



Belfast District Council (Shadow)

Report to	Shadow Strategic Policy and Resources Committee
Subject:	Council response to the draft Local Government (Disqualification)(Prescribed Offices and Employments) Regulations (Northern Ireland) 2014
Date:	29 August 2014
Reporting Officer:	Suzanne Wylie, Chief Executive
Contact Officer:	

1.0	Introduction
1.1	<p>The purpose of this report is to present Members with a draft Shadow Council response to the DoE's Consultation on the Local Government (Disqualifications)(Prescribed Offices and Employments) Regulations (Northern Ireland) 2014.</p> <p>The draft Regulations make provisions to:</p> <ul style="list-style-type: none"> • disqualify a council employee from being a councillor on his or her employing council; • specify the offices and employments the holding of which would disqualify the holder from being a councillor on any council. <p>The deadline for the council response to the consultation is 5 September 2014. A copy of the consultation document and the draft Regulations is attached at Appendix 1.</p>
1.2	<p>Members should note that while the Council seeks to submit a response agreed by this Committee to the DoE in line with the 5 September deadline, this response will remain subject to ratification by the Shadow Council at its meeting on 9 September 2014.</p>
2.0	Background
2.1	<p>Removal of blanket ban on employee being a councillor</p> <p>Section 4(1)(a) of the 1972 Act currently provides a blanket prohibition on an employee of a council being elected or being a councillor. This means that a person employed by a council, in any capacity, may not stand for election as a councillor or be co-opted to fill a vacancy in the office of</p>

	<p>elected representative of a council.</p> <p>The DoE has determined that this blanket prohibition could give rise to a challenge that it violates Article 10 of the European Convention of Human Rights and as a result the 2014 Act has amended the 1972 Act to remove the blanket ban.</p> <p>The 1972 Act, as amended by the 2014 Act, also provides for the Department to maintain a prohibition in relation to specified offices and employments on a council. This approach is in line with statutory arrangements in England, Scotland, Wales and the Republic of Ireland in relation to disqualifying specified employees of the council for being elected or being a councillor.</p>
3.0	Key Issues
3.1	<p>Specified offices and employments</p> <p>The draft Regulations will make provision in relation to two categories of offices and employments for the purposes of disqualification:</p> <ul style="list-style-type: none"> • those of a geographic nature • those related to the nature of the office or employment
3.2	<p>Geographic</p> <p>The Department considers that it is not appropriate for an employee of a council, irrespective of the nature of the office or employment held, to be a councillor on his or her employing council. It is therefore proposed that an employee of a council cannot be a councillor on his or her employing council.</p>
3.3	<p>Related to the nature of office or employment</p> <p>The Department considers that it would not be appropriate for officers that provide advice to council or its committees on a regular basis; or, who discharge a function on behalf of a council, from being a councillor under any circumstances.</p> <p>The Department proposes that this group of officers would include individuals holding the most senior positions in a council's administrative structure (including the clerk to the council (chief executive), and other senior officers that a council is required by law to appoint, e.g. the chief financial officer).</p> <p>It is further proposed that this group of officers should include those officers that report directly to one of the senior officers and those officers who speak on a council's behalf to journalists or broadcasters.</p>
3.4	<p>Maximum level of remuneration</p> <p>In order to provide clarity for council employees and a uniform approach to the prescription of employments that would disqualify the holder from being a councillor, the Department proposes basing the prescription of employments on those over a maximum level of remuneration – which is recommended as Spinal Column Point 32 on the NJC scale (at 1 April 2013 this represented £27,323).</p>

4.0	Consultation Response
4.1	<p>The Department would welcome the views of the Council on the four questions listed below. A summary of the proposed council response to each question is included below for the consideration of Members.</p> <p>Consultation questions</p> <p>1) Do you agree that a council employee should be prohibited from being a councillor on the council which employs them?</p> <p><i>Yes – the Council agree that council employees should be prohibited from being a councillor on their own Council</i></p> <p>2) Do you agree that a council employee should (subject to the restrictions on specified offices and employments) not be prohibited from being a councillor on a council other than one which employs them?</p> <p><i>Yes – the Council agrees that an employee should be permitted to be a councillor on a council other than the one which employs them, subject to the restrictions placed on specified offices and employments</i></p> <p>3) Do you agree that the holding of any of the senior offices specified should disqualify the holder for being elected or being a councillor in any council?</p> <p><i>Yes – the Council agrees that employees who hold specified senior positions should be prohibited from being a councillor in any council.</i></p> <p>4) Do you support the maximum level of remuneration specified by the Department as the basis for prescribing the employments that would disqualify the holder for being elected or being a councillor in any council?</p> <p><i>The Council supports the principle that certain post holders should be disqualified from being elected or being a councillor in any council.</i></p> <p><i>The council does not agree, however, that the level of the employees remuneration should serve as the only metric for prescribing the employments that would be disqualified, given the purpose and spirit of the legislation, and would note the following considerations:</i></p> <p><i>The identification of SCP 32 as the maximum permitted level of remuneration is arguably somewhat arbitrary. In the Council, SCP 32 equates to grade SO2 which would not be considered a senior level of staff. It seems likely therefore, that establishing SCP 32 as the maximum remuneration permissible may have the effect of unnecessarily politically restricting a number of staff.</i></p> <p><i>Using an employee’s remuneration as the decisive criterion seems unlikely to achieve the stated purpose of the legislation. That is, if the legislation’s prescribed intention is to disqualify those employees who have access or reporting responsibilities to very senior officers, members and</i></p>

	<p><i>Committees, it seems more appropriate to specify those criteria in the legislation rather than to apply an unrelated metric, or at least alongside that metric. Consideration might also be given to an appeals mechanism to ensure that the criteria are being applied consistently and within the spirit of the legislation.</i></p> <p><i>From a practical perspective, if a maximum level of remuneration is established for employees who will be able to seek co-option or election to other Councils, guidance will be needed to allow Councils to resolve circumstances when an employee's level of pay increases over the threshold during their period of office. For example, if that employee secures a promotion or upgrade through structural review processes.</i></p>
5.0	Resource Implications
5.1	None
6.0	Equality and Good Relations Implications
6.1	None
7.0	Recommendations
7.1	<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; and (ii) Consider and approve the attached Shadow Council consultation response at Appendix 2 subject to any amendments proposed by the Committee
8.0	Documents attached
	<p>Appendix 1 – Consultation on the Draft Local Government (Disqualification)(Prescribed Offices and Employments) Regulations (Northern Ireland) 2014</p> <p>Appendix 2 – Draft Belfast Shadow Council consultation response</p>