between the Executive and district councils and provide a forum for the collective consideration of strategic issues. The Partnership Panel would consist of Northern Ireland Ministers (especially where their departments have a significant policy relationship with local government) and representatives from councils.

8.4. The proposed Partnership Panel would be purely advisory, recognising the separate and distinct legal authority of departments and local government. It would not hamper the discretion of the Executive or of an individual Minister, or the operational discretion of local government. Accordingly, the Department proposes that the panel's remit would be to:

- give advice to Ministers about matters affecting the exercise of any of their department's functions;
- make representations to Ministers about any matters affecting, or of concern to, those involved in local government in

Northern Ireland; and

- give advice to those involved in local government in Northern Ireland.

Question 41:

Should a Partnership Panel be established to formalise relations between central and local government?

Question 42:

What are your views on the proposed remit of the Panel?

Supervision of Councils

9.1. Sections 127-129 of the Local Government Act (Northern Ireland) 1972 contain powers to enable the Department to supervise how councils exercise their functions. Those powers, which have rarely been used, would enable the Department to:

- require a council to make reports and give information about the exercise of its functions to the Department;
- cause local or other inquiries to be held or investigations to be made in connection with any matters relating to the functions of a council; and
- take action where a council has failed to discharge any of its functions (including empowering a departmental official to exercise the function in question).

9.2. Responsibility for policy and legislation in relation to local government functions falls to a number of Northern Ireland departments. Consequently, it is proposed that the above powers should be extended so that the department

Answer 41:

No. This is excessive. We already have a Strategic Investment Board which involves all central government departments and we have NILGA and SOLACE which bring together local government at different levels. We have the Housing Community Network, the Rural Community Network and likely many others. We need to rationalise what we have got and enable it to function rather than setting up another (new) partnership panel.

Answer 42:

There should not be one.

concerned (rather than the Department of the Environment) may exercise these powers where necessary. This will be particularly important when functions over which particular departments have policy responsibility are transferred to local government.

Question 43:

Do you agree that the supervision powers currently available to the Department of the Environment should be made available to all departments?

The Reorganisation of District Councils  
Creation of new councils and dissolution of existing councils

10.1. The Local Government (Boundaries) Act (Northern Ireland) 2008 sets out the broad boundaries of the new local government districts and provided for the appointment of a Local Government Boundaries Commissioner to review and make recommendations on the boundaries of the new local government districts and their constituent wards. The Local Government Boundaries Commissioner presented his report to the Department of the Environment on 22 June 2009. When Executive decisions have been made about the timetable for local government reorganisation, the Department will bring forward legislation to the Assembly to give effect to the Boundaries Commissioner's recommendation, with or without modification. This legislation will specify the boundaries of the new local government districts and wards.

10.2. Legislation will then be required to:

- abolish the current local government districts;
- dissolve the current district councils; and

Answer 43:

No. This is excessive and potentially wasteful and confusing. Keep a single department (DoE) responsible for liaison with councils and allow all other government departments to deal with any necessary local government supervision through DoE. Day to day relationships between government and the councils should not be affected.

- establish a council for each of the new local government districts.

10.3. Section 2 of the Local Government Act (Northern Ireland) 1972 enables a district council to submit a petition to the Secretary of State to request the granting of a charter designating the district of the council as a borough. Also, section 132 of the 1972 Act made provision at the time of the previous local government reorganisation in 1973 for a new council, in certain circumstances, to keep the borough status of an old council (i.e. one which was to join with other councils to form the new council). It is proposed that similar provisions to those in section 132 should be made to allow a successor council to keep the borough or city status of an existing council which is to join with another council (or other councils) to form the new council.

#### Transfers of staff, assets & liabilities

10.4. The proposed reduction in the number of councils from 26 to 11 will affect the employment position of some 9,900 local government staff, and require the transfer of the ownership of assets and liabilities from the current district councils to the new district councils. Around 1,000 Northern Ireland Civil Service staff will also be affected by the transfer of central government functions to local government

10.5. The Department proposes that each department transferring functions to local government will be responsible for effecting this transfer through either legislative provisions or an appropriate transfer agreement. To ensure consistency in the transfer of all affected staff, assets and liabilities to local government the department concerned would be able to make schemes for the transfer of all affected staff, assets and liabilities to the new council structure from:

- the Northern Ireland Civil Service;

- the existing 26 councils and associated bodies; and
- other bodies as applicable (for example, the Northern Ireland Housing Executive).

10.6. Such a scheme (or schemes) may contain details concerning interests in and rights over property, employment contracts and other incidental matters.

The Department proposes that the Libraries Act (Northern Ireland) 2008, which provided for the transfer of staff, property rights and liabilities of the affected bodies to the Northern Ireland Library Authority, should be used as a model for the local government transfer schemes.

