



Belfast City Council

Report to:	Strategic Policy and Resources Committee
Date:	Friday, 20th November, 2009
Subject:	Northern Ireland Office Consultation on the Filling of Casual Vacancies on District Councils
Reporting Officer:	Mr. Liam Steele, Head of Committee and Members' Services (extension 6325)
Contact Officer:	Mrs. Julie Lilley, Members' Liaison Officer (extension 6321)

Purpose of Report

To submit for the consideration of the Committee a report regarding the consultation paper which has been issued by the Northern Ireland Office entitled 'Filling Casual Vacancies on District Councils'.

Summary of the Consultation Document

The consultation paper seeks to examine proposals for reforming the process used currently in Northern Ireland for the filling of casual vacancies arising on District Councils in light of the implementation of the Review of Public Administration in 2011 and the reduction in the number of Councils from 26 to 11. In addition, the paper also looks at the impact of the possible introduction of a Severance Scheme for Members in advance of the next Local Government elections and how co-options should be dealt with in this context.

Key Issues

Introduction

Casual vacancies arising in District Councils in Northern Ireland can be filled by means of co-option. In most circumstances, District Councils have generally acted within the spirit of the legislation and co-opted a replacement from the same Political Party as the vacating Member, thereby maintaining the Party balance on the Council. However, there have been recent occasions when failure to agree on co-option has led to by-elections, which have resulted in costs accruing to the ratepayer. Because proportional representation is the method used to count votes polled in Local Government in Northern Ireland, by-elections are likely to be won by a candidate from the strongest Party within an Electoral Area and not necessarily by the Party which had won the seat

in the original electoral contest.

These two issues – cost and maintaining political balance as determined by the electorate – will be even more important following the Review of Public Administration and the Northern Ireland Office has put forward a number of alternatives and options for change.

Other Methods for Filling Vacancies Identified in the Consultation Paper

Amend Requirement for Unanimous Agreement to Co-option

Although strictly speaking not an alternative to co-option, this method would involve relaxing the requirement for unanimous agreement to be achieved before a co-option can take place. Instead, a percentage threshold for agreement could be introduced to ensure that a relatively small number of dissenting Members could not prevent a co-option. However, it must be borne in mind that even with this change to the current procedures there would remain scope for a dominant Party to manipulate this rule to its advantage.

Party Nomination

In February 2009, changes were made to the method of filling vacancies arising in the Northern Ireland Assembly. The new method provides for the Nominating Officer of the Political Party to which the vacating Member belonged at the time of the original election to nominate a replacement to fill the vacant seat. Independent Members may provide the Chief Electoral Officer with a list of up to six substitutes who will be asked, in ranked order, to fill the seat in the event that it is a position held by an Independent Member which becomes vacant. Similar changes are also being progressed for the filling of vacant Northern Ireland seats in the European Parliament.

The Countback Method

In certain other jurisdictions the “countback” method of filling vacancies is used. This generally involves the re-examining of the ballots cast at the previous election, but under the assumption that the vacating Member was eliminated, in order to identify who the electorate’s next preferred candidate would have been. Alternatively, the vacating Member’s individual ballot papers can be re-examined, with the next preferred candidate invited to fill the vacant seat. This method is used currently in some Australian states and in the Maltese Parliament. Such a system would not be guaranteed to yield a reliable result since presumptions of voters intentions must be made which may not be accurate.

Options for Reform

A key objective for the filling of vacancies arising in District Councils is to ensure that the balance of representation secured at the time of the election is maintained. This allows Councils to continue to reflect the values and aspirations of the communities they serve. By-elections can potentially distort this balance and the aim is to minimise these as far as possible. The options below set out potential alternatives to by-elections:

- A.** retain the current co-option method
- B.** amend the current co-option method to introduce a percentage threshold of agreement from Members of a District Council before a co-option can take place
- C.** replace the current co-option method with a Party Nomination system
- D.** adopt the ‘Countback’ Method selecting the next preferred candidate.

It would appear that the most fair and equitable option of those listed above is Option C, the Party Nomination system. However, to ensure that electoral primacy is maintained it will be important to have clarity and rules as to how Party nominations are managed where a vacating Member has changed Political affiliation during the term of the Council. It would seem that the most obvious solution, should this situation arise, would be to ask the Nominating Officer of the Political Party to which the vacating Member belonged at the time he or she was elected to nominate a replacement, particularly since it is evident that voters in Northern Ireland tend to be swayed more by the Parties to which candidates belong rather than the individual views of the candidates themselves.

In order to ensure that Party nominations are managed and controlled effectively within each Council, it would be appropriate that nominations be sought from a Party representative within the affected Local Authority.

Short-term Legislative Reform

Severance Scheme for Members

The Department of the Environment undertook recently a consultation on proposed severance arrangements for Councillors. The Department indicated strongly that the introduction of a Severance Scheme for Members should be accompanied by a reform of the system for filling vacancies on District Councils partly because of the potential to have large numbers of Councillors choosing to retire on or before the reduction in the number of District Councils and the possibility of numerous resulting by-elections. The Northern Ireland Office is strongly of the opinion that, should a Severance Scheme be introduced in advance of the May 2011 Local Government Elections, special provision would be required to deal with vacancies arising from Members availing of the scheme.

Alternatives to By-Elections

The consultation paper presents two options in relation to how to deal with vacancies should a Severance Scheme for Members be introduced in the short term. These are:

1. allow the current co-option rules to apply but carry vacancies until the next election if any co-option fails; or
2. carry all vacancies until the next election.

Option 1 would avoid the need for costly by-elections and all the associated administration which needs to be put in place. In Belfast the existing co-option policy has worked well and has been accepted by all the Political Parties as the most efficient and democratic way to deal with vacancies arising.

Option 2 could result in some Councils having to operate for a period prior to 2011 with a severely reduced number of Members. However, the consultation paper suggests that a solution could be to introduce a provision to ensure that membership of a Council does not drop below two thirds in the period prior to the elections in 2011.

Given the level of support which has been shown by Parties in respect of the Council's co-option policy, of the two options suggested in the consultation paper, Option 1 would appear to offer the best process for the period up until May 2011. However, the timing of the introduction of the Severance Scheme will impact upon this. If the Severance Scheme were to be introduced so that it is available for a specified period of time, then a situation could arise where one Party on a Council could gain agreement to co-options for any of its Members who wished to resign and at a later stage object to co-options proposed by another Political Party, which would mean that the vacancies could not be filled and the second Party would have to operate with a reduced number

of representatives. Clearly this would be anti-democratic and, while it may not be likely to happen – certainly in Belfast City Council, where the voluntary co-option policy has been operated successfully and fairly by all the Parties for many years – nevertheless it would appear to represent an anomaly which would be best avoided. This could be achieved by introducing the Severance Scheme in such a way that applications would have to be received by a particular date so that all vacancies arising would occur on the same day. The Council would then have to decide whether it wished to approve all or none of the casual vacancies arising from the Severance Scheme.

On the other hand, on the basis that the Party Nomination system can be recognised and acknowledged as being the most appropriate option for dealing with casual vacancies within a Council following the Review of Public Administration, and as no justifiable reason is provided as to why this system could not be applied in the interim period, I would take the view that this should be the process adopted as the Council's preferred option for the period up until May 2011.

Recommendation

It is recommended that the Committee agrees to the comments outlined in this report being submitted to the Northern Ireland Office as the Council's formal response on the filling of casual vacancies on District Councils.

Decision Tracking

Officer responsible: Liam Steele, Head of Committee and Members' Services

Date action to be completed by: Following approval at Council on 1st December, the Council's response will be submitted to the Northern Ireland Office.