



Northern
Ireland
Office

**GOVERNMENT RESPONSE
TO CONSULTATION**

Filling Casual
Vacancies on
District Councils

February 2010

FILLING CASUAL VACANCIES ON DISTRICT COUNCILS

A. Introduction

1. The NIO published a consultation paper on *Filling Casual Vacancies on District Councils* in October 2009. Currently, the “co-option” method is used to fill vacancies, which requires council members to unanimously agree to a proposed replacement¹. If one or more members oppose the proposal, a by-election must be held to fill the vacancy. The paper explored a number of ways in which the current co-option method of filling casual vacancies on district councils could be reformed and recommended replacement by party nomination or substitution.

2. Responses to the consultation were received from a number of political parties, district councils and other organisations. A list of respondents is included at Annex A. All respondents agreed with the Government’s recommended option of replacement by party nomination and substitution. This response paper describes in more detail the views expressed as part of the consultation and sets out the Government’s proposed way forward.

3 This document is available on the NIO website: www.nio.gov.uk under *Public Consultation*. Printed copies of this response may also be obtained free of charge from:

Elections Unit
Northern Ireland Office
11 Millbank
London SW1P 4PN
Email: ElectionsUnit@nio.x.gsi.gov.uk

4. You may make additional copies of this response without seeking permission. This document can also be made available on request in different formats, for individuals with particular needs. Please call 0207 210 6569 for

¹ Section 11 of the Electoral Law Act (Northern Ireland) 1962

any queries in relation to this response. The NIO textphone number is 02890 527668.

5. If you have any concerns or complaints about the consultation process you should contact the NIO's consultation co-ordinator, Brendan Giffen, on 02890 528138, by e-mail: Brendan.Giffen@nio.x.gsi.gov.uk or by post:

Brendan Giffen
Central Management Unit
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
Belfast
BT4 3SG

6. The consultation has assisted the NIO greatly in formulating its policy on the reform of the way in which council vacancies are filled in Northern Ireland. We are grateful to all those who provided a response.

B. Assessment of options

7. The consultation paper put forward a number of options for reform of the way in which vacancies on local councils are filled. A summary of these options and respondents' views on them are set out below.

(i) Retain the current co-option method

8. This option envisaged maintaining the current co-option method of filling vacancies. Most respondents agreed that, whilst the current system of co-option can generally be seen to have served its purpose, it could become increasingly difficult to secure unanimous agreement to proposed replacements once the move from 26 to 11 councils takes place.

9. Most respondents also agreed that there was increased potential for by-elections under the current system and that this could eventually lead to party balance on councils being distorted. There was also concern that there was currently no guidance as to how replacement members should be co-opted where the vacating member was elected as an independent or was the only representative of their party in that area.

10. Overall, the consultation demonstrated no support at all for retaining the current co-option method of filling vacancies.

(ii) Relax need for unanimous agreement to co-option

11. This option envisaged maintaining the current co-option method, but removing the need for unanimous agreement by councillors to a proposed replacement. Most respondents who addressed this issue commented that relaxing the requirement for unanimous agreement to a co-option was likely to benefit the dominant party in a council to the detriment of smaller parties and independent members. It was noted that any attempt to set a percentage target for agreement to a co-option² would have a different impact on different councils depending on their size and party balance and could lead to by-

² For example, providing for co-option to proceed if supported by 80% of council members

elections or co-options being forced against the wishes of parties or members representing minority communities within a council area.

12. Overall, the consultation demonstrated no support at all for allowing co-option with the support of a majority of councillors.

Replacement by party nomination

13. This option envisaged a system where vacant seats would be filled by nomination of the nominating officer of the party on whose behalf the vacating councillor stood when elected. Those elected as independent councillors could submit a list of possible substitutes to replace them in the event that they vacate their seats.

14. All respondents believed that this option would provide the best way forward. Respondents believed that this would ensure: the retention of the party balance in existence at the time of the election; the avoidance of costly by-elections; and consistency with the procedure used to fill vacant seats in the Northern Ireland Assembly.

15. Although respondents were broadly supportive of this option, several put forward additional views on how the process might operate in practice. One respondent believed that unanimous or majority support by councillors should be sought before a substitute proposed by an independent member could be returned. Another believed that by-elections should be held automatically in the event that a councillor was disqualified.

16. The consultation paper sought views on whether proponents of this option would prefer the nominating officer of the party³ to make any formal nomination or whether this should be delegated to officials at local level. Only one respondent believed that it should be delegated to officials at local level,

³ As defined in Part 2 of the Political Parties, Elections and Referendums Act 2000

with the remaining respondents who commented on this issue in support of the party nominating officer nominating replacements⁴.

17. Overall, there was unanimous support for replacement by party nomination or substitution.

The next preferred candidate

18. This option envisaged votes at the time of the previous election being re-examined to discover who would be the “next preferred candidate” from those that were not elected. No responses were received in support of this option. The two key reasons for this lack of support were: that such a system could not guarantee the retention of the party balance in existence at the time of the election; and the potential cost in storing and recounting ballots.

19. Overall, there was no support for the “next preferred candidate” option.

C. Other issues raised

(i) Multiple Mandates

20. Several respondents mentioned the effect that change in the current system of filling vacancies might have in assisting political representatives in Northern Ireland to cease holding multiple mandates. It was noted that recent events had demonstrated that the current system of co-option by unanimous consent was leading to increased by-elections. This in turn may make MPs and MLAs who are also councillors more reluctant to give up their council seat. A number of political parties in particular made clear that replacement by party nomination would encourage those holding multiple mandates to give up their council seats, safe in the knowledge that the seat would not fall into the hands of another party by virtue of an objection to a co-option and a subsequent by-election.

