



Northern
Ireland
Office

CONSULTATION PAPER

Filling Casual
Vacancies on
District Councils

Contents

1. Background

1.1 Introduction

1.2 Co-option in Northern Ireland

1.3 Filling vacancies in other PR-STV systems

2. Options for Reform

2.1 Introduction

2.2 Retain the current co-option method

2.3 Relax need for unanimous agreement to co-option

2.4 Replacement by party nomination

2.5 The next preferred candidate

2.6 Analysis and recommended approach

3. Short-term Legislative Reform

3.1 Severance arrangements for local councillors

3.2 Option a) – Retaining co-option

3.3 Option b) – Carrying all vacancies

4. Equality and Regulatory Considerations

5. Responding to the Consultation

6. Responses: Confidentiality and Disclaimer

CHAPTER 1 - Background

1.1 Introduction

1.1.1 This consultation paper examines proposals for reforming the co-option method currently used in Northern Ireland for filling casual vacancies arising in district councils. The deadline for responses to this consultation is 15 January 2010. Further details on responding to the consultation are set out in Chapter 5. This consultation document is available on the NIO website: www.nio.gov.uk under 'Public Consultation'.

1.2 Co-option in Northern Ireland

1.2.1 Local elections in Northern Ireland are held using the single transferable vote form of proportional representation (PR-STV). This ensures that district councils reflect, as far as possible, the make-up of the communities they represent. By-elections are generally undesirable in PR-STV electoral systems because they are likely to be won by a candidate from the strongest party within an electoral area, even if the contested seat had previously been filled by a representative from another party. This can distort the careful balance that would have existed after the previous election.

1.2.2 For this reason, casual vacancies arising in district councils in Northern Ireland are filled using the co-option method in the first instance. Broadly speaking, the co-option method involves all council members agreeing to a proposed replacement. A by-election is held if all members do not agree¹.

1.2.3. There is no requirement in legislation for proposed replacements to be members of the party to which the vacating councillor belonged. Nevertheless, in most circumstances, district councils have acted within the spirit of the legislation and co-opted a replacement from the same party that the vacating councillor belonged to in order to preserve the party balance that would have previously existed on the council.

¹ This process is set out in detail in section 11 of the Electoral Law Act (Northern Ireland) 1962

1.2.4 Although the co-option method has broadly succeeded in maintaining party balance on district councils, there have been recent examples where a failure to co-opt has resulted in by-elections. Furthermore, following the reduction of councils from 26 to 11 as a result of the Review of Public Administration, individual district councils will have considerably more members after the next local election. It may be more difficult to secure the unanimous consent of all council members in the new councils, which may again increase the likelihood of by-elections.

1.3 Filling vacancies in other PR-STV systems

Northern Ireland Assembly

1.3.1 In February 2009, changes were made to the method of filling vacancies arising in the Northern Ireland Assembly². The new method provides for the nominating officer of the political party that the vacating member belonged to at the time they were elected 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 the member vacates.³ Similar changes are also being progressed for filling vacant Northern Ireland seats in the European Parliament.⁴

Local Authorities in Ireland

1.3.2 A co-option system is used to fill casual vacancies arising in local authorities in Ireland⁵. However, this co-option process differs substantially from the NI method in that any proposed replacement must first be nominated by the same registered political party to whom the vacating member belonged. A council meeting is then held to confirm the nomination and formally co-opt the new member. Independent members are co-opted according to procedures set out in the local authority's standing orders.

² By virtue of section 6 of the Northern Ireland Assembly (Elections) (Amendment) Order 2009

³ This is similar to the method that existed before the 2009 changes

⁴ Section 26 of the Political Parties and Elections Act 2009 amends section 5 of the European Parliamentary Elections Act 2002 to permit the Secretary of State to make regulations to allow for replacement by nomination. These regulations will be laid before Parliament shortly.

⁵ Section 19 of the Local Government Act, 2001

The Countback Method

1.3.3 In other PR-STV systems the “countback” method of filling vacancies is used. This generally involves re-examining 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.⁶

⁶ Countback is used in state legislatures in Australia and in the Maltese Parliament.

