

Consultation on the Local Government (Finance) Bill

Belfast City Council Response

1.0 INTRODUCTION

- 1.1 Belfast City Council welcomes the opportunity to respond to the draft Local Government (Finance) Bill issued for consultation by the Department of the Environment. The Council hope that the comments outlined within this response are constructive in nature and will add value to any revised Bill prepared and the drafting of the future subordinate legislation.
- 1.2 The Council has a number of general comments to make in regard to the content of the draft legislation as well as detailed comments on some of the individual clauses set out within the proposed Bill.

2.0 GENERAL COMMENTS

- 2.1 Belfast City Council is supportive of the need to modernise the legislative framework relating to local government finance and councillors' remuneration in Northern Ireland. Many of the comments set out in this response reflect views previously expressed by the Council as part of its ongoing engagement in the RPA process.
- 2.2 The Council is, however, conscious that much of the detail around the outworking of this legislation will be set out within the subsequent subordinate legislation (regulations) of which there is no detail at the moment. Therefore, the Council welcomes the stipulation set out within the consultation document that such regulations will not be brought forward without prior consultation with local authorities.
- 2.3 The Council would welcome the opportunity to engage closely with the Department in drafting the regulations under this Bill to ensure that they reflect the needs of local government in Northern Ireland and provide for the provision of a modern and responsive public service by district councils.
- 2.4 The Council would seek clarification on both the process and timescale anticipated for taking forward the drafting of the subordinate regulations to emerge under this Bill.

Title

- 2.5 The Council notes that the draft Bill comprises five Parts, two of which in fact relate to expenditure powers. The Council would suggest that, in terms of nomenclature of the Bill, perhaps the Bill should be styled as the Local Government (Finance and Expenditure) Bill 2009. This point is all the more relevant in the context of points which are made later on in relation to addressing the expenditure powers of district councils.

Autonomy

- 2.6 Belfast City Council welcomes the intention set out within the Bill to give greater freedom to local authorities in Northern Ireland to manage their own financial affairs without having to obtain consent from the Department of the Environment. A key concern is that in the absence of knowing the detail of the subordinate regulations it is difficult for the Council to gauge the degree of central intervention. The Council believes such intervention should be the minimum practicable so that the potential freedoms that the Bill would seek to deliver are realised.
- 2.7 The Council would be of the view that over-intervention could potentially reduce the degree of freedom afforded to local authorities and would seem to contradict the basic principles of the RPA to create a '*strong, dynamic and responsive local government*' sector and we would refer to the principles enshrined in the 'European Charter on Local Self-Government'. The Council would again stress the need for the local government sector to be closely involved in the drafting of these regulations and the Council would welcome the opportunity to work closely with the Department on this.
- 2.8 The Council is also concerned that some of the powers reserved by the Department, particularly those in regard to the right to intervene both in terms of the overall borrowing by

councils and in respect of affordability thresholds, also appear to undermine the basic principles of the modernisation process. The Council would seek further clarification on the circumstances under which the Department envisages potentially exercising these powers.

Role of Central/Local Government Relations

- 2.9 Whilst the Council recognises and supports the intention of the Bill to bring the local government financial regime in Northern Ireland in line with England, Scotland and Wales, it would be concerned that the funding of local government in Northern Ireland is different, with the majority of council funding (e.g. approx. 74% in the case of Belfast City Council) being derived from the district rate.
- 2.10 The Council is also concerned that the consultation document does not consider the unique way in which rates are collected in Northern Ireland. Whilst greater controls are being imposed on local authorities, the Bill does not address the role of external agencies (e.g. Land and Property Services) which impact upon and/or influence the financial processes of councils but are not directly accountable to local government for their performance. The Council believes that controls need to be put in place for these types of relationships to ensure that local authorities are not detrimentally affected by the behaviour or actions of any agencies which are outside their control.

