

APPENDIX 1

Consultation on the Local Government (Miscellaneous Provisions) Bill

Belfast City Council Draft Response

1.0	<u>Introduction</u>
1.1	Belfast City Council welcomes the opportunity to respond to the Local Government (Miscellaneous Provisions) Bill issued for consultation by the Committee for the Environment and would hope that the comments outlined within this response are constructive in nature and add value to the future drafting of necessary subordinate legislation.
1.2	The Council have a number of general comments to make in regard to the content of the draft legislation as well as specific feedback on individual clauses where appropriate. The
2.0	<u>General Comments</u>
2.1	Whilst the Council would have no major issues, in principle, with the Bill, it is conscious that much of the detail around the out workings of this legislation will be set out within the subsequent subordinate legislation (regulations). Whilst the explanatory memorandum suggests that such regulations will take account of previous consultation exercises undertaken by the Department of the Environment (DoE) on the establishment of statutory transition committees and the introduction of a severance scheme for elected Members (both of which Belfast City Council has formally submitted consultation responses to the severance and statutory transition committees (on which Belfast City Council has formally responded to the DoE), it is unclear what level of further engagement will take place between the Department, the Committee for the Environment and local councils during the Committee stage and the subsequent drafting of any subordinate legislation (regulations).
2.2	Belfast City Council feel that in accordance with good practice, the Department should ensure that local councils are consulted in the drafting of the relevant detailed subordinate regulations and, in particular, with respect to Clause 14 (constitution of statutory transition committees; Clause 15 (functions to be undertaken by Statutory Transition Committees; Clause 17 (severance payments for councillors).
2.3	Furthermore, the Council supports the intention that Clauses 14, 15 and 16 (and parts of Clause 3) be subject to affirmative resolution (i.e. to be debated) by the NI Assembly and would reiterate the need for the Minister, the Department and the Committee for the Environment to consult with all interested parties including local government in the drafting phase of any subordinate legislation related to these clauses.
3.0	<u>Specific Comments on Clauses</u> - It should be noted that Belfast City Council have not commented on all Clauses set out within the Bill.
	Clauses 1-8: Contracts of Councils
	Explanatory Memorandum Overview: <i>These provisions replicate existing legislation in Great Britain in the form of the Local Government (Contracts) Act 1997 and essentially clarify the powers of district councils to enter into PFI/PPP contracts with the private sector. In Northern Ireland, these provisions started life in the shape of the Local Government (Contracts and Compulsory Purchase) Bill, the title of which has now been changed to the Local Government (Miscellaneous Provisions) Bill to reflect the additional provisions which have been introduced in relation to certain RPA Transition issues.</i>
	Belfast City Council comments: <ul style="list-style-type: none">▪ In relation to the provisions set out in Part 1 'Contracts of Councils', arc21 has already responded to these on behalf of its member councils and Belfast City Council do not see the need to make any further response. arc21 had a number of concerns in relation to the provisions but these are not concerns in relation to any RPA issue and have, in any event, now been picked up by the Executive in the shape of the draft Waste Bill which is now also out for consultation and to which arc21 has again made a response on behalf of its member councils.

Clause 9: Introductory section to Part 2 – Local Government Reorganisation

Explanatory Memorandum Overview:

This clause outlines the meaning of the phrases “existing council”; “new council”; “successor council” and “predecessor council” in respect of Part 2 of the Bill.

Belfast City Council comments:

- The Council has concerns that in relation to both the power to give directions and the power to make regulations, it is not sufficiently clear that the Department has the power to do so with specific reference to any particular council or transition committee. It may therefore be necessary for the Department to make particular provision in relation to the case of Belfast and/or the Lisburn/Castlereagh Transition Committee.
- It is recommended that the legislation should therefore be clear that the Department has such a power to make specific regulations and this could be achieved by including a new sub-paragraph under Clause 9 (2)(c) to the effect that the power of the Department to give directions in Chapter 2 and to make regulations in Chapter 3 will include the power to do so in relation to the circumstances of one or more specified Councils.

Clause 10: Control of disposals and contracts of existing councils

Explanatory Memorandum Overview:

This clause sets out a system of controls on disposals of land, and capital and non-capital contracts being entered into, by the current 26 district councils in the period leading up to their dissolution and the establishment of the 11 new district councils. The Department will have powers to direct that councils must obtain consent from their statutory transition committees before engaging in the specified activities, subject to minimum thresholds.