CHAPTER 2 - Options for Reform

2.1 Introduction

2.1.1 A key policy objective for filling vacancies arising in PR-STV systems is to ensure that the careful balance of representation secured at the time of the election is maintained. This provides for councils to continue to reflect, as far as possible, the values and aspirations of the communities they serve. By-elections can potentially distort this careful balance and should be minimised as far as possible. The options below set out potential alternatives to by-elections.

2.2 Retain the current co-option method

2.2.1 The current system provides for by-elections to be avoided by allowing councils to co-opt a new member in the event that a seat becomes vacant. The law does not require a replacement to belong to the same party as the vacating member. However councils will generally co-opt a member from the same party and, in doing so, maintain the party balance that existed at the time of the election.

2.2.2 However, an important feature of the current co-option method is that any co-option must be agreed unanimously by council members and a failure to co-opt will result in a by-election. There are concerns that this threshold is too high and leaves room for individual members to object and cause by-elections despite the vast majority of council members agreeing to the co-option. The reduction in the number of local councils from 26 to 11 will result in larger councils of between 40 and 60 members, which may make securing unanimity to co-option even more difficult.

2.2.3 We believe that the current co-option system has functioned reasonably well and has resulted in by-elections being avoided through co-operation and agreement within councils. However, there remains a risk of individual members preventing a co-option against the wishes of the vast majority of council members and forcing a by-election and

securing unanimous agreement may prove even more difficult in the new larger councils.

2.3 Relax need for unanimous agreement to co-option

2.3.1 Relaxing the requirement of unanimous agreement to co-option could ensure that co-options would not be prevented in circumstances when most or all other members are in agreement but a very small minority of members object. A percentage threshold for agreement could be introduced to ensure that a co-option can be agreed if a significant majority of council members agree.

2.3.2 Although implementing this option would mean that a small minority of members could not prevent a co-option against the wishes of the vast majority of council members, we would need to consider fully any potential adverse consequences, particularly in councils where the vast majority of members represent a particular party or section of the community. For example, if the threshold was set at requiring the agreement of 80% of council members, this would mean that, on a 40 member council, the objections of seven councillors would not prevent a co-option. Furthermore, if a section of the community or party's representation on a particular council was less than 20%, it may theoretically be possible for members representing the dominant section of the community or party to forcibly co-opt a replacement from their party or section of the community, even though the vacating member was from the smaller party or minority section of the community. Independent members may also be subject to co-options being forced upon them despite having firm objections to this.

2.3.3 We would be wary of introducing a percentage-based system without appropriate safeguards to protect smaller parties and minority sections of communities.

2.4 Replacement by party nomination

2.4.1 A further option would be to dispense with co-option entirely and instead adopt a system for filling vacancies in local government that would be

similar to the current system of filling vacancies in the Northern Ireland Assembly. This would mean that the nominating officer of the political party to which the vacating member belonged to at the time she or he was elected could nominate a replacement. Independent members would provide a list of substitutes which would be used to fill a vacancy caused by the independent member leaving office.

2.4.2 This option would ensure that the party balance existing at the time of election would be retained in the event of a casual vacancy. Voters of smaller parties in particular would be reassured that, if elected, their party would retain their seat(s) in the council for the full term and would not face the prospect of losing the seat in the event that a council could not agree to a co-option.

2.4.3 To ensure certainty, it would be important for any legislation to identify the person or officer who would actually make the nomination. We would welcome views on whether the nominating officer of the relevant party would be best placed to make any nomination or whether it would be more appropriate for a party member at local level to make the nomination. In either case, nominees would still be required to satisfy the qualification requirements for district councillors.⁷

2.4.4 We believe that this option would fulfil the key aim of maintaining party balance within a council in the event that a member vacates. It would also provide protection to smaller parties and independents and ensure that their views could continue to be represented if they vacate their seat(s).

2.5 The next preferred candidate

2.5.1 In the event that a member vacates his or her seat, provision could be made to re-examine the ballot papers from the last election in order to select the electorate's "next preferred candidate" as a replacement. For example, a

⁷ Including the requirements set out in section 3(1) of the Local Government Act 1972 relating to the councillors attachment to the district council area.

complete recount could take place on the assumption that the vacating member had been eliminated, with his or her votes being transferred in the normal way. The next candidate to meet the quota, who had not already been elected previously, would then be elected to fill the seat. Alternatively, when publishing the results of an election, the Returning Officer could announce not just those returned, but also those who have not been returned in rank order; they might then be approached in order of preference to fill any vacant seats arising during term.