Borrowing & Expenditure

- 2.11 The Council welcomes the introduction of more flexible arrangements for borrowing as set out in Clauses 11 to 18, including the need to comply with appropriate codes of practice. The Council would also suggest that the powers of borrowing and investment be mirrored by a further provision which creates a general power of expenditure of district councils to carry out their statutory functions. While the Council acknowledges that the point could be made that this power is already contained in section 17 of the Interpretation Act (NI) 1954, nevertheless, it is submitted that a general power of expenditure could usefully be re-stated in order to make it absolutely clear that district councils have a general power of expenditure, acting in accordance with principles of due diligence etc, in relation to the discharge of their statutory functions.
- 2.12 The Council would further suggest that, for the purposes of that provision, it should be made clear that the statutory functions of a district council include the recruitment and employment of staff and, furthermore, the training and development of Members and employees.
- 2.13 The Council welcomes the proposal to extend to all Departments the general power to pay grants to councils. However, the Council would seek an assurance that this extends to Joint Committees (in so far as it is relevant).

Members' Remuneration

- 2.14 The Council welcomes the proposals contained within the draft Bill in relation to the area of Members' remuneration. In the interests of transparency and openness the Council is fully supportive of the proposed new provision requiring councils to publish a scheme of allowances. Belfast City Council already publishes comprehensive details of payments made to its Members and would view the publication of a scheme of allowances as complementary to this.
- 2.15 The Council welcomes the proposals to establish an Independent Remuneration Panel to advise on councillors' allowances. The Council concurs with the view of the Councillor Remuneration Working Group (CRWG) that a single panel for the whole of Northern Ireland is the best option as this enable equitable treatment for all councillors in Northern Ireland. The Council also agrees that members of the panel should be appointed using the public appointments process. However, it is essential that a criterion for selection is that the individual must have appropriate expertise and knowledge of the roles and responsibilities of Elected Members and preferably be familiar with remuneration issues for councillors.
- 2.16 The Council would be in favour of the proposal to repeal Section 38 of the 1972 Act in order to remove some of the restrictions relating to the payment of expenses incurred by councillors in attending meetings and conferences. The proposed new clause 33 would provide much more flexibility to councils to make their own business cases which would help determine whether a particular conference/visit would be concerned with matters which relate to the interests of the

district or the inhabitants of that district. The Council would suggest, however, that a further criterion is included pertaining to the advancement of the affairs of local government.

3.0 **Conclusion**

- 3.1 Belfast City Council reiterates its support for modernising the legislative framework relating to local government finance and councillors' remuneration in Northern Ireland. However, the absence of detail in key areas and the absence of the accompanying Regulations make it difficult for the Council to undertake an informed assessment of the likely impact of the proposals and the potential consequences for councils and citizens in the future.
- 3.2 The Council would like to take this opportunity to advocate the need for a closer working relationship with the Department in taking this Bill forward and on the drafting of the subsequent subordinate legislation.
- 3.3 The Council has raised a number of issues in this response and would seek clarification on how the Department intends to incorporate these, and any other comments received from stakeholders, into the final legislation and any accompanying regulations.

4.0 Detailed comments on the Draft Local Government (Finance) Bill – clause by clause

Reference	Excerpt	Belfast City Council Comments
Part 1: Financial Administration		
Clause 4	<p><i>(1) The chief financial officer of a council shall submit to the council a report on the robustness of the estimates.</i></p> <p><i>(2) A council shall have regard to that report when considering the estimates under section 3(2)(a).</i></p> <p><i>(3) In this section “the estimates” means the estimates submitted to the council under section 3(1).</i></p>	<ul style="list-style-type: none"> ▪ The Council would recommend that guidance is issued by the Department on the exact issues to be considered by the Chief Finance Officer in order to determine whether the figures are robust.
Clause 7	<p><i>(1) In this section “controlled reserve” means a financial reserve of a description prescribed under section 6(1) for the purposes of this section.</i></p> <p><i>(2) In the case of a controlled reserve, it shall not be regarded as appropriate for the balance of a reserve at the end of any financial year to be less than the minimum amount determined in accordance with regulations under section (6)1.</i></p>	<ul style="list-style-type: none"> ▪ Clauses 6 and 7 deal with the issue of reserves and indicate that there is a proposal for councils to maintain a minimum level of reserves. Whilst recognising that this is a prudent financial approach, the Council would also ask the Department to issue guidance for consultation in regard to the maximum level of reserves that should be maintained. This is a matter which the Local Government Auditor comments on when reviewing the annual accounts.
Clause 11	<p><i>11. A council may borrow money –</i></p> <p><i>(a) for any purpose relevant to its functions under any statutory provision; or</i></p> <p><i>(b) for the purposes of the prudent management of its financial affairs</i></p>	<ul style="list-style-type: none"> ▪ The introduction of more flexible arrangements for borrowing as set out in Clauses 11 to 18 are welcome including the need to comply with appropriate codes of practice. ▪ There now exists a range of more innovative methods of raising finance (e.g. Local Asset Back Vehicles), and the Council would additional provision be included in Clause 11 to confer a power on councils to enter into such arrangements.
Clause 13	<p><i>1) A council shall determine and keep under review how much money it can afford to borrow.</i></p>	<ul style="list-style-type: none"> ▪ Whilst Clause 4 requires the CFO to submit a report on the robustness of the estimates of the Council, and Clause 6 requires the CFO to report to the Council on the adequacy of financial reserves, the Council is surprised to note that Clause 13 does not require any report to Council on the review of the affordable borrowing limit. The Council would recommend that this is included in any associated subordinate legislation.