Belfast City Council comments:

- The specified statutory transition committee referred to should be the transitional committee(s) that would otherwise hold or have responsibility for the subject land /capital contract post RPA.
- However, as Belfast City Council have assets outside their current boundary the legislation should provide for the Belfast Transition Committee being the specified transition committee responsible for consenting to any disposals /contracts in respect of these assets.
- References to specified sums, specified date and specified description will all require more detail as to amounts, thresholds etc, and district councils should be consulted on this whilst the detail is being developed in subordinate legislation.
- **Clause 10 (4) (c)** provides that a direction may be varied or revoked by a subsequent direction. However, clarity will be required around the proposed mechanism for varying or revoking the direction. **Belfast City Council would recommend that Councils be consulted in any such instances and any variation or revoking of the direction will need to be agreed by Councils.**

Clause 13: Contravention of direction

Explanatory Memorandum Overview:

This clause defines when a disposal of land made in contravention of a direction is to be declared void.

Belfast City Council comments:

Clause 13 (1) Disposals made in contravention of directions being void – clarification will be required around the enforcement of this clause. In particular, when a disposal has taken place and a 3rd party is in occupation as the new legal owner, clarification will be required as to the legal effect of this clause.

Clause 14: Statutory transition committees: constitution

Explanatory Memorandum Overview:

This clause makes provision about the establishment of statutory transition committees to manage, at a local level, the transition from the current configuration of 26 local government districts to the new 11 districts as set out in the Local Government (Boundaries) Act (Northern Ireland) 2008. The clause also provides the Department with the power to specify in regulations* the level of membership of the statutory transition committees, the process to be adopted by the current councils to determine their representation on the relevant transition committee, and the governance arrangements for the committees. It also provides for the regulations to make provision in relation to making payments to and facilities available to statutory transition committees.

Belfast City Council comments:

- It is important to highlight that Belfast City Council stands in somewhat of a different position to that of the other 25 Councils in regard to the RPA transition process, since all the other Councils are to be abolished and replaced by 10 new Councils. As a result, the 25 Councils are to merge together in clusters and have formed voluntary Transition Committees, made up of elected Members from constituent Councils, for the purposes of managing the transition and convergence process.
- Whilst Belfast City Council will clearly become a new legal entity post RPA, it is not merging with any other council but rather assimilating, within its boundary, geographical areas from the current Castlereagh Borough and Lisburn City Council areas as set out within the Local Government Boundaries Commissioner's Final Recommendations report published on 26th June 2009.
- Accordingly, the previous Environment Minister Sammy Wilson supported the proposition that Belfast City Council manages its own transition process and that the Council's Strategic Policy and Resources Committee be designated as the Belfast's Transition Committee. The Committee would comprise of twenty Members appointed on the basis of proportionality applying the D'hondt procedure, with an additional monthly meeting of the Committee to be designated for the purpose of RPA transition and associated change management business.

- The Minister’s approval to this proposal was conveyed to the Council by letter of 2 February and accordingly the Strategic Policy and Resources Committee had met as a Transition Committee from March onwards. The Belfast Transition Committee recognises the need to put in place formal engagement mechanisms between the Lisburn/Castlereagh Transition Committee and the Belfast Transition Committee to identify and resolve transitional related matters and to ensure service continuity for the citizen.
- Belfast City Council would recommend that the current governance arrangements for Belfast’s Transition Committee be retained with further consideration given, in drafting any subordinate legislation, to the introduction of a formal engagement mechanism between the Lisburn/Castlereagh Transition Committee and the Belfast Transition Committee to discuss transitional related matters.
- **Belfast City Council feel that in accordance with good practice, the Department should ensure that local councils are consulted in the drafting of the relevant detailed subordinate legislation which emerges from this Clause.**

Clause 15: Statutory transition committees: functions

Explanatory Memorandum Overview:

This clause provides the Department with the power to specify in regulations the functions and powers of a statutory transition committee in relation to delivering the transition process. It is intended that the functions of a statutory transition committee will include the development and management of the convergence of the plans and programmes of the current local government districts that will form the new districts; the development of strategies for estates and accommodation; the management of the transfer of assets and liabilities; the development of a preliminary staff structure for the new council; the appointment of a Chief Executive designate and key senior managers designate, and the preparation of a budget and the fixing of the rate for the new council district.

