



Report to:	Strategic Policy and Resources Committee (SP&R)
Subject:	Local Government Reform - Consultation on the Local Government Code of Conduct for Councillors - draft Belfast City Council Response
Date:	25 April 2014
Reporting Officer:	Suzanne Wylie, Chief Executive Designate
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1.0	<u>RELEVANT BACKGROUND INFORMATION</u>
1.1	<p><u>Consultation</u></p> <p>The Department of the Environment is seeking views from consultees on its proposals in relation to the new Local Government Code of Conduct for Councillor. This is a mandatory code of conduct which outlines the principles which will govern the conduct of councillors.</p> <p>The Code will be applicable to all Councillors (both existing and new members) following the election on 22 May 2014 and it will outline the principles and rules of general conduct, disclosure and registration of interests, lobbying and access to councillors, decision making and application of the code with regard to planning matters. Part 9 of the Code (in relation to planning matters) will not however come into force until 1 April 2015 when planning powers are formally adopted by the new council. A copy of the consultation document (including the draft Code of Conduct) is attached at Appendix 1.</p> <p>In order to meet the 30th April deadline for responses, it is proposed that the draft BCC response be presented to the Belfast STC on the 9th April 2014 and then to SP&R on the 25th April 2014.</p> <p>The STC approved the attached response at Appendix 2 at its meeting on the 9th April.</p>
1.2	<p><u>Code of Conduct</u></p> <p>The Local Government Bill provides for the introduction of a new ethical framework for local government in Northern Ireland, a key element of which is the introduction of a mandatory code of conduct for councillors. Previously, councillors were guided by a non-mandatory Northern Ireland Code of Local Government Conduct which issued in 2003.</p> <p>Once it receives Royal Assent the Local Government Act 2014 will:</p> <ul style="list-style-type: none">• provide for the introduction of a mandatory Northern Ireland Local Government Code of Conduct for Councillors (“the Code”)• impose a requirement for councillors to observe the Code; and• establish mechanisms for the investigation and adjudication of written complaints by the Commissioner of Complaints (NI Ombudsman) <p>The mandatory code of conduct will be consistent with the seven Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership, as well as the four additional principles of equality, promoting good relations, respect and good working relationships that are already adopted by the Northern Ireland Assembly code.</p> <p>The code will detail the standards of conduct that are expected when acting as a councillor and conducting council business, including, very importantly, the discharge of the council’s new planning functions.</p>

	<p>A draft of the code must be laid before and approved by resolution of the Assembly before it can come into force.</p> <p>It is intended that the ethical standards framework should be reviewed after three to four years to assess how it is working and to consider whether any modifications are needed, such as the setting up of standards committees in councils.</p>
1.4	<p><u>Role of the Commissioner (investigation and adjudication processes)</u></p> <p>The Bill makes provision for the investigation and adjudication processes that should be undertaken by the commissioner, and it applies relevant provisions of the Commissioner for Complaints (Northern Ireland) Order 1996 to the ethical framework. The Commissioner may investigate any written complaints from any person that a councillor (or former councillor) has failed, or may have failed, to comply with the Code.</p> <p>Where, following an investigation, it is found that a person has failed to comply with the Code of Conduct; the Commissioner may decide to:</p> <ul style="list-style-type: none"> - censure the person found to have failed to comply with the Code; - suspend or partially suspend the person from being a councillor for up to one year - disqualify the person from being, or becoming, a councillor for a period of up to five years <p>In addition, the Commissioner may make recommendations to a council about any matter relating to the exercise of a council's functions.</p> <p>The Code states that it is the responsibility of each councillor to ensure that they are familiar with the provisions of the Code and that they comply with those provisions accordingly. It is therefore essential that all Councillors to be fully cognisant of both the contents of the Code in relation to the standards of conduct required and the role of the Commissioner in relation to investigations, adjudication and the imposition of any sanctions as a result of a breach of the Code.</p> <p>It is envisaged that all Councillors will receive dedicated training in relation to the Code of Conduct and that the Department, in conjunction with the Commissioner for Complaints, will issue detailed guidance in support of the Code.</p>
1.5	<p><u>Appeals Mechanism included in Local Government Bill</u></p> <p>The Local Government Bill has been amended to include the provision of an appeal to the High Court as part of the ethical standards framework.</p> <p>The DOE Minister has indicated that he intends to bring forward a further Bill which will establish an independent body with responsibility for adjudication within the ethical standards framework, which will be outside the remit of the Commissioner for Complaints. The Commissioner will still retain responsibility for receiving all complaints and undertaking all investigations.</p>
1.6	<p>Given the mandatory nature of the Code and the need to revert to the NI Assembly to make any changes, it is important to ensure that local government is satisfied with the structure and the content of the Code prior to its introduction in the Assembly.</p>
2.0	<u>KEY ISSUES</u>
	<u>Summary of draft response to the Department of the Environment</u>
2.1	<p>Officers have carried out a review of the draft Code of Conduct and a detailed response is attached at Appendix 2 for the Committees' consideration and comment.</p>

