



Report to:	Strategic Policy and Resources (Transition) Committee
Subject:	Consultation on proposals for a Roads (Functions of District Councils) Bill
Date:	18 th June 2010
Reporting Officer:	Ciaran Quigley, Director of Legal Services
Contact Officer:	Kevin Heaney, RPA Project Coordinator (ext. 6202)

1.0	<u>RELEVANT BACKGROUND INFORMATION</u>
1.1	The Council received correspondence, dated 29 th April 2010, from the Chief Executive of Roads Service setting out proposals for the development of a Roads (Functions of District Councils) Bill. A copy of the consultation document, including the draft Bill, is attached at Annex 1. Comments on the draft Bill has been sought by 23 rd July 2010.
1.2	The Bill is intended to enable the Department to transfer the following local roads functions to councils:- <ul style="list-style-type: none"> ▪ authorising local road race events; ▪ the issue of authorisations to enable vehicles to enter pedestrian zones; ▪ off-street car parks; and ▪ on and off-street parking enforcement
2.0	<u>KEY ISSUES</u>
2.1	The following provides a brief overview of the provisions as set out within the Bill and the proposed transfer of additional responsibilities to local government.
	Clause 1: Parking Enforcement
2.2	Under Clause 1 and Schedule 1 of the Bill the Council will be given the power to carry out enforcement functions, presently exercised by the Department under the Traffic Management order 2005, in relation to parking and waiting contraventions. This will mean that councils will become responsible for on and off-street parking enforcement; traffic attendants and for the issuing and processing of Penalty Charge Notices.
2.3	It is intended that the Department would retain responsibility for type approval of prescribed parking and immobilisation devices; making regulations; to set the Penalty Charge Tariffs and the contraventions in respect of which a Penalty Charge is payable. Clarification is required as to who retains the income receipt from penalty charges and whether this will be used to off-set the costs incurred by councils for enforcement and necessary maintenance.
	Clause 2: Transfer to councils of certain functions in relation to parking places
2.4	Under Clause 2, the majority of off-street car parks provided by the Department, and the land on which they are situated, would transfer to district councils. The Department would retain and continue to operate those off-street car parks used for “park and ride” and “park and share” schemes.

	Clause 3: Functions of councils in relation to road races
2.5	The Bill will provide powers to district councils to authorise road races and to make the necessary road closure orders to facilitate them. The district council in whose area a race starts would be the council to make the necessary road closure order.
2.6	The Bill also provides for the future legislative responsibility for the Roads Races Order to transfer from DRD to DCAL which has policy responsibility for the central administration and promotion of sport in Northern Ireland.
2.7	Members should note that a separate Bill, the Roads (Miscellaneous Provisions) Bill, deals with a number of roads related issues including giving local councils the power to close roads for events. The Bill is currently at 2 nd committee consideration stage within the NI Executive. This means that there will be two separate pieces of legislation which will be dealing with the ability of councils to close roads for holding events.
	Clause 4: Pedestrian Zone Permits
2.8	The Bill will provide councils with the power to issue special authorisation permits allowing vehicles to enter pedestrian zones. The Department will retain the power to make extinguishment orders (i.e. designation of pedestrian zones).
	<i>BCC RESPONSE</i>
2.9	Clearly this is a very important piece of legislation which has the potential to impact upon the future role and functionality of the Council. It represents a positive step in enabling the transfer of additional functions to councils and in creating strong and responsive local government. The proposals will enhance local government service delivery and the ability of the Council to make a real and lasting difference at the local level and, therefore, should be welcomed.
2.10	However, there are issues of detail (e.g. public liability and insurance implications for the Council) which are still to be worked out when the associated regulations and potential transfer scheme are drafted. The Council will strongly advocate the need for intensive dialogue and engagement with the Department in relation to the development of the detail as to how the Bill will be implemented and the content of any associated subordinate legislation.
2.11	A draft Council response is attached at Appendix 2 for Members consideration. In summary, the key points raised in the response include: <ul style="list-style-type: none"> ▪ concerns about the separation of linked legislative provisions (i.e. pertaining to the closure of roads for events) across two Bills as this will lead to confusion ▪ consideration in relation to the potential public liability and insurance implications for councils resulting from the provisions set out within this Clause ▪ advocacy of the need for an appropriate maintenance budget to transfer to councils alongside the transfer of responsibility for off-street car parking ▪ seeking Council input into the designation of Park and Ride and on-street parking provisions which are comprised within the fabric of the roads otherwise maintained by the DRD ▪ any policy retention by the Department to set the level of charges/tariffs would need to have a caveat in relation to the necessity for the function to cover reasonable operational costs of delivery

	<ul style="list-style-type: none">▪ clarity is sought in relation to the ability of the Council to dispose of land used for parking places in addition to the specified powers to acquire land
	Members will note that a recent press release published by the BBC News (23-03-2010) reported that in 2009 the cost of enforcement to the Department was £8million while income from fines and car parking charges accounted to £4+million.

