

Consultation on the Draft Local Government (Standing Orders) Regulations (NI) 2014 and Model Standing Orders

Belfast District Council (Shadow) Response

1.0 INTRODUCTION

- 1.1. The new Belfast District Council welcomes the opportunity to respond to the draft Local Government (Standing Orders) Regulations (NI) 2014 and Model Standing Orders.
- 1.2. The Council's response is structured as follows. The first part of the response provides a summary of the key points which the Council would like to make in respect of the draft Regulations. This is supported by a more detailed table of comments on the Regulations and each of the paragraphs contained within Schedule 1.

2.0 GENERAL COMMENTS

- 2.1 The Council note that this consultation is dealing primarily with those mandatory elements which the Standing Order Regulations state must be included in each of the new council's standing orders. The Council also notes that aside from these specified mandatory elements, the draft model standing orders will be open to change by the Council. For that reason, the focus of this consultation response is on the mandatory elements of the Regulations only.

3.0 KEY COMMENTS

Schedule 1

3.1 **Paragraph 1 – Standing Order: Decisions to be taken by a qualified majority**

- 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.

- It is therefore not possible for an agreed response to be given on decisions (b) and (c) and there were strong views expressed across the parties consulted. If there is no agreement at Committee it may therefore be more appropriate for the Council to suggest that the Department consult with individual Party Groups on these matters. **[this remains subject to discussion and agreement at Committee]**

3.2 **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 the public’s interests.
- Whilst the first reason is relatively straightforward, the Council would seek clarity around who would have the authority to ‘deem’ that an unreasonable delay could be prejudicial to the council’s or the public’s interests. The Council would 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.

3.3 **Paragraph 4 – Standing Order: Call in admissibility**

- This paragraph specifies the criteria required for a call in to be deemed valid (including the method of submitting a call in request, the associated timescales and the supporting information required). The paragraph also outlines the process to be followed in respect of a decision which is called in under Section 41(1)b – disproportionate adverse impact.
- 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’)

3.5 **Paragraph 5 – Standing Order: The call in process – committee arrangements**

- 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).
- The Council would be of the view that legal advice should be provided, as appropriate, to any such committee to inform their considerations of those decisions.
- One view expressed by an elected Member was that as opposed to establishing an ad-hoc committee to deal with call-in made under procedural ‘undue process’ 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?

3.6 **Paragraph 7 – Standing Order: Positions of responsibility – time limits**

- This paragraph specifies a time limit of 15 mins between the nominating officer selecting a position of responsibility and the person nominated accepting the position.
- 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.

Detailed comments on the Draft Local Government (Standing Orders) Regulations (NI) 2014 and Model Standing Orders

Reference		Summary	Belfast City Council Comments
Draft Standing Order Regulations			
Regulations			
Regulations			
Reg 1	Citation, commencement and interpretation This regulation outlines the citation of the legislation, the commencement date and interpretation.		<ul style="list-style-type: none"> ▪ No comment
Reg 2	Incorporation of provisions in standing orders This regulation states that a council must incorporate the provisions in the Schedule in its standing orders		<ul style="list-style-type: none"> ▪ No comment
Reg 3	Modification of standing orders This regulation states that a council must not modify its standing orders to enable the mandatory standing orders incorporated under regulation 2 to be amended or disapplied.		<ul style="list-style-type: none"> ▪ No comment
Schedule 1			
	Part 1 - Voting		
Para 1	Standing Order – Decisions to be taken by a qualified majority		<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

Reference	Summary	Belfast City Council Comments
	<p>This Paragraph states that a qualified majority shall be required in relation to a councils decision on:</p> <ul style="list-style-type: none"> a. the exercise of the general power of competence b. a call in made in accordance with section 41(1)b – adverse impact c. the suspension of standing orders 	<p>processes of councils could be frustrated.</p> <ul style="list-style-type: none"> ▪ 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, with respect to the proposals in relation to decision (b) – a call in made under section 41(1)(b) of the 2014 Act (disproportionate adverse impact grounds) and 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 quality majority voting. ▪ It is therefore not possible for an agreed response to be given on decisions (b) and (c) and there were strong views expressed across the parties consulted. If there is no agreement at Committee it may therefore be more appropriate for the Council to suggest that the Department consult with individual Party Groups on these matters.
	Part 2 – Call in Process	
Para 2	<p>Interpretation</p> <p>This paragraph simply provides the interpretation of the</p>	<ul style="list-style-type: none"> ▪ No comment