<p>Clause 14</p>	<p>1) <i>Regulations made with the consent of the Department of Finance and Personnel may for national economic reasons set limits in relation to the borrowing of money by councils.</i></p> <p>(2) <i>The Department may by direction set limits in relation to the borrowing of money by a particular council for the purpose of ensuring that the council does not borrow more than it can afford.</i></p>	<ul style="list-style-type: none"> ▪ Belfast City Council believes that the legislation should restrict the ability of the Department to set limits to the local government borrowing to circumstances whereby a local authority has disregarded its duty or obligation under Clause 13 to ‘determine an affordable borrowing limit’ and keep this limit under review. ▪ The Council notes that Clause 14 is taken from similar legislation in GB in 2002. ▪
<p>Clause 17</p>	<p>1) <i>For the purposes of this Part, a council shall be taken to have entered into a credit arrangement where–</i></p> <p>(a) <i>it enters into a transaction which gives rise to a liability on its part, and</i></p> <p>(b) <i>the liability is a qualifying liability.</i></p> <p>(2) <i>A transaction entered into by a council is to be taken for the purposes of subsection (1) as giving rise to a liability on the part of the council if:-</i></p> <p>(a) <i>it falls in accordance with proper practices to be treated for the purposes of the council’s accounts as giving rise to such a liability, or</i></p> <p>(b) <i>it falls in accordance with regulations to be treated as falling within paragraph (a).</i></p> <p>(3) <i>The reference in subsection (1)(b) to a qualifying liability is to any liability other than:</i></p> <p>(a) <i>a liability to repay money,</i></p> <p>(b) <i>a liability in respect of which the date for performance is less than 12 months after the date on which the transaction giving rise to the liability is entered into, and</i></p> <p>(c) <i>a prescribed liability.</i></p>	<ul style="list-style-type: none"> ▪ # ▪ The Council would expect that the regulation to provide clarity as to what is a qualifying liability and in particular what is a ‘prescribed’ liability. ▪ In reviewing Clause 17, the Council would suggest that there seems to be a gap in this part of the Bill with regard to the power of the Department to make regulations referred to in Clause 17(2)(b).
<p>Clause 21</p>	<p>(1) <i>Regulations may apply section 20 to cases where:-</i></p> <p>(a) <i>a council makes a disposal of the kind mentioned in subsection (1) of that section and the consideration for the disposal does not consist wholly of money payable to the council, or</i></p>	<ul style="list-style-type: none"> ▪ Greater clarification is required in regards to the process by which ‘Non-money receipts’ are to be captured and represented in the accounting processes of councils. ▪ The Council notes that greater clarification is to be given by regulations.

