



Briefing 13/47 November 2013

The Local Government Bill (Northern Ireland), duty of continuous improvement and performance management.

To: Contacts in Northern Ireland

For information only: Contacts in England, Scotland and Wales

Key issues

Local Government Bill introduced to Assembly.

Details provided for main elements of the Bill including a duty of continuous improvement

APSE Performance Networks appropriate as a performance management model for new councils

1. Background

The Local Government Bill was introduced by Mark Durkan, Minister for the Environment on 23 September 2013. It provides the legislative framework within which the 11 new councils will operate. The Bill introduces new duties for the councils.

This Bill brings the re-organisation of the existing councils one step closer after a prolonged period of uncertainty about the future of local government. However there remains a lot of work to be done for both the Department and the council clusters.

The document can be found [here](#).

2. Key Issues

- 2.1 Governance Arrangements - The Bill will update governance arrangements by making provisions for:
- the sharing of positions of responsibility amongst political parties and independents using either the d'Hondt or Sainte-Lague formula or single transferable vote. Membership of committees will also reflect the political balance of the council through the use of a specified procedure. Membership of committees will also reflect the political balance of the council through the use of a specified procedure.
 - a system of checks and balances on council decision-making to provide protection to ensure the fair treatment of everyone represented by the council, including a call-in procedure and the use of qualified majority voting in specified circumstances.
 - new decision-making structures available to councils to provide for effective and efficient decision making, thus allowing for a range of decisions to be devolved to a council executive. Internal scrutiny arrangements will be introduced to provide a check and balance on the operation of devolved decision making committees
 - public access to meetings and information of councils to be enhanced and each council will be required to publish a constitution which will set out details of how it will operate.

2.2 Ethical Standards - The Bill will establish a new ethical standards regime for councillors (to be reviewed after 3 to 4 years) with a mandatory code of conduct with mechanisms for investigation and adjudication. The NI Commissioner for Complaints will be responsible for the investigation and adjudication process.

2.3 Performance Improvement (see section 3 below) - The Bill puts in place a new framework to help bring about improvement in the delivery of council services focusing on the strategic aspects of a council's operations that impact on ratepayers. The Department will be able to issue guidance to support councils in delivering performance improvement in the delivery of their services. Councils will be required to publish an Annual Improvement Plan to enhance its accountability to the local community. A power is being provided for Ministers individually to intervene in the operation of a council if it is shown that a council is failing to deliver its services or a specific service, as required, to meet appropriate standards.

2.4 Supervision Powers - The supervision powers (provided by sections 127-129 of the Local Government Act (Northern Ireland) 1972) contain powers enabling the DoE to supervise councils in the exercise of their functions. These are being extended to all departments.

2.5 Community Planning - Councils will be required to initiate, maintain, facilitate and participate in community planning for their districts. Specified statutory agencies will be required to participate in and support community planning whilst Departments will be required, as far as is practicable to promote and encourage it, and have regard to the implications of a community plan in the development of their policies and the exercise of their functions. Engagement with the community in the development of a community plan is made explicit in the legislation. A statutory link between the community plan and the preparation of the development plan is provided as the latter should provide the spatial dimension to its community plan.

2.6 A general power of competence - The introduction of a general power of competence significantly alters the determination requirements for a council to take action. Instead of having to find a statute that would allow the council to act, councils would be required to satisfy themselves that there was nothing to prevent them using the power. In broad terms, it would enable the council to act with similar freedom to an individual, unless there is a law to prevent it from doing so. Consequently it will provide a council with the ability to act in its own interest and to develop innovative approaches to addressing issues in its area.

2.7 Partnership Panel - The establishment of a Partnership Panel will formalise the relationship that currently exists between the NI departments and councils at a political level. It will consist of Ministers, in particular those whose departments have a significant policy relationship with local government and an elected representative from each of the new councils so providing a forum for the discussion of matters of mutual interest and concern.

2.8 Dual Mandate - The Bill provides that MLAs, MPs and MEPs will be prevented from being elected or being a councillor.

2.9 Controls on council expenditure in the period prior to re-organisation - The controls placed on existing councils in the run up to re-organisation, which were provided for by the Local Government (Miscellaneous Provisions) Act (NI) 2010, are being supplemented to reflect the new financial framework within which councils operate. Controls in respect of borrowings and reserves will be introduced.

2.10 Transfer of staff and assets - The re-organisation of the councils and the transfer of functions from the departments to councils will result in the transfer of staff, assets and liabilities to the new councils from existing councils, from other local government bodies to the new councils and from departments that are transferring functions to the new councils. The Bill makes provision for the development of schemes to effect these transfers. Those relating to staff will provide for the protection of contractual employment rights, terms and conditions of service and pensions, and will apply statutory protections, including those enshrined in the Transfer of Undertakings (Protection of Employment) regulations.

3. Arrangements for Performance Improvement

3.1 Part 12 of the Bill details the arrangements to be made for performance improvement in the new councils commencing with the general duty, as follows:

(1) A council must make arrangements to secure continuous improvement in the exercise of its functions.

(2) In discharging its duty under subsection (1), a council must have regard in particular to the need to improve the exercise of its functions in terms of

- (a) strategic effectiveness;
- (b) service quality;
- (c) service availability;
- (d) fairness;
- (e) sustainability;
- (f) efficiency; and
- (g) innovation.

3.2 It goes on to talk about establishing objectives for improvement and put in arrangements to secure those objectives. It states that the Department may by order specify factors or performance indicators by reference to which a council's performance in exercising functions can be measured and standards or performance standards to be met by councils. The Department must consult with relevant bodies before doing so.