10.7. In particular, staff transfer schemes would make provision for:

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

#### Staff Transfer Schemes

10.8. Further consideration needs to be given to where the responsibility for making a staff transfer scheme might lie. To ensure a consistent approach in the transfers, the Department proposes that model transfer schemes are prepared. These model schemes will follow the precedent already established in previous RPA-related staff transfers and cover issues including the statutory protection of rights under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and pension rights. Where necessary, the schemes could be tailored, through schedules to the scheme, to meet the differing needs across departments and local government. Model schemes

would be subject to consultation with transferring departments, existing councils, representatives of receiving councils and any other appropriate body.

Question 44:

Do you agree that model transfer schemes should be developed?

Question 45:

Who should be responsible for preparing any model transfer schemes?

#### Assets and Liabilities Transfer Schemes

10.9. The dissolution of the current 26 councils, and the creation of the proposed 11 new councils, will require the transfer of legal title to assets and the legal responsibility for any liabilities from a current council to its successor council. The Department proposes that transfer schemes, in line with previous RPA-related transfers, would be put in place.

10.10. Legal title for any assets and legal responsibility for any liabilities associated with the transfer of functions from departments to local government will also need to be transferred to the 11 new councils. The Department proposes that a scheme in relation to such a transfer would create, for the department concerned, interests in or rights over assets transferring, to ensure that assets are used for the purpose for which they were intended, following transfer. It would also

Answer 44:

Yes, this is sensible. A lot of thought has gone into these models and they work. The Department should put as much thought into the new functions such as community planning and the power of well-being as it has put into the model transfer schemes.

Answer 45:

DoE should offer these to Councils for agreement/selection. Councils' legal advisors should then actively acquire the assets. Physical assets which are left over and not acquired by councils should be declared redundant and sold off. Staff redundancies should be treated empathetically in accordance with good Human Resources practice.

address issues such as liabilities. Arrangements would be made to enable the transfer, for example, of property that a council or department would not otherwise legally be entitled to transfer, such as property purchased or donated with clauses (e.g. buyback) limiting the ability for this property to be passed on through sale or transfer.

10.11. The Department also proposes that there should be a mechanism whereby interests in, or rights over, property could be clarified. This would be undertaken through the issue of a certificate by the department concerned. The transfer of assets and liabilities would be effected by legislation and the issue of a certificate would only be required in the event of, for example, an ownership challenge.

Question 46:

Do you agree that transfer schemes in relation to property and assets of government departments transferring to the new councils should provide for a continuing interest for the department concerned?

Financial Arrangements

10.12. Current legislation applicable to local government provides that councils may only incur expenditure for carrying out functions for which they have responsibility. Prior to the reorganisation of local government, there may however be a requirement for existing councils to incur expenditure in relation to matters that would not fall into this category, for example, expenditure in relation to elections to their successor councils.

10.13. The Department therefore proposes that existing district councils should be able to incur expenditure on behalf of

Answer 46:

No, this is excessive. Purpose of assets may change entirely. Assets should be actively acquired by the councils as noted above, not simply transferred. Redundant assets should be disposed of in the normal way. Once acquired, councils should have discretion to use them or dispose of them as any other property. Councils are, after all, democratically elected and responsible to the electorate.

their relevant successor councils. For accounting purposes, it is proposed any 5 expenditure incurred in this way would be recoverable from the new councils once they are established.

Question 47:

Do you support the proposal that existing district councils should be able to incur expenditure on behalf of the new council to be established for that area?

#### HUMAN RIGHTS

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

#### EQUALITY

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

#### REGULATORY IMPACT ASSESSMENT

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

#### RURAL PROOFING

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

#### FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

15. The Department may publish a summary of responses following

Answer 47:

Yes.

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

#### ALTERNATIVE FORMAT

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

#### CONSULTATION

17. Comments should be sent by 11 March 2011 to Local Government Policy Division at the address below or by e-mail to [LGPDConsultations@doeni.gov.uk](mailto:LGPDConsultations@doeni.gov.uk)

19. This Consultation Document is being circulated to persons and bodies listed in Annex C and is also available to view at: [http://www.doeni.gov.uk/index/local\\_government/](http://www.doeni.gov.uk/index/local_government/)

Local Government Policy Division  
Goodwood House  
8th Floor  
44-58 May Street  
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BT1 4NN  
Fax: 028 9025 6080  
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#### ANNEX A

##### GLOSSARY

##### Best value

The establishment of a culture of good management for the delivery of efficient, effective and economical services that meets users needs.

##### Cabinet-style model

Executive responsibility for all operational decisions is devolved from the full council to a relatively small committee of councillors.

