



Belfast District Council (Shadow)

Report to	Shadow Strategic Policy and Resources Committee
Subject:	Council response to the draft Local Government (Standing Orders) Regulations (Northern Ireland) 2014 and Model Standing Orders
Date:	29 August 2014
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1.0	Relevant background information
1.1	The purpose of this report is to seek approval from the Shadow Strategic Policy and Resources Committee and subsequently the Full Shadow Council on a formal Council response to the DoE's Consultation on the 'Local Government Standing Order Regulations and Model Standing Orders'.
1.2	Members will recall that an initial report on Standing Orders had been presented to the inaugural meeting of the Shadow Council on 11 June 2014. The report indicated that the incoming new Belfast City Council would operate under a new set of standing orders, the content of which would be informed by both mandatory provisions enshrined in primary legislation, emerging as part of local government reform, and associated Guidance (i.e. Model Standing Orders) to be issued by the Department for Environment (DoE).
1.3	At the meeting Members had been informed that the DoE had recently issued a consultation document on the draft Standing Order Regulations (including Model Standing Orders) with responses sought by 15 August 2015 . A copy of the consultation document is attached at Appendix 1 .
1.4	<u>Interim arrangements for Shadow Council</u> At the meeting on 11 June 2014, Members agreed that the Shadow Council would operate on the basis of the draft Model Standing Orders as issued by DoE until such time as the consultation had been concluded and the legislation finalised.
1.5	<u>Standing Orders for the New Council</u> Upon finalisation of the Standing Order Regulations (and associated Model Standing Orders) the Shadow Council can review and build upon the Model Standing Orders in the lead up to the commencement of the new Council in April 2015.

1.6	This review will be undertaken via a specific programme of engagement with Members over the next few months and it is proposed that a revised and final version of the new Belfast City Council Standing Orders will be submitted for the approval of the Shadow SP&R Committee in the first instance and then to the Shadow Council for ratification. A further report on the forward work plan around Governance (including taking forward the Standing Orders for the new Council) will be brought to Committee in September.
2.0	Key Issues
2.1	Members should note that the Council sought from the DoE an extension to the consultation period for the 'Local Government Standing Order Regulations and Model Standing Orders' until September to allow Members to consider the detail and allow for the emerging response to be taken through the Committee and Council decision-making processes. The Department had not agreed to the proposed extension on the grounds that any delay could unnecessarily stall the progress of the legislation through the Assembly.
2.1	Accordingly, as a formal Council response could not be agreed through the established Committee and Council decision-making process before the specified deadline for submission, a series of briefing sessions had been scheduled with Party Groups during the week commencing 11 August. This provided an opportunity to discuss with Members their emerging views on the key proposals set out in the consultation document which informed the development of an interim informal officer response which has been submitted to the DoE on 15 August 2014 (a copy of which is attached at Appendix 2).
2.2	Members should note that in submitting the interim officer response, DoE were advised that the response would be considered by the Shadow SP&R Committee on the 29 th August and by full Council on the 9 th September and that a formal response would be submitted to the Department thereafter.
2.3	Attached at Appendix 3 is a copy of the proposed draft Council formal response which builds upon the officer response submitted. Set out below for Members consideration is a summary of the key elements of the draft Standing Order Regulations and the proposed Council responses
	Standing Order Regulations and Model Standing Orders – Emerging Response
2.4	The Local Government Act (Northern Ireland) 2014 requires councils to make standing orders for the regulation of the proceedings of the council. It also sets out (under Section 38 of the 2014 Act) ' Mandatory Provisions ' which councils must incorporate into their Standing Orders.
2.5	The draft Standing Order Regulations set out; however, proposals in regards to the inclusion of a number of additional mandatory provisions which it is suggested should form the basis of the standing orders for each of the councils. It is these provisions which are subject to consultation and cover the following areas:- <ul style="list-style-type: none"> (i) decisions that require a qualified majority (which are not already provided for in the Act) (ii) the process for the reconsideration of decisions (the call-in process) (iii) the timescales in which the appointment of a councillor to hold a position of responsibility must take place; and (iv) the procedure for appointing members to more than one committee at a time
2.5.1	(i) Provisions in relation to Qualified Majority

