



<b>Subject:</b>	Consultation on Standing Orders Regulations – in respect of the Call-in process and those decisions subject to a Qualified Majority Vote
<b>Date:</b>	23 February 2024
<b>Reporting Officer:</b>	John Walsh, Chief Executive
<b>Contact Officer:</b>	Nora Largey, Interim City Solicitor / Director of Legal and Civic Services

<b>Restricted Reports</b>	
<b>Is this report restricted?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Please indicate the description, as listed in Schedule 6, of the exempt information by virtue of which the council has deemed this report restricted.</b>	
Insert number <input type="checkbox"/>	
<ol style="list-style-type: none"><li>1. Information relating to any individual</li><li>2. Information likely to reveal the identity of an individual</li><li>3. Information relating to the financial or business affairs of any particular person (including the council holding that information)</li><li>4. Information in connection with any labour relations matter</li><li>5. Information in relation to which a claim to legal professional privilege could be maintained</li><li>6. Information showing that the council proposes to (a) to give a notice imposing restrictions on a person; or (b) to make an order or direction</li><li>7. Information on any action in relation to the prevention, investigation or prosecution of crime</li></ol>	
<b>If Yes, when will the report become unrestricted?</b>	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Sometime in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

<b>Call-in</b>	
<b>Is the decision eligible for Call-in?</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report/Summary of Main Issues</b>
1.1	<p>The Department for Communities are seeking the views of Councils on the future contents of any proposed legislation dealing with Standing Orders, and in particular on the operation of call-in and what if any mandatory Standing Orders should be included in future legislation.</p> <p>The purpose of this report is to seek SP&amp;R approval on the Council position which will then be issued to the Department for Communities pending ratification by Council.</p>
<b>2.0</b>	<b>Recommendation</b>
2.1	<p>The Committee is asked to:</p> <ol style="list-style-type: none"> <li>i. note the background in relation to Standing Order Regulations</li> <li>ii. agree the Council position outlined at paragraph 3.5</li> <li>iii. note the list of decisions called-in since April 2015 and the status of each (Appendix 3)</li> </ol>
<b>3.0</b>	<b>Main Report</b>
3.1	<p><b>Background</b></p> <p>The Department for Communities issued a letter on 31 October seeking the views of Councils on the future contents of any proposed legislation dealing with Standing Orders (<b>Appendix 1</b>). The Department is, in particular, seeking information related to the operation of the ‘call-in’ procedure, which provides a mechanism by which councils may reconsider decisions already taken. The Council have been asked to identify and provide details of:</p> <ul style="list-style-type: none"> <li>• any issues with the current ‘call-in’ process;</li> <li>• how many decisions have been called-in since 1 April 2015;</li> <li>• what type of decisions were called-in;</li> <li>• on what grounds were they called-in; and</li> <li>• what the outcome was – decision upheld or overturned.</li> </ul> <p>The Senior Democratic Services Officer has collated the information on the numbers and status of all decisions called in since April 2015 which is presented at Appendix 3.</p> <p>An extension to the deadline has been provided until February 2024.</p>
3.2	<p><b>Background to Standing Order Regulations</b></p> <p>It was always the intention of the Department that they would introduce Standing Order Regulations in the Assembly which would include “mandatory” standing orders which must be included in the standing orders of each of the 11 Councils.</p> <p>In the interim period before the establishment of the new Councils, the Department issued a set of Model Standing Orders which were adopted by all of the new Councils and remain the basis for the existing standing orders within each of the 11 Councils.</p> <p>The Department previously tried in 2015 and again in 2016 to bring forward Local Government (Standing Orders) Regulations (NI) but both sets of draft regulations were negatived by the Assembly. This was mainly due to a disagreement on the “merit principle” in relation to decisions called in on “community impact” grounds.</p>