Reference	Summary	Belfast City Council Comments
	various terminologies in this Part.	
<p>Para 3</p>	<p>Standing Order – Decisions subject to call-in</p> <p>This paragraph specifies those decisions which may be subject to call-in, and those which may not be subject to call-in.</p>	<p>Decisions subject to call-in</p> <ul style="list-style-type: none"> ▪ 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. <p>Decisions not subject to call-in</p> <ul style="list-style-type: none"> ▪ 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 the public’s interests. ▪ Whilst the first reason is relatively straightforward, the Council would seek clarity around who would have the authority to ‘deem’ that an unreasonable delay could be prejudicial to the council’s or the public’s interests. The Council would 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,

Reference	Summary	Belfast City Council Comments
		safety or legal grounds.
<p>Para 4</p>	<p>Standing Order – Call-in admissibility</p> <p>This paragraph specifies the criteria required for a call-in to be deemed valid. This includes the method of submitting a call-in request, timescales, the supporting information, the role of the clerk (chief executive), etc.</p> <p>The paragraph also outlines the process to be followed when a call-in is submitted under Section 41(1)b – (adverse impact) in relation to the seeking of an opinion by a practising solicitor or barrister.</p>	<ul style="list-style-type: none"> ▪ 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>Format of call in request</p> <ul style="list-style-type: none"> ▪ The Council note that no detail is provided as to the appropriate format of a call-in request. The Council would seek clarification as to whether this would be left to the discretion of a council or will guidance specify

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		that original signatures are provided on a hard copy for example.
<p>Para 5</p>	<p>Standing Order – The call-in process: committee arrangements</p> <p>This paragraph sets out the practicalities of the call in process with respect to a council running under committee arrangements.</p> <p>The process includes the requirement to establish an ad-hoc committee comprised of the chairpersons and deputy chairpersons of all committees of the council, to deal with decisions called-in under section 41(1)a of the Act (undue process).</p>	<ul style="list-style-type: none"> • One view expressed by an elected Member was that as opposed to establishing an ad-hoc committee to deal with call-in made under procedural ‘undue process’ 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?
<p>Para 6</p>	<p>Standing Order – The call-in process: executive arrangements</p> <p>This paragraph sets out the practicalities of the call in process with respect to a council running under committee arrangements.</p>	<ul style="list-style-type: none"> ▪ No comment
	<p>Part 3 – Positions of Responsibility</p>	
<p>Para 7</p>	<p>Standing Order – Positions of responsibility: time limits</p> <p>This paragraph specifies a time period of 15 mins between a) the nominating officer selecting a position of</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

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	<p>responsibility and the term for which it will be held; and b) the person nominated accepting the position.</p> <p>An extension to this time limit may be granted subject to the approval of the council.</p>	<p>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.</p> <ul style="list-style-type: none"> ▪ 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.
	<p>Part 4 – Appointment of Councillors to Committees, etc</p>	
<p>Para 8</p>	<p>Interpretation</p> <p>This paragraph simply provides the interpretation of the various terminologies in this Part.</p>	<ul style="list-style-type: none"> ▪ No comment
<p>Para 9</p>	<p>Standing Order – Appointment of more than one committee</p> <p>This paragraph provides that where a council appoints more than one committee at the same meeting, for the purposes of determining the number of places that must be allocated across the parties and independent members of the council it must agree:</p> <ol style="list-style-type: none"> a) The number of committees to be appointed; and b) The number of councillors that shall constitute the membership of each committee 	<ul style="list-style-type: none"> ▪ No comment
<p>Para 10</p>	<p>Nomination - This paragraph provides that the process for nominating places on a committee to councillors must be</p>	<ul style="list-style-type: none"> ▪ No comment

Reference	Summary	Belfast City Council Comments
	calculated in accordance with Schedule 2 of the 2014 Act.	
Model Standing Orders		
Model Standing Orders		
	General comment	<ul style="list-style-type: none"> ▪ The Model Standing Orders comprise each of the mandatory elements provided for in the Act and the Standing Order Regulations. As they have been produced to assist councils to develop their own bespoke standing orders, the Council understand that there would be no contention with the Council altering the running order / presentation of their bespoke standing orders provided that mandatory elements in the legislation are complied with.

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