2.5.2 There would be obvious resource implications in storing and recounting ballot papers. Perhaps more importantly, this option would not result in the maintenance of the party balance that would have existed at the time of the election. In Northern Ireland, any “countback” would be in respect of the District Electoral Area (DEA) from which the vacating member was originally returned. If a DEA had only one representative from a particular section of the community, and that member vacated, there is no guarantee that the “next preferred candidate” would also come from that section of the community and that section of the community might then have no representation on the council.

2.5.3 We do not believe that this option would successfully maintain party and community balance on councils in the event that a member vacates.

2.6 Analysis and recommended approach

2.6.1 Of all the proposed options, we believe that only *replacement by party nomination* (as set out in 2.4 above) can guarantee that the party balance on councils, as selected by voters at the time of the election, can be maintained throughout the term, even if a member vacates. Party balance may potentially be maintained through co-option, however this will require unanimous or majority agreement amongst parties, which may not always be forthcoming. A relaxation of the unanimity requirement may equally result in a system that unduly favours representatives of the dominant section of a community in a particular council area. There is also no guarantee of achieving party balance

under the *next preferred candidate* option (e.g via countback) and this could result in certain sections of the community within a DEA no longer being represented on a council.

CHAPTER 3 - Short-term legislative reform

3.1 Severance arrangements for local councillors

3.1.1 The Department of the Environment (NI) recently undertook a consultation on proposed severance arrangements for local councillors⁸. Final decisions have yet to be taken by DoE(NI) on the timing of the introduction of the scheme or the numbers of councillors who may be eligible. However, the consultation paper indicated DoE(NI)'s preference for the introduction of any severance arrangements to be accompanied by reform of the system of filling vacancies in district councils because of the potentially large numbers of councillors who may retire and the possibility of numerous resulting by-elections.

3.1.2 The proposals discussed in Chapter 2 are designed to fill *occasional* vacancies arising in district councils. In the event that DoE(NI) introduces a severance scheme well in advance of a May 2011 election, it is possible that a large number of seats could become vacant. We believe that special provision is needed for such a situation.

3.1.3 The local elections that were due to take place in Northern Ireland in May were postponed until May 2011 to take account of the time needed to re-draw local boundaries following the Review of Public Administration⁹. Electoral law generally provides for any vacancies arising shortly before an election to be carried and for those vacancies to be filled at the next election¹⁰. Due to the close proximity between the potential date of the introduction of a severance scheme and a May 2011 election, we believe that it would be appropriate to make provision for by-elections to be avoided in the

⁸ 'Severance arrangements for district councillors' DoE(NI) Consultation Document, April 2009

⁹ The Postponement of Local Elections (Northern Ireland) Order 2009 provides for the election to be take place in 2011 on a date set by Order, which we expect will be in May 2011.

¹⁰ Section 11(4) of the Electoral Law Act (Northern Ireland) 1962 provides for vacancies arising from 1 January in an election year to be carried until the election. In England & Wales the period is set at six months prior to the election date (s.89(3) of the Local Government Act 1972).

intervening period. We seek views on how best to achieve this; and particularly in relation to the following options:

3.2. a) Allow the current co-option rules to apply but carry vacancies until the next election if any co-option fails

3.2.1 This option would allow councils to be given the opportunity to utilise the existing co-option rules to co-opt replacements for those councillors who retire as part of any severance scheme. If the co-option fails, the vacancy would simply be carried until the next local election in 2011.

3.2.2 This would avoid costly by-elections shortly before the next election and could provide for council membership to remain at a high level over this period. However, as noted above, the current co-option rules are designed to deal with occasional vacancies and there may be concerns that co-option should not be used to fill a large number of vacancies shortly before an election, particularly when there will be a reduction of 120 seats after the election. Any co-option(s) would however need to be supported by all remaining members of the council present at any co-option meeting.

3.3 b) Carry all vacancies until the next election

3.3.1 This option would simply extend the current period in which vacancies could be carried in the period before an election to ensure that any vacancies arising from the introduction of a severance scheme would be covered. These vacancies would then be filled at the next in election in May 2011.

3.3.2 We are not yet aware of how many councillors will be eligible for the severance scheme and so have no indication at this stage of how many vacancies may arise. The possibility therefore remains of membership being substantially reduced on certain councils if we were to implement this option.