	<p><i>(b) a council receives otherwise than in the form of money anything which, if received in that form, would be a capital receipt under that section.</i></p> <p><i>(2) Regulations under subsection (1) may, in particular:</i></p> <p><i>(a) make provision for a council to be treated as receiving a sum of such an amount as may be determined under the regulations;</i></p> <p><i>(b) make provision about when the deemed receipt is to be treated as taking place.</i></p>	
Clause 22	<p><i>1) Regulations may make provision about the use of capital receipts by a council.</i></p> <p><i>(2) Regulations under subsection (1) may, in particular, make provision requiring an amount equal to the whole or any part of a capital receipt to be used only to meet–</i></p> <p><i>(a) capital expenditure, or</i></p> <p><i>(b) debts or other liabilities.</i></p>	<ul style="list-style-type: none"> ▪ It is our interpretation that the new provisions remove the requirement for capital receipts to be applied in the first instance against any money borrowed by the Council for the purpose of acquiring that asset. ▪ However, Clause 22 implies that by regulations the Department may require the capital receipt to be used to meet debts or other liabilities. It is the Council's view that in principle the legislation gives local authorities freedom to manage their own financial affairs and this is another example where such freedom can be constrained by regulation by the Department. ▪ The Council would expect that if such regulations are taken forward, it would be fully consulted in their drafting.
Part 2 - Grants to Councils		
Clause 27	<p><i>(1) The Department shall for each financial year make a grant under this section to councils (unless in any particular case the amount of the grant would be nil).</i></p> <p><i>(2) In this section "the rates support grant" means the grant made under this section for any financial year.</i></p> <p><i>(3) The amount of the rates support grant payable to a council for any financial year shall be determined in accordance with regulations.</i></p>	<ul style="list-style-type: none"> ▪ The Council understands that the statutory formula currently used to allocate the resources grant will be used to allocate the new rates support grant. ▪ The statutory formula needs to be reviewed post RPA especially in light of the establishment of new local authorities with new functions and functions that will transfer from central to local government.
Clause 28	<p><i>(1) Subsection (2) applies where the Department is satisfied, from information contained in a relevant report relating to a council, that as regards any financial year–</i></p> <p><i>(a) the council has failed to achieve or maintain a reasonable standard of economy, efficiency and effectiveness in the discharge of its functions, or</i></p>	<ul style="list-style-type: none"> ▪ Whilst the Council recognises that this clause is a reaffirmation of provisions set out within the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002, the Council would suggest that any consideration of introducing sanctions in circumstances whereby local government failed to achieve or maintain a reasonable standard of economy, efficiency and effectiveness in the discharge of its functions,

	<i>(b) the expenditure of the council has been excessive having regard to the council's financial resources and other circumstances relevant to the council.</i>	<p>should be applied as a means of last resort. Consideration will need to be given to the likely effect that such sanctions will have upon the administration of local government.</p> <ul style="list-style-type: none"> Further clarity is required as to how such sanctions would be introduced and if this would be at the behest of the Local Government Auditor.
Clause 29	<p><i>(1) The Department or any other Northern Ireland department may, in respect of a financial year, make grants to councils for such purposes and of such amounts and subject to such conditions as that department may determine.</i></p> <p><i>(2) Grants shall not be made under this section without the consent of the Department of Finance and Personnel.</i></p>	<ul style="list-style-type: none"> The Council welcomes the provision to give all government departments the power to make grants in connection with appropriate schemes, particularly as it removes any existing doubts about the statutory power of government departments to pay grants to district councils. This has been a particular issue in the past in relation to the waste management powers of district councils. One particular concern that the Council would wish to highlight is that the Bill does not appear to extend, in general terms, to Joint Committees and the Council would suggest that there needs to be a provision in the draft Bill which extends the provisions of the Bill, insofar as they are relevant, to Joint Committees.
Clause 30	<p><i>(1) Regulations may provide for the payment by councils of such allowances or other payments as may be prescribed to councillors for, or in relation to anything done in connection with, service as councillors.</i></p> <p><i>(2) Payments by a council under the regulations shall be of such amounts or at such rates as may be determined by the council, but shall not exceed such amounts or rates as may be determined by the Department.</i></p> <p><i>(3) Regulations may require each council to make a scheme setting out the amounts or rates of the allowances or other payments determined by the council.</i></p> <p><i>(6) In this section any reference to a council includes a reference to a joint committee and any reference to the district of a council includes a reference to the districts of all the councils which have concurred in appointing the joint committee.</i></p> <p><i>(7) In this section "joint committee" has the same meaning as in the Local Government Act (Northern Ireland) 1972 (c.9)</i></p>	<ul style="list-style-type: none"> Based on the principles of transparency and openness, Belfast City Council would be fully supportive of the proposed new provision requiring a council to make and publish a scheme of allowances. The Council already publishes comprehensive details of payments made to Members and would view the publication of a scheme of allowances as complementary to this. Clause 30(6) confirms that any reference to a council includes reference to a Joint Committee in the context of part 3 of the draft Bill – Payments to Councillors. We would be of the opinion that such a clause should be generic to the Bill and would therefore recommend that the Department take the opportunity to expressly state the provisions that would apply to Joint Committees, similarly to Schedule 7 of the 1972 Act.