	<p>The Local Government Act (Northern Ireland) 2014 provides that the following decisions must be taken by a qualified majority (i.e. 80% of councillors present and voting):</p> <ul style="list-style-type: none"> • the adoption of the council’s form of governance (executive, committee or prescribed) • the method for filling positions of responsibility (d’Hondt is specified default) • the method for appointing councillors to committees (Quota Greatest Remainder is specified default). <p>In addition to the decisions above, the draft Standing Order Regulations (Schedule 1, Paragraph 3) propose that the following decisions must also be taken by qualified majority:</p> <ul style="list-style-type: none"> (a) the exercise of general power of competence; (b) a call-in made in accordance with section 41(1)(b) of the 2014 Act (adverse impact); and (c) the suspension of standing orders. <p>The Department requested views as to whether other strategic decisions of a council should be specified as requiring a qualified majority.</p> <p><u>PROPOSED DRAFT RESPONSE</u></p> <p><i>Schedule 1, Paragraph 1 – Standing Order: decisions to be taken by a qualified majority</i></p> <ul style="list-style-type: none"> • The Council are agreed that no further category of decisions should be subject to a qualified majority vote, otherwise the decision making processes of councils could be frustrated. • The Council would have no substantive difficulties with the proposal that decision (a) – the exercise of the general power of competence be subject to a qualified majority vote. • In relation to decision (b) – a call in made under section 41(1)(b) of the 2014 Act (disproportionate adverse impact grounds) most parties consulted highlighted the need for further detail and clarification around definitions, etc. • However, notably the proposals in respect to decision (b) – a call in made under section 41(1)(b) of the 2014 Act (disproportionate adverse impact grounds) or decision (c) – the suspension of standing orders, one of the political parties was of the view that if a decision is called in under these grounds it should not be subject to qualified majority voting. <p>Members should note that it was not therefore possible to submit a definitive officer response in relation to decisions (b) and (c) as referred to above and had highlighted to the Department that they may wish to consult with individual Party Groups on these matters. The Committee needs to consider if it is satisfied that this position remains as the formal response.</p>
2.5.2	(ii) Provisions in relation to the Call-in Process (Schedule 1, Paragraph 3)
	<p>The 2014 Act provides that any decision taken may be subject to ‘call-in’ whereby 15% of all Members (9 out of 60) may call for any council or committee decision or recommendation to be reconsidered on the basis that it:</p> <ul style="list-style-type: none"> (a) was not arrived at after proper consideration of the relevant facts and issues (due process) or; (b) would disproportionately affect adversely any section of the inhabitants of the district (adverse impact). <p>The Department has developed a process, which is specified in the draft standing orders, that a council must put in place in relation to both the request for a call-in and the processing of such a request.</p>

The proposed arrangements specify those decisions that are subject to a request for reconsideration – and those decisions which may not be the subject of such a request. The latter includes decisions in respect of the regulatory or quasi-judicial functions of the council which are subject to separate appeal mechanisms, and also where a decision needs to be taken as a matter of urgency.

PROPOSED DRAFT RESPONSE

Schedule 1, Paragraph 3 – Standing Order: decisions subject to call-in

- The Council would note that Section 41(4) of the 2014 Act defines a decision for the purposes of call in as “a decision of the council or a committee of the council and includes a decision to make a recommendation”. However, the proposed Standing Order in paragraph 3 does not make reference to a decision of the council but refers only to committee decisions. The Council would therefore recommend that the standing order is amended to deal with this discrepancy and ensure consistency with the 2014 Act.

Decisions not subject to call-in

- The Council note that Schedule 1, Paragraph 3(2) indicates those decisions that shall not be subject to call in. Within a Traditional Committee system, these include decisions on a regulatory or quasi-judicial function which is subject to a separate appeal mechanism; and, a decision where an unreasonable delay could be prejudicial to the council’s or public interest.
- Whilst the first reason is relatively straightforward, the Council would recommend that the regulations or guidance are clear as to who has the authority to ‘deem’ that an unreasonable delay could be prejudicial to the council’s or the public’s interests. It is anticipated that this would be the responsibility of the Committee making the decision. The Council would further recommend that there are clear guidelines provided around the types of decisions where a delay could be prejudicial to the council or public’s interests – for example on health, safety or legal grounds.