3.3.3 In situations where vacancies are carried during the period shortly before an election, there is usually provision to ensure that membership of the council does not drop below two thirds during this period. If we proceeded to

implement this option, we would aim to make similar provision in respect of carrying vacancies in advance of a May 2011 election. We would also take forward discussions with DoE(NI) on whether the timing of the severance scheme or the manner of its introduction may be adapted to minimise the number of vacancies that would need to be carried to ensure that they do not exceed one third of members of a council. In the unlikely event that more than one third of members of a council resign during the period, the current rules on filling vacancies could be used to allow members to be co-opted or elected to fill seats back up to the two thirds level.

3.3.4 If DoE(NI) introduced a severance scheme in advance of a May 2011 election, the NIO would make special provision to avoid by-elections in the intervening period. We seek views on what such provision might entail, but in particular whether:

- a) the current co-option rules should be retained over this period with vacancies carried until the next election if there is a failure to co-opt; or**
- b) all vacancies arising from the introduction of the severance scheme should be carried and filled at the May 2011 election**

CHAPTER 4

Equality and Regulatory Considerations

4.1 Equality Screening

4.1.1 Under section 75 of the Northern Ireland Act 1998, public authorities are required to have due regard to the need to promote equality of opportunity between:

- People of different religious belief, political opinion, racial group, marital status or sexual orientation;
- Men and women generally;
- People with disabilities and those without;
- People with dependants and those without.

4.1.2 In addition to this obligation public authorities are required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. These obligations are designed to ensure that equality and good relations considerations are carefully considered as part of the policy development process and that consultation can take place with those on whom the policy will impact most.

4.1.3 The NIO has concluded that the proposals put forward in this paper do not require a full equality impact assessment. The proposals suggested would not result in adverse implications to section 75 groups and altering the proposals would not result in better community relations or equality of opportunity.

4.2 Regulatory screening

4.2.1 The issues considered as part of this consultation consider ways in which the current system of filling vacancies on district councils could be amended and would not result in any costs to business or voluntary sectors.

CHAPTER 5

Responding to this consultation

- 5.1 This consultation will run for 12 weeks and responses are therefore requested by **15 January 2010**. Comments on the proposals should be sent by post to:

Head of Elections Unit
Northern Ireland Office
1st Floor
11 Millbank
LONDON
SW1P 4PN

Email responses should be sent to: electionsunit@nio.x.gsi.gov.uk and faxed responses to 02072100248. Please call 02072106569 for queries in relation to this consultation. The NIO textphone number is 02890527668.

- 5.2 This consultation document is available on the NIO website: www.nio.gov.uk under Public Consultation. Printed copies of this consultation document may also be obtained free of charge from the above address. You may make additional copies of this document without seeking permission. This document can also be made available on request in different formats, for individuals with particular needs.
- 5.3 If you are responding on behalf of a group or organisation please make this clear. The NIO is committed to publishing a list of those organisations that comment on these proposals and to making available, to anyone who asks for it, a copy of the comments and our response to them. **If you do not wish your comments to be published in this way, you must make this clear in any response you submit.**

- 5.4 If you have any concerns or complaints about the consultation process you should contact the NIO's consultation co-ordinator, Donna Knowles on 02890 527015, or e-mail Donna.Knowles@nio.x.gsi.gov.uk or by post:

Donna Knowles
Central Management Unit
Northern Ireland Office
Stormont House Annexe
Stormont Estate
Belfast
BT4 3SH

CHAPTER 6

Responses: Confidentiality and Disclaimer

- 6.1 The information you send us may be passed to colleagues within the Northern Ireland Office, the Government or related agencies. **Individual responses may also be published on the internet at www.nio.gov.uk, unless a respondent has requested otherwise.** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily: the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations (2004).
- 6.2 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice, with which public authorities must comply, and which deals, amongst other things, with obligations regarding confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.
- 6.3 Please ensure that your response is marked clearly if you wish your response to be kept anonymous. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Confidential responses, included in any statistical summary of numbers of comments received and views expressed, will be anonymised. The Department will process your personal data strictly in accordance with the Data Protection Act. In most circumstances this will mean that your personal data will not be disclosed to third parties.