<p>3.3</p>	<p><b>Current arrangements in relation to Call In and Qualified Majority Voting</b></p> <p>The procedures in relation to the “reconsideration of a decision” (also referred to as “call-in”) are provided for by Section 41 of the Local Government Act (Northern Ireland) 2014 and are outlined in more detail in the Councils Standing Orders (see Standing Order 48).</p> <p><b>2014 Act</b></p> <p>Section 41(1) of the 2014 Act indicates that the Council must make provision requiring reconsideration (or “call-in”) of a decision if 15 per cent of members of the council (which for Belfast City Council means at least 9 Members) present to the clerk of the council a requisition on either or both of the following grounds –</p> <ul style="list-style-type: none"> <li>a) that the decision was not arrived at after a proper consideration of the relevant facts and issues (i.e. “procedural” grounds);</li> <li>b) that the decision would disproportionately affect adversely any section of the inhabitants of the district (i.e. “community impact” grounds).</li> </ul> <p>With regards to a decision called in on “community impact” grounds, our current Standing Orders indicate that if the legal opinion deems the “call in” to have merit, then the decision must be tabled at the next available meeting of the Council where it will be taken by a Qualified Majority Vote (i.e. where 80% of Members present and voting must be in favour of the decision).</p> <p>If the legal opinion deems the “call in” on community impact grounds <b>not</b> to have merit, then the original decision stands and should be implemented at the next available opportunity.</p>
<p>3.4</p>	<p><b>Proposals under Standing Order Regulations</b></p> <p>The most recent Draft Standing Order Regulations 2016 were presented to the Assembly in 2016 but no agreement could be reached. (<b>Appendix 2</b>)</p> <p>These would have made important changes to the Model Standing Orders adopted by each of the Councils, not least in relation to the operation of call-in and the list of those decisions which must be taken by a Qualified Majority Vote.</p> <p>The Department received legal advice which indicated that the “opinion” of the solicitor or barrister can only be on “a point of law” and cannot be on the “merit” principle as originally proposed – as this power was not provided by the primary legislation. According to the Department’s legal advice, to assume this power would be “ultra vires”.</p> <p>The draft regulations provided that a call in made under “community impact” grounds would only be taken by a qualified majority vote where a barrister has found that the decision is <b>outside the powers of the council, is incompatible with EU law or convention rights, or is not in compliance with the council's equality scheme.</b> In all other cases the decision would be implemented or tabled for ratification by the council.</p>

3.5	<p>The following proposed response is provided for Members consideration:</p> <ul style="list-style-type: none"> <li>• <i>Belfast City Council have operated the call-in process consistently since April 2015. Details on the number of decisions called in, including the types of decisions, the grounds and the outcomes are included in Appendix 3.</i></li> <li>• <i>The Council would be broadly supportive of the proposals set out in the draft Standing Order Regulations 2016 which included a revision to the decisions which would be subject to Qualified Majority Vote.</i></li> <li>• <i>The Council supports the proposal that decisions called in under Section 41(1)(b) (i.e. on “community impact” grounds) would only be subject to a Qualified Majority Vote where a solicitor or barrister has opined under section 41(2) of that Act that there is a risk that the decision is:</i> <ul style="list-style-type: none"> <li>- <i>outside the powers of the council,</i></li> <li>- <i>or is incompatible with EU law or Convention Rights (within the meaning of the Human Rights Act 1998),</i></li> <li>- <i>or is not in compliance with the council’s equality scheme in so far as it relates to equality of opportunity (within the meaning of section 75(1) of the Northern Ireland Act 1998).</i></li> </ul> </li> <li>• <i>The Council would also take this opportunity to raise a further related issue which arises out of Section 41 of the 2014 Act (Power to require decisions to be reconsidered).</i></li> <li>• <i>Section 41(1) requires Council’s to make provision for reconsideration of decisions. Section 41(4) states that a “decision” means a decision of the council or a committee of the council (and includes a decision to make a recommendation).</i></li> <li>• <i>In practice, this means that a decision taken by a Committee and which is not called, may nevertheless be called in following ratification at full Council (being a decision of the Council). This has the effect of prolonging the period following Council ratification before a decision can be implemented. In most cases any issue which arises as a result of a Committee decision before it reaches Council can either be resolved informally or the decision referred back to Committee for reconsideration. If that does not resolve the issue then the ultimate decision at Council could be subject to call-in.</i></li> <li>• <i>The Council would respectfully suggest that only one opportunity to avail of call-in is sufficient to address the issue which the legislation sought to address and avoids adding unnecessary bureaucracy to the decision-making process.</i></li> </ul>
3.7	<p><b><u>Financial and Resource Implications</u></b></p> <p>There are no financial or resource implications connected to this report.</p>
3.8	<p><b><u>Equality or Good Relations Implications/Rural Needs Assessment</u></b></p> <p>There are no equality or good relations implications connected to this report.</p>
4.0	<p><b>Appendices - Documents Attached</b></p>
	<p>Appendix 1 – Letter from Andrew McIntyre, Dept for Communities</p>

	Appendix 2 – Draft Local Government (Standing Orders) Regulations (NI) 2016
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	Appendix 3 – Belfast City Council Pro Forma response – list of call ins
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