3.0 Resource Implications

The potential resource impact of the Bill is still to be quantified.

4.0 Recommendations

The Committee is asked to:

- i) note the forgoing report;
- ii) consider the draft Council response attached at Annex 2; and
- iii) agree that the draft response, subject to any amendments made by Members, be submitted to the DRD.

5.0 Appendices

Annex 1: Consultation on proposals for a Roads (Functions of District Councils) Bill

Annex 2: Draft Council response to Roads (Functions of District Councils) Bill

Belfast City Council



Our Ref: KH/RPA

Being dealt with by: Kevin Heaney

Ext: 6202

Date: 24th June 2010

Clare Carey
Department for Regional Development
Ports & Public Transport Division
Primary Legislation Unit
Room 6.04
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Dear Ms Carey,

BELFAST CITY COUNCIL RESPONSE TO CONULTATION PROPOSALS FOR A ROADS (FUNCTIONS OF DISTRICT COUNCILS) BILL

Please find enclosed a copy of the response submitted on behalf of Belfast City Council to the consultation proposals for a Roads (Functions of District Councils) Bill released by the Department for Regional Development.

The attached response was approved by the Council's Strategic Policy and Resources Committee at its meeting on 18th June 2010.

This decision is subject to ratification by full Council on 2 August 2010. I will advise you of any changes at that stage.

Yours sincerely

CIARAN QUIGLEY
Town Solicitor/Assistant Chief Executive

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**DRD CONCULTATION PROPOSALS FOR A
ROADS (FUNCTIONS OF DISTRICT COUNCILS) BILL
BELFAST CITY COUNCIL RESPONSE**

1.0 Introduction

- 1.1 Belfast City Council welcomes the opportunity to respond to the consultation on proposals for a Roads (Functions of District Councils) Bill. This is a timely and much needed piece of legislation, which represents a positive step in enabling the transfer of additional functions to councils and in creating strong and responsive local government.
- 1.2 The Council seeks, through this response, to further enhance the effectiveness of this legislation for the benefit of its local people. In responding to the consultation document, the Council has a number of general comments to make in addition to detailed comments on some of the individual clauses set out within the proposed Bill.

2.0 General Comments

Scope of Functions to transfer

- 2.1 The Council has previously advocated the need for the full transfer to local government of the responsibility for the maintenance and development of local roads and is, therefore, disappointed in the agreed scope of functions proposed to transfer.
- 2.2 The Council is strongly of the view that roads are much more than engineering solutions and would welcome greater local flexibility being built into the system, within overarching principles, which ensures equality obligations are adhered to. This would allow for the management of difference at the local level. Local roads have the potential to impact on issues such as community safety, community relations, air equality and health, environmental improvement, neighbourhood renewal and economic development and, therefore, their prioritisation, planning and maintenance must be made within this wider social context.
- 2.2 The delay in the local government reform programme and the associated transfer of functions to councils should be used as opportunity for the Minister and Department to reassess the functions proposed to transfer from central to local government. The Council would recommend that a more comprehensive and holistic approach is taken to the transfer of roads related functions (including the provision of cycling infrastructure), to councils.

Legislative Process

- 2.3 While the Council fully welcomes the Bill and the enhanced responsibilities it confers on councils, it is conscious that much of the detail around the outworking of this legislation will be set out within subordinate legislation. The Council would therefore advocate the need for the Department to consult with all interested parties (including councils) in the drafting phase of any subordinate legislation related to this Bill.
- 2.4 Due consideration will need to be given to the inter-relationship and operability between this Bill and other related legislation recently brought forward. The Council notes that certain powers being conferred to Councils in regards to the closure of roads for events, had been set out within the recent draft Roads (Miscellaneous Provisions) Bill and this should be referenced to provide clarity and certainty

- 2.5 The Council would suggest that it may be more appropriate to link some of the provisions set out within this draft Bill, particularly those pertaining to the ability of Councils to close roads for race events, as an amendment to the Roads (Miscellaneous Provisions) Bill.
- 2.6 The package of functions could make it more viable in terms of operational delivery and there would be greater certainty for client groups in relation to the organisational responsibilities. There could also be issues around the consistency in approaches to enforcement etc if the functions were fragmented across separate Bills.
- 2.7 It is important to note that the powers as set out within this Bill regarding the closure of roads for road race events brings with it potential significant public liability and associated assurance implications. Further information is required from the Department in terms of any associated public liability and insurance implications attached to the transferring functions.