Schedule 1, Paragraph 4 – Standing Order: Call in admissibility

- The Council also note that the regulations require councillors submitting a call in request under Section 41(1) b of the 2014 Act to specify the community affected and the nature and extent of the disproportionate adverse impact. The Council would point out that the 2014 Act refers to disproportionate adverse impact on “any section of the inhabitants of the district” and provides that “section” will “specified in standing orders”. In this Standing Order “section” has been specified as “community” and the Council would recommend that further detail and interpretation is required as to what is meant by community in this context in order to assist councillors when making a request for call in.
- Whilst the Council appreciate that the Standing Order Regulations are mainly geared towards procedural issues, the absence of clarity around the meaning of the phrase “disproportionate impact” remains a concern.
- It is therefore strongly recommended that the Standing Orders, or supporting guidance, include a clear framework and definition around the two cases in which decisions can be called in (i.e. on the grounds of ‘disproportionate adverse affect’ or under ‘undue process’)

	<p>Paragraph 5 – Standing Order: The call in process – committee arrangements</p> <ul style="list-style-type: none"> • This paragraph sets out the practicalities of the call in process with respect to a council operating under committee arrangements. The process includes a requirement to establish an ad-hoc committee comprised of the chairperson and deputy chairperson of each of the committees of the council to deal with decisions called in under Section 41(1)a of the Act (undue process). • One view expressed by an elected Member was that as opposed to establishing an ad-hoc committee to deal with call-in made under ‘undue process’ (procedural) grounds could these not be dealt with through seeking legal advice as being applied to call-in under ‘disproportionate adverse impact’ grounds. Notwithstanding, the Council would be of the view that legal advice should be provided, as appropriate, to any ad-hoc committee to be established for these purposes. • The Council would seek further clarification as to how the Chairperson and Deputy Chairperson of the ad-hoc committee is to be determined and appointed, and whether the Chairperson would have a casting vote. Clarity is also sought in relation to the situation whereby a member of the ad-hoc committee is also a signatory on a request for call in – would such a councillor be permitted to sit on the ad-hoc committee and if so, would there be any impact on their voting rights?
2.5.3	<p>(iii) Provisions in relation to Positions of Responsibility time limit</p>
	<p>Schedule 1 of the Act provides for the Regulations to specify the time limit within which a nominating officer of a political party is to select a position of responsibility and the term for which it will be held by a member of his or her party.</p> <p>The draft Standing Order Regulations make provision for these actions to take place within 15 minutes of the nominating officer being required to make a nomination and for the person nominated to accept the position. The Department considers that this should provide a sufficient period for the exercise of these functions – but the regulations also allow that an extension to this time period may be allowed subject to the approval of the council.</p> <p><u>PROPOSED DRAFT RESPONSE</u></p> <p>Schedule 1, Paragraph 7 – Standing Order: Positions of responsibility – time limits</p> <ul style="list-style-type: none"> • The Council would recommend that whilst the positions of responsibility will be allocated to parties on a term basis (all positions of responsibility allocated for each of the four years), it would be more practical if the actual names of the nominated persons were provided on an annual basis at the relevant Annual General Meeting for that coming year – and not at the outset of the full four year term. • It is felt to be unreasonable to expect a party to name the specific councillor who will fill a position which would not commence for at least another year.
2.5.4	<p>(iii) Provisions in relation to Appointment of Councillors to Committees</p>
	<p>Schedule 2 of the Act provides for the appointment of councillors to committees by either the Quota Greatest Remainder or the Droop Quota method. The Act provides that standing orders must make provision for circumstances where a council decides to appoint more than one committee at a time.</p>

	<p>The draft Standing Orders Regulations include provisions to ensure that the process for making appointments to a single committee is, as far as practicable, replicated if more than one committee is appointed. This will ensure that the membership of each committee reflects, as far as practicable, the political balance of the council.</p> <p><u>PROPOSED DRAFT RESPONSE</u></p> <ul style="list-style-type: none"> The Council is content with the provisions in relation to the appointment of councillors to committees.
3.0	Resource Implications
3.1	None
4.0	Equality and Good Relations Implications
4.1	None
5.0	Call-in
5.1	This decision is subject to call-in.
6.0	Recommendations
6.1	<p>It is recommended that Members:</p> <ul style="list-style-type: none"> (i) note the contents of the report including the draft consultation document at Appendix 1; (ii) note the informal officer response provided at Appendix 2; and (iii) consider the formal Council response as attached at Appendix 3 and agree its submission to the DOE subject to any amendments being proposed by the Committee
7.0	Documents attached
	<p>Appendix 1 – Consultation on the Draft Local Government (Standing Orders) Regulations (Northern Ireland) 2014 and Model Standing Orders</p> <p>Appendix 2 – Informal officer response to the consultation – issued 15 August</p> <p>Appendix 3 – draft Belfast Shadow Council formal response to be submitted to DoE</p>