Belfast City Council comments:

- Belfast City Council would recommend that consideration is given to the inclusion of the following additional provisions either within this Clause or within the regulations developed by the Department in relation to this Clause:-
 - enabling Statutory Transition Committees to establish Sub-Committees to consider specific issues as they feel appropriate. It would be better to have this enabling provision in place from the outset rather than a Transition Committee finding that it would be necessary to establish a Sub-Committee and had no statutory powers to do so.
- **Belfast City Council would recommend that in accordance with good practice, the Department should ensure that local council’s are consulted during the development phase of any subordinate legislation relating to this clause**

Clause 16: Power to modify existing legislation

Explanatory Memorandum Overview:

While clauses 14 and 15 set out specific provisions in relation to the making of regulations for the establishment and operation of statutory transition committees, this clause provides a power for the regulations to apply (with or without modification) or dis-apply the provisions of relevant local government or rating legislation.*

Belfast City Council comments:

- Belfast City Council would recommend that in accordance with good practice, the Department should ensure that local councils are consulted during the development phase of any subordinate legislation relating to this clause.

Clause 17: Severance payments to councillors**Explanatory Memorandum Overview:**

The clause confers a power on the Department to make regulations providing for the making of severance payments to councillors who resign as councillors before the end of a specified period and who meet such other criteria as the Department may specify. The clause also amends section 4 of the Local Government Act (Northern Ireland) 1972 to provide that a person who has received a severance payment is disqualified from being elected, or being, a councillor.

Belfast City Council comments:

Belfast City Council are supportive of the provisions outlined in Clause 17 in respect to Severance payments but would reiterate that requirement for local councils to be consulted during the development phase of any secondary legislation relating to this clause.

The Council have already formally responded in April 2009 to the Department of the Environment's consultation exercise in regard to proposals for the introduction of a Severance Arrangements and in accordance with that response would recommend that the following issues be taken into consideration in the drafting of any subordinate legislation.

1. A set amount of £1,000 per year being payable up to a maximum of 38 years;
 2. eligibility for severance being restricted to Members who have served a minimum of two Council terms;
 3. the inclusion of Members of the House of Lords in the severance scheme and also the inclusion of MLAs, MPs, and MEPs but on the basis that their entitlement to an award would be calculated only on those years of Local Government service which they have acquired prior to their election to another tier of Government;
 4. the next of kin of a Member being entitled to severance in the event that a Councillor dies after applying for severance but before the payment has been made;
 5. a recipient of severance having to repay it in full in the event that they return subsequently to serve in Local Government before a period of two Council terms has elapsed;
 6. Central Government being responsible for meeting the costs associated with the introduction of a severance scheme;
 7. the scheme should apply during the period from January, 2010 until the date of the Local Government elections in May, 2011, providing that the necessary legislation on co-option is implemented so as to avoid the potential risk of multiple bi-elections.
- **Belfast City Council would recommend that in accordance with good practice, the Department should ensure that local council's are consulted during the development phase of any subordinate legislation relating to this clause.**

Clause 18: Acquisition of land otherwise than by agreement

Explanatory Memorandum Overview:

This clause provides that councils may vest land for any of their purposes in Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997 – a provision that had been inadvertently omitted from that Order.

Belfast City Council comments:

Belfast City Council would recommend that the power for a district council to acquire land otherwise than by agreement should not be limited only to waste management purposes but should provide for district councils having a more general power to acquire land otherwise than by agreement exercisable in connection with their functions.

Clause 20: Regulations and orders

Explanatory Memorandum Overview:

This clause essentially sets out the means by which the Department may make different regulations as provided for in the Bill.

Belfast City Council comments:

- Belfast City Council would recommend that in accordance with good practice, the Department should ensure that local council's are consulted during the development phase of any secondary legislation which has a direct impact upon them.
- The Council supports the intention that Clauses 14, 15 and 16 (and parts of Clause 3) be subject to affirmative resolution by the NI Assembly and would reiterate the need for the Minister and the Committee for the Environment to consult with all interested parties in the drafting phase of any secondary legislation related to these clauses.