Central Control and Oversight

- 2.8 There needs to be consistency in the degree of oversight exercised by the Department. The retention of final approval powers without guiding principles would leave de-facto control with the Department whilst shifting operational responsibility to the Councils. There needs to be greater clarity in terms of the necessary consultation arrangements and the actual responsibilities transferring. In many circumstances joint action will be necessary in relation to policy development and the implementation of the proposed provisions set out in the Bill. This approach, to be effective, needs to be based on partnership, with provision for arbitration, rather than retained control.
- 2.9 The issue of associated functions makes it difficult to be definitive at this uncertain stage of the RPA process. Outside of Belfast the desegregation of the functions on the current 26 Council model may prove to be impossible without some form of cooperation or shared service approach being agreed by the Councils as clusters.
- 2.10 Joint action across Councils and the Department will be required in relation to the development of policy for parking etc which has a significant impact on planning decisions and the shape of future developments.

Budget and Resources

- 2.11 In advance of any transfer of functions there needs to be a full due diligence assessment undertaken to ensure that the level of resources are adequate to enable the council to continue to deliver the functions effectively. This is particularly important within the context of the pending cuts in the Northern Ireland block grant.

3.0 Specific Comments

3.1 *Clause 1*

- The enforcement of parking and other restrictions is assumed to encompass potential resident parking areas. It would be useful if the Bill clarified the scope of the proposed powers and the relationship to other restrictions such as bus lanes.
- The Council notes that in a recent press release published by the BBC News (23-03-2010) it was reported that in 2009 the cost of enforcement to the Department was £8million while income from fines and car parking charges accounted to £4+million.
- Any retention by the Department of the powers to set the level of charges/tariffs and the offences would need to have a caveat in relation to the necessity for the function to cover reasonable operational costs of delivery.
- Further clarification and detail is required in terms of the Departments intentions regarding debt management and, in particular, debt recovery for outstanding debt at point of transfer.

3.2 **Clause 2**

- The proposed retention by the Department of Park and Ride or Park and Share sites should be reconsidered in so far as it relates to the current provision of such facilities within or adjacent to the town/ city centres. Park and Ride facilities within the urban centres should be integrated and managed as part of the parking portfolio to be transferred to councils. Whilst the retention of the control over facilities along the strategic highway network would be supported the management and operation of city / town centre facilities should take account of local considerations.
- As councils will become responsible for all aspects of the maintenance and operation of off-street car parks, an appropriate maintenance budget must transfer with this function.
- In relation to the on-street parking zones the proposed approach should encompass both the provision and removal of on-street spaces. As suggested above, the approach should reflect a partnership rather than the suggested Departmental control with the Council's options limited to a "request" for provision.
- For clarity the provision of the Bill should be clear in relation to the Council being able to dispose of land used for parking places in addition to the specified powers to acquire land.
- The Council would note that any transfer of land & property from one body to another is now subject to compulsory first registration at the Lands Registry. It is understood that a large proportion of the car park sites held by DRD are currently unregistered, and it is also understood that transfer of ownership from one legal entity to another will require compulsory first registration at Lands Registry. The process of registration is a very detailed, time intensive (and hence costly) process, particularly where there are complex title issues. The Council would request that all necessary land registrations are undertaken by the Department in advance of transfer, or the necessary subvention transferred to councils to enable them to undertake this activity.

3.3 **Clause 3**

- Consideration will need to be given to the inter-relationship and operability between the powers set out under this Clause (e.g. powers of Councils in regards to closure of roads for events) and those related provisions as set out in the recent Roads (Miscellaneous Provisions) Bill.
- It may be more appropriate to link the changes to the current legislative proposals, particularly those pertaining to the ability of Councils to close roads for race events, as an amendment rather than through the separate Bill.
- Consideration will need to be given to the potential public liability and assurance implications for councils resulting from the provisions set out within this Clause.
- The proposed transfer of responsibility for the Road Races Order to DCAL could add to the confusion arising from the functional changes proposed and would appear to provide little added value given the necessity for the DRD to be involved in the associated processes for the diversion and management of traffic on the wider network.

3.4 **Clause 4**

- The provision in relation to extinguishment orders should be clarified in relation to the ability of a council to request such a provision. The Council would contend that the ability to implement such an order would be an important element of land assembly for planning and/or regeneration purposes.
- The proposed transfer of responsibility for the Road Races Order to DCAL could add to the confusion arising from the functional changes proposed and would appear to provide

little added value given the necessity for the DRD to be involved in the associated processes for the diversion and management of traffic on the wider network.

Regulatory Impact Assessment

The consultation document states that *“the content of the Bill does not give rise to any associated costs or savings on business, charities, social economic enterprises or the voluntary sector. Consequently the Department has not conducted a regulatory impact assessment”*.

There was no reference to the potential impact upon the local government sector and, therefore, the Council would contend that a regulatory impact assessment may have been necessary and beneficial.