#### Call-in

A process to allow a specified number of councillors to request that:

- a decision taken but not yet implemented under devolved arrangements; and
- a decision to be endorsed by the council through the ratification of minutes from a committee be looked at again, under specified circumstances.

#### Central policy committee

A central committee that will be responsible for developing the policies by which a council will operate.

#### Checks and balances

A system of principles of an organisation that ensures the correct operation of structures and that no one person or group has too much power or influence.

#### Continuous improvement

Ongoing effort to seek regular improvements in the delivery of these services over time.

#### D'Hondt

A formula developed by the Belgian mathematician D'Hondt which is used to ensure that positions of responsibility can be allocated relative to political parties electoral strengths.

#### Decision-making structures

The structures operating within an organisation to enable relevant participants to be in a position to make a decision.

#### Devolved decisionmaking

A decision-making principle where a specified committee or officer makes the final decision on issues within their remit.

#### Droop Quota method

A formula for allocating positions, taking into account the electoral strengths of political parties. Similar to quota greatest remainder but with a greater divisor.

#### Executive responsibility

Having sole authority and responsibility for

taking an action or making a decision.

#### Full Term

The period of time (usually four years) a council regularly meets and carries out its formal duties.

#### Mandatory cross-party committee

A committee which is required to have membership drawn from more than one political party elected to the organisation.

#### Proportionality

The principle of recognising the relative electoral strengths of the political parties in the allocation of positions of responsibility.

#### Qualified majority voting

A voting method that requires a specified minimum level of votes to be cast in favour of the proposal for it to be accepted.

#### Quota Greatest Remainder

A formula for allocating positions taking into account the electoral strengths of political parties.

#### Saint Lague

A formula developed by the French mathematician Saint-Lague which has a similar purpose to D'Hondt but where the divisor is greater.

#### Scrutiny committee

A committee established under the principle of checks and balances to scrutinise the work of devolved decision-makers and make recommendations in relation to council policy review.

#### Streamlined Executive

responsibility for specific decisions is devolved from the full council to a central policy committee and a limited number of other committees.

#### STV

Single transferable vote where a voter has a single vote but may express a preference for the person to whom that

vote should be transferred if his/her first preference has more votes than is required to be elected.

Traditional committee structure  
Individual committees are established to consider specific issues and return recommendations on appropriate courses of action, for decision by the full council (unless authorised by full council to make that decision).

#### ANNEX B

#### THE FREEDOM OF INFORMATION ACT 2000 CONFIDENTIALITY OF CONSULTATIONS

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

2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.

3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential,

except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk>)

#### ANNEX C LIST OF CONSULTEES

This is not an exhaustive list but it is indicative of the organisations to whom the document has been issued  
All Northern Ireland District Councils  
arc21

Association for Public Service Excellence  
Association of Local Government Finance Officers  
Belfast Solicitors Association  
Chief Local Government Auditor  
Civil Law Reform Division  
Community Relations Council  
Confederation of British Industry  
Courts and Tribunal Service  
Equality Commission for NI  
Federation of Small Businesses  
Food Standards Agency  
HM Council of County Court Judges  
HM Revenue & Customs  
Human Rights Commission

19. Please include the Ministerial Advisory Group for Architecture and the Built Environment for Northern Ireland (The MAG) in future consultations. The MAG Secretariat is currently at:  
Department of Culture, Arts and Leisure,  
Causeway Exchange,  
1-7 Bedford St,  
Belfast,  
County Antrim  
BT2 7EG  
Telephone: 028 9025 8825

Judge McKibbin District Judge  
(Magistrates Court)  
Law Centre (NI)  
Local Government Staff Commission for  
Northern Ireland  
MEPs  
Ministry of Defence  
MLAs  
MPs  
National Association of Councillors  
NI Assembly, Committee for the  
Environment  
NI Association of Citizens Advice Bureau  
NI Chamber of Commerce and Industry  
NIACRO  
NIC/ICTU  
NIPSA  
Northern Ireland Chamber of Trade  
Northern Ireland Court Service  
Northern Ireland Judicial Appointments  
Commission  
Northern Ireland Law Commission  
Northern Ireland Local Government  
Association  
Northern Ireland Local Government  
Officers' Superannuation Committee  
Northern Ireland Political Parties  
NWRWMG  
Participation & the Practice of Rights  
Project  
Royal Society for the Protection of Birds  
School of Law  
Secretary - Catholic Bishops of Northern  
Ireland  
Section 75 Groups  
SOLACE  
Staff Commission for Education & Library  
Boards  
SWaMP2008  
The Executive Council of the Inn of Court  
of NI  
The General Consumer Council for  
Northern Ireland  
The Law Society of NI  
The NI Council for Voluntary Action  
The Queens University of Belfast – School of  
Law  
University of Ulster - School of Law