3.3 The Bill notes that councils must make arrangements for the collection of information which will allow it to:

- assess whether it has met its improvement objectives during a financial year
- measure its performance during a financial year by reference to those performance indicators specified by the Department and self-imposed performance indicators applicable for that year;
- assess whether it has met during a financial year those performance standards set by the Department and self-imposed performance standards applicable for that year;

3.4 Section 94 states that each council must use the information it collects to compare its performance in exercising the functions to which the information relates with its performance in exercising those or similar functions during previous financial years and so far as is reasonably practicable, the performance of other councils in exercising those or similar functions during the financial year to which the information relates and during previous financial years. It must also use the information to assess whether it could improve its performance in exercising its functions and in the light of that assessment, decide what steps it will take to improve its performance in exercising its functions.

3.5 Improvement planning and publication of improvement information

The Bill goes on to say that each council must make arrangements for the publication of

- the council's assessment of its performance during a financial year, in meeting the improvement objectives it has set itself which are applicable to that year, by reference to performance indicators and standards,
- the council's assessment of its performance in exercising its functions during a financial year as compared with its performance in previous financial years and so far as is reasonably practicable, the performance during that and previous financial years of other councils,
- details of the information collected in respect of a financial year and
- what the council has done to discharge its duties in relation to that year.

Those arrangements must be framed so that the information is published before 31st October in the financial year following that to which the information relates or such other date as the Department may specify by order.

3.6 The council must make arrangements for the publication of a description of the council's plans for discharging its duties in a financial year together with, if the council thinks fit, its plans for subsequent years in an "improvement plan" and those arrangements must be framed so that the information is published as

soon as is reasonably practicable after the start of the financial year to which the plan must relate or as soon as is reasonably practicable after such other date as the Department may specify by order.

4. APSE Comment

The annual process of financial and budgetary planning and the production of service and business plans is a long established procedure within local government and corporate and service priorities naturally emerge when this process is an effective one.

The introduction via the Bill of community plans, their link to development plans (as part of the transfer of planning) and the establishment of an improvement framework, will help to formalise arrangements which are already in place in some local authorities but not in others. It will act as a prompt for all of the new councils within a framework which allows for different outcomes dependent upon local circumstances and priorities. APSE welcomes this approach to continuous improvement.

The DoE has collected and published a small set of performance indicators for a number of years but the Bill looks to completely overhaul these. In order for an improvement framework to be fully embraced by the new councils they must have an input into what is being collected to ensure it is appropriate for services and is used to improve them. It is vital that the officers and councillors who are responsible for delivering services are engaged in drawing up the relevant measures for both services and corporate functions and have an input into its ongoing development. There is no doubt that this kind of framework needs to be regularly reviewed to ensure it remains in line with a changing environment.

As part of the improvement process, the Bill refers to using information to compare council services over time and with other councils. There will always be learning opportunities between councils and the process of tracking and identifying levels of performance is vital to highlight those councils performing well or poorly and so prompt learning and engagement between them.

The new councils will be larger in scale and the range of population figures will be smaller than is the case under the 26 council model. As a result, comparison and benchmarking between them will be more appropriate within the region. However, there will also be a wider range of comparators from England, Scotland and Wales with similar population sizes to those in the new councils. Lessons can be learnt from similar organisations but councils can also learn from those who may be vastly different.

Clearly the collection of data is of little value unless the information is used and the Bill rightly incorporates the section on collection of information within the general duty of securing continuous improvement in the exercise of councils' functions. The data should feed into the financial and planning cycles mentioned above.

One of the reasons for the creation of Performance Networks, APSE's performance management and benchmarking service, was to address the need for relevant data as an input to the planning process.

APSE provides training to all Performance Networks members so they are familiar with the analysis and reports which are produced and know how to access further information from the database, either for new comparators, historic trend data or new measures. Case studies of best performing councils are published to ensure all remain aware of how the operational arrangements about how services are delivered and networking between different councils is actively encouraged. Meetings are held to enable the sharing of knowledge and expertise backed up with evidence from Performance Networks.

As such, APSE's Performance Networks model is an established service which meets all of the requirements of an improvement framework:-

- it was designed by service providers (rather than imposed from central government)
- it is dynamic with annual adjustments to performance measures and other elements of the model
- it includes definitions for measures, guidance and notes on how to complete the templates to help avoid differences in interpretation
- there is support available from peers in other local authorities and dedicated APSE staff
- the model is generic and so can be adapted to include new service areas for example a new template for cemeteries a crematoria was introduced last year

Performance Networks currently covers the following services

- Building cleaning
- Building maintenance
- Cemetery and Crematorium
- Civic, cultural and community venues
- Culture, leisure and sport
- Education catering
- Highways and winter maintenance
- Other (civic and commercial) catering
- Parks, open spaces and horticultural services
- Refuse collection
- Sports and leisure facility management
- Street cleansing
- Street lighting
- Transport operations and vehicle maintenance
- Welfare catering

The model can be adapted to accommodate new service areas - for example a cemeteries and crematoria template was added last year and we are looking at a protective services model. Other services and corporate functions can also be added.

Over recent years a number of government bodies have fed data in or taken reports as they understand the benefits of the model. These include the Welsh Audit Office, DFP, FFynon and Waste Data Flow.

Local government re-organisation is the ideal time to introduce a performance management framework as detailed in the Local Government Bill. The scale of the new councils and the new governance arrangements with scrutiny responsibilities for councillors mean having relevant, robust and detailed data to hand is essential.

One of the benefits which the Bill reflects and which the new councils will benefit from, is the fact that a lot of the elements within the Bill and the arrangements to be put in place have been tried and tested in England, Scotland and Wales as they have been through various cycles of re-organisation. Learning from them is an opportunity the new councils cannot afford to miss.

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