2.2	<p>An initial summary of the priority issues for the Council as identified by officers is set out below for information. Officers are aware that the Code of Conduct for Councillors will be subject to political consideration and individual Party Groups may wish to express their own views.</p> <p>It is recognised that there are a number of queries around processes and definitions and that it is likely that these will be addressed in the supporting guidance.</p>
2.3	<p>General points</p> <ul style="list-style-type: none"> • On a general point, the Council would note that the guidance in relation to the Code of Conduct has not yet been issued. It is therefore difficult to give proper consideration to the Code in the absence of the supporting guidance. • The Council welcome the amendment to the Local Government Bill which provides a right of appeal to councillors who are deemed to be in breach of the Code. However, the draft Code contains many high level principles against which members might have a difficulty in discerning if a particular course of conduct is, or could, amount to a breach. There are accessible English standards cases that could have provided a reference point to give greater clarity. • The Council would be concerned that paragraph 15 of the introductory text refers to “a body of precedent”. This in effect means that there is acceptance that the Commissioner will establish the benchmark for conduct as opposed to the Code. A principle of law is that law should have some degree of certainty thus an individual may judge with some certainty what type of conduct falls short or transgresses the required standard. • The Council note that grafted into the code are certain legal duties which exist independent of the Code. The Council would seek clarification as to whether the Code therefore provides for individual sanction to be imposed in relation to those legal duties that exist independently from the Code. <p>Comments on the draft Code</p> <ul style="list-style-type: none"> • Requirement to comply with the Code (p.14) – the Council welcome the provision in Part 2 to apply the Code to all councillors, including councillors of existing councils until those councils are dissolved in April 2015. • Enforcement of the Code (p.16) – the Council are supportive of the role of the Commissioner but would recommend that the supporting guidance provides clarity around the enforcement process, including: the making of a complaint; target timescales for resolving complaints; the investigation process; dealing with malicious complaints and whether or not fees will be chargeable if a complaint is found to be vexatious. • Rules of General Conduct (p.20) – under 4.14 - duty to have regard to advice – the Council feel that the Code should also reference the power of surcharge which has been retained. Under paragraph 4.16 disclosure of information - the code duplicates a legal duty under Data Protection Act (DPA) which also has a sanction/penalty for disclosure. Perhaps rather than creating a freestanding further obligation, the code should reference the existing legal duty. Under paragraph 4.18 (p.23) “Dealings with your council” – it is unclear as to what “substantial land, property or other interests” means in practice. How would a Member decide if any such interest is substantial? In addition, what does “friend or associate” mean in relation to planning applications? As it currently stands, this could result in a high degree of uncertainty. Will this section apply only if it is the Councillor themselves who make the application on behalf of such a person and does it not apply if the person themselves make the application? • Registration of Interests (p.24) – paragraph 5.2 (vii) identifies a personal interest in respect of “any land where the landlord is your council and the tenant is a firm in which you are a partner,

	<p><i>a company of which you are a remunerated director, or a body of the description specified under sub-paragraph (iv) above” - would this also apply to outside bodies to which Members are appointed by the Council? An example may be a waste management group appearing before a committee.</i></p> <p>In respect of paragraph 5.2 (ix) – this would impact when Trade Unions address Council or Committee if any Members are also in the Union. The Council would recommend that the Department further examine the potential impact of that instance.</p> <p>The section on sensitive information (5.6 to 5.8) places a responsibility on CEOs that might in practice present them with some difficulty. More discussion is required in relation to this issue. It would be helpful if either the Code, or the associated guidance gave a few examples of what would be regarded as ‘sensitive information’.</p> <ul style="list-style-type: none"> • Lobbying and Access to Councillors (p.28) – paragraph 7.5 could have serious implications for Councillors in dealing with planning and licensing applications. It must be ensured that Councillors are fully aware of how some present practices will not be able to be replicated in the new arrangements. There must be a thorough communication exercise with the public and agents as the current system <i>encourages</i> lobbying of elected members.
3.0	Resource Implications
3.1	No resource implications attached to this report.
4.0	Equality and Good Relations Implications
4.1	No equality or good relations implications attached to this report.

5.0 Recommendations
<p>Members are asked to:</p> <ul style="list-style-type: none"> (i) note the contents of this report (ii) consider the draft Council response attached at Appendix 2; (iii) agree that the draft Council response, subject to any changes made by Members, be submitted to the Department of the Environment

4.0 Appendices
<p>Appendix 1 – Consultation on the Northern Ireland Local Government Code of Conduct for Councillors</p> <p>Appendix 2 – Draft BCC response to the Department of the Environment</p>