⁴ One respondent suggested that the nominations should be sought at local level although made formally by the party nominating officer.

(ii) Short-term legislative reform

21. The consultation paper discussed the potential introduction of a severance scheme for district councillors in Northern Ireland. The introduction of such a scheme would be the responsibility of the Department of the Environment (NI) (DoE(NI)) and final decisions have yet to be taken on the timing of its introduction or the numbers of councillors that may be eligible.

22. Due to the potentially large number of councillors that may be eligible for any scheme, the consultation paper proposed carrying any vacancies that arose well in advance of the May 2011 elections and/or allowing the existing co-option method to apply until then. Some respondents agreed with this approach.

23. However, a substantial majority of respondents that addressed this issue believed that replacement by party nomination or substitution would be preferable for filling such vacancies. In particular, these respondents were concerned that carrying vacancies would increase the workload for existing councillors and that replacement by party nomination or substitution would allow future councillors to gain valuable experience and assist the smooth running of the severance scheme overall.

(iii) Equality considerations

24. Two respondents questioned the NIO's decision not to proceed to a full equality impact assessment in respect of the proposals contained in the consultation. These respondents believed that the proposals did not take into account the potential impact on women or other section 75 groups and that the consultation more generally did not seek to promote greater equality of opportunity. These submissions noted in particular that the recommended approach did not contain a requirement for an outgoing female councillor to be replaced by another female councillor and argued that any new method of filling vacancies should reflect gender balance as well as party balance.

25. The key aim of the consultation is to provide for a method of filling casual vacancies that will, as far as possible, maintain the party

balance existing on district councils at the time of election. The method proposed in the consultation will not have an adverse impact on any of the section 75 groups and may potentially benefit smaller parties and independents by ensuring that seats vacated by such members are filled by their nominees and not by the majority party in a district electoral area (which would likely be the case if there was a by-election).

26. We recognise that there are concerns in relation to the diversity of public representatives in Northern Ireland, including district councillors. However, we do not believe that such concerns can or should be addressed through amending the system of filling casual vacancies on district councils. Current equality and electoral legislation does not oblige parties to select candidates on the basis of gender or ethnic background and it would seem inconsistent to only place such an obligation on parties when seeking to fill casual vacancies. We appreciate that there is a wider debate on whether Government should bring forward legislation to compel political parties to select candidates on the basis of gender or ethnic background; however we believe such debate goes well beyond the scope of this consultation exercise.

D. Proposed Reform

27. The consultation demonstrated overwhelming support for the proposal to allow vacancies to be filled by party nomination or substitution. There was also clear support for amending the system as soon as possible to make it easier for councillors holding other elected offices to give up their council seats and to address any vacancies arising from the introduction of a severance scheme by DoE(NI) over the coming months. The NIO will therefore take forward legislative reform as soon as possible to implement the new system for filling vacancies.

28. The key features of the new scheme will be as follows:

- The Clerk of the Council will inform the Chief Electoral Officer as soon as practicable that a vacancy has arisen and the name of the vacating member;

- The Chief Electoral Officer will determine whether the vacating member stood in the name of a registered party or parties when elected or whether the member stood as an independent;⁵
- If the member stood in the name of a registered party, the Chief Electoral Officer will ask the nominating officer of that party to nominate a replacement to fill the vacancy;
- If the member stood on behalf of more than one party when elected, the Chief Electoral Officer will require a joint nomination from the nominating officers of those parties before the vacancy can be filled;
- If the member was elected as an independent, that member may submit a list of substitutes to the Chief Electoral Officer, which the Chief Electoral Officer will use to fill that member's seat in the event that he or she vacates it; and
- If the nomination or substitution processes fail, the seat will be filled by by-election.

29. As with the procedure for filling vacancies in the Northern Ireland Assembly, the key aim is to maintain the will of the electorate at the time of the election. This means that if a member stood in the name of one party at the time of the election, it will be that party's nominating officer who will be able to nominate a replacement even if the member has since changed parties or become independent. Similarly, if a member stood as an independent, they will need to provide a list of substitutes to avoid a by-election, even if they have subsequently joined a political party.

E. Summary

⁵ There are different methods by which the Chief Electoral Officer will make this determination. If the vacancy arises after the next local elections, he will make the determination by reference to the statement of persons nominated. However, there is currently no requirement for Deputy Returning Officers to retain these statements and those from 2005 may not be available. Therefore, for any vacancies arising between legislation being brought into force and the next election, the Chief Electoral Officer will refer to the statement of persons nominated or make any other enquiries necessary to make the determination. Although unlikely, it may be possible for a member vacating before the next election to have been co-opted onto the council. In these circumstances, the Chief Electoral Officer will determine the status of such a member in line with written notification provided by that member.

30. The NIO is grateful to all groups and individuals that responded to this consultation and will bring forward legislation to provide for the proposed changes outlined above as soon as possible.

ANNEX A – LIST OF RESPONDENTS TO THE CONSULTATION

1. Alliance Party of Northern Ireland
2. Antrim Borough Council
3. Ballymoney Borough Council
4. Banbridge District Council
5. Belfast City Council
6. Chief Electoral Officer for Northern Ireland
7. Committee on the Administration of Justice (CAJ)
8. Dawn Purvis MLA, Leader of the Progressive Unionist Party (PUP)
9. Dungannon and South Tyrone Borough Council
10. Democratic Unionist Party (DUP)
11. Edwin Poots MLA, Minister of the Environment
12. Electoral Commission
13. Larne Borough Council
14. Lisburn City Council
15. Northern Ireland Local Government Association (NILGA)
16. Omagh District Council
17. Social Democratic Labour Party (SDLP)
18. Sinn Féin
19. Women's Support Network (WSN)
20. Ulster Unionist Party (UUP)