Part 3 - Payments to Councillors

Clause 33

1) Subject to subsection (3), a council may make payments towards expenditure reasonably incurred by a councillor in respect of attendance authorised by the council at any conference or meeting, whether inside or outside the United Kingdom, convened by any person or body (other than a person or body convening it in the course of a trade or business or a body whose objects are wholly or partly political) for the purpose of discussing matters which, in the opinion of the council, relate to:-

(a) the interests of the district or any part of it; or

(b) the interests of the inhabitants of the district or any part of it.

Payments made under subsection (1) may include any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting.

(3) Payments made by a council under subsection (1) towards expenditure incurred by a councillor for any purpose corresponding to a purpose for which payments may be made under section 30 shall be at such rates as may be determined by the council but shall not exceed the rates determined by the Department under section 30 for payments for the corresponding purpose.

- The Council would be in favour of the proposal to repeal Section 38 of the 1972 Act in order to remove some of the restrictions relating to the payment of expenses incurred by councillors in attending meetings and conferences. The proposed new clause 33 would provide much more flexibility to councils to make their own business cases which would help determine whether a particular conference/visit would be concerned with matters which relate to the interests of the district or the inhabitants of that district.
- The Council would suggest, however, that a further criterion is included pertaining to the advancement of the affairs of local government.
- The Council would note that Clause 35 extends the provisions of Clause 33(1) to cover officers as well as Councillors. Therefore, it is not clear why, from a drafting perspective, why Clause 33(1) does not simply state that a council make payment towards expenditure reasonably incurred by a councillor or officer.

<p>Clause 34</p>	<p><i>(1) Regulations may establish a panel to advise the Department on payments by councils to councillors.</i></p> <p><i>(2) Regulations under this section may make provision relating to the membership and functions of the panel.</i></p> <p><i>(3) Regulations under this section may in particular include provision:-</i></p> <p><i>(a) requiring the panel to comply with directions given by the Department (including directions requiring the panel to provide the Department with advice or information in relation to such matters as the Department may direct);</i></p> <p><i>(b) requiring the Department to make available to the panel such premises, staff and services as the panel may reasonably require; and</i></p> <p><i>(c) requiring the Department to pay to members of the panel such allowances as the Department may determine.</i></p>	<ul style="list-style-type: none"> ▪ The Council welcomes the provision contained in the proposed clause 34 of the Bill enabling the Department, by regulations, to establish a Regional Remuneration Panel. The Council endorses the recommendation of the Councillor Remuneration Working Group (CRWG) that a single panel for the whole of Northern Ireland is the best option given that the decisions of a single panel will provide equitable treatment for all councillors in Northern Ireland. The Council also agrees that members of the panel should be appointed using the public appointments process. However, it is essential that a criterion for selection is that the individual must have appropriate expertise and knowledge of the roles and responsibilities of elected members and preferably be familiar with remuneration issues for councillors. ▪ In line with the Council's previous comments on Clause 30 in respect of joint committees, the Council would ask the Department to consider making specific provision in the draft Bill for an Allowance scheme for Joint Committees.
<p>Part 4 - Miscellaneous powers to make payments</p>		
<p>Clause 40</p>	<p><i>(1) A council may pay reasonable subscriptions, whether annually or otherwise, to the funds of</i></p> <p><i>(a) associations of councils or officers or members of councils formed for the purpose of consultation upon and discussion of matters relating to the common interests of councils or matters relating to local government;</i></p> <p><i>(b) voluntary bodies established for scientific, technical or professional purposes the objects of which are ancillary to any of the functions of the council.</i></p>	<ul style="list-style-type: none"> ▪ The Council would suggest that the provisions of this Clause be extended to cover professional bodies in circumstances where a council considers necessary or desirable that an officer should hold membership in connection with that officer's discharge of duties.
<p>Clause 43</p>	<p><i>Before making any regulations or Orders under this Act or issuing any guidance under this Act, the Department shall consult councils and –</i></p> <p><i>(a) such associations representative of councils;</i></p> <p><i>(b) such associations representative of officers of councils;</i></p> <p><i>(c) such other persons or bodies, as appear to the Department to be appropriate .</i></p>	<ul style="list-style-type: none"> ▪ In terms of Clause 43 the Council would seek assurances from the Department that "joint committees" are included within the definition described in the draft Bill.

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