

NILGA Correspondence re: Fresh Start Agreement and Changes to the Government Consultation System

(Response from Fermanagh and Omagh District Council)

Fermanagh and Omagh District Council (Council) welcomes the opportunity to respond to NILGA regarding the Fresh Start Agreement and Changes to the Government Consultation System.

Brief Background for Fermanagh and Omagh District Council

The District Council area is home to 114,992 people, approximately 52,500 jobs and 7,175 businesses. The District Council area is Northern Ireland's largest region in terms of land mass - approximately 3,000km², or 20% of NI - and the smallest in terms of population. As a result, the population density of approximately 41 people per km² is the sparsest in Northern Ireland. This is a key feature of the district but presents challenges in terms of accessibility and service delivery.

Introduction

The Council, in late 2015, was notified of the publication of the Fresh Start Agreement.

The final document contained updates on a number of key areas, including consultation time periods.

The Fresh Start Agreement indicated, within Paragraph 65, that:

'The maximum consultation requirement on policy will be reduced from twelve weeks to eight.'

This was then followed by a letter from the Permanent Secretary, for the then Department for the Environment (in April 2016), detailing Paragraph 65 and how it will impact on Public Authorities following the 2016 Assembly Elections.

Impact (upon Fermanagh and Omagh District Council)

The initial roll-out of the 'Fresh Start Agreement', following the 2016 Northern Ireland Assembly Elections, has significantly impacted upon the Council and its decision-making processes.

The timeframes for public consultations have been widely discussed in recent years, not only in Northern Ireland but across the UK and there are various pieces of research which outline the various findings and working examples.

Timescales

The fact that the maximum consultation period has been reduced from 12 weeks to 8 weeks, has had a considerable impact upon the Council and its procedures. When responding to various consultations, Council Officers will often make contact with local groups or individuals within the community, who may be impacted by the proposals before drafting a response for Council approval. Depending on the date published, as well as the duration of the consultation, this may not be possible in the future, which would result in a substantial reduction in the level of engagement informing the consultation process.

Additionally, because of the governance structures in place within the Council i.e. the Council and Committee meeting schedule, the new timescales may not allow for some consultations to be ratified in the normal fashion. Instead, Officers must gain Elected Member approval by requesting Council Powers to be delegated to a particular Committee. Not only will this place additional pressures on Council Officers to ensure the development of a robust, reflective and informed response, it may also add to the pressures and time constraints of Council Committee Meetings.

Impact of Change in Guidelines on External Organisations

Not only have the new consultation guidelines impacted upon the Council, but they may also have a huge impact upon external bodies, organisations or other stakeholders if they are providing a consultation response to the Council, or indeed any other public authority (i.e. one of the Government Departments).

These external organisations will often have their own internal management or decision-making process, and may have to obtain authorisation from their own individual board or committee before submission.

Often, these committee/board meetings may only occur monthly or bi-monthly which leaves the organisation also struggling to meet their own internal approval mechanisms.

Fresh Start Agreement - Wording

The Council believes that the wording contained within paragraph 65 of the Fresh Start Agreement is unclear. The wording at present is:

‘The maximum consultation requirement on policy will be reduced from twelve weeks to eight’.

This wording allows Government Departments the ability to consult for a duration of their choosing, up to eight weeks. The Council believes that this wording allows some organisations, and Government Departments, the opportunity to consult for less than eight weeks – adding to the pressures felt by Council in drafting consultation responses.

Some examples of these 'shorter' consultations can be found on page 4 of this response document.

Procedures for Responding to Consultations (Fermanagh and Omagh District Council only)

Since April 2015, when Fermanagh and Omagh District Council was formed, the Council has put in place a reporting procedure for external consultations (i.e. those from Government Departments, agencies or other organisations). This reporting procedure has taken the form of monthly reports to the Council's Policy and Resources Committee, entitled Forthcoming Consultations.

This monthly report included recommendations (from Council Officers) on consultations which it is felt that the Council should make a response on, i.e. it may impact on the wider community, it may impact on the services provided by the Council or it contains proposals which conflict with the policy direction of the Council.

The report also contained information on external consultations where there is doubt as to whether the consultation met the above-mentioned criteria. These consultations are included to obtain guidance from the Elected Members on whether they would like a response drafted to these consultations.

This process worked well for consultations revolving around a 12-week consultation period.

With the Fresh Start Agreement, and the changes to the Government consultation system, the Council has had to change the way in which Officers obtain guidance from Elected Members with regard to Consultation Responses.

The change, as agreed at Policy and Resources Committee on 12 October, means that an email is sent to all Elected Members setting out the details of any consultation where further guidance is required as to whether Members feel that a draft consultation response should be brought to Committee for approval.

The reduced timescales created a number of difficulties in allowing the Council to meet its official (approval and ratification) governance processes. These difficulties included:

- Times of the year when Council meetings are in recess, i.e. August (annually) – there are no Council meetings during the month of August, therefore there are potentially five-six weeks during the summer when it is impossible for the Council to draft consultation responses with Elected Member permission/approval.
- There have been a number of occasions where the consultation period has not been the full eight weeks. Some of these public consultation periods have been as little as three weeks, which would also leave it impossible for the Council to draft a consultation response, with Elected Member

permission/approval. Some examples of these 'shortened' public consultation processes include:

- Department for Infrastructure consultations on various Amendment Orders (e.g. 'The Cycle Routes (Amendment No. 2) Order (Northern Ireland) 2016).
- Transport NI commissioned consultation regarding 'A4 Enniskillen Southern Bypass Environmental Impact Assessment Scoping Consultation'.

Other Pressures

The Council has also experienced difficulties for consultations that require 'joint responses' i.e. those from various interest groups (Building Control Officers, Environmental Health, Community and Voluntary Organisations, etc). This additional input, also places pressure on the Council's reporting procedures.

On occasions, consultations that have been responded to by Groups (i.e. Council Officer Groups) have only been submitted in draft format, pending full approval by the Council. Not only does this increase the administration workload upon the Council, but also upon the Department/Organisation consulting – as it may result in the receipt of a slightly amended final draft to that already received.

There have also been occasions, due to the shortened timeframes, where various Cross-Council Groups (e.g.. Building Control, Environmental Health,) have submitted a response to a consultation without the relevant Council Officer having the opportunity to inform Elected Members. The Officer will then retrospectively inform Elected Members that a response has been made, providing copies of the submitted response.

'Early Input' to Policy Development

The Council welcomes the opportunity to provide Government Departments with feedback and other input, at an early stage in the policy development process. Although, this has been quite evident for consultation processes such as the Programme for Government it is not the case for all.

The Draft Programme for Government Framework, invited Council Officers to provide input at various consultation events/workshops being organised by individual Government Departments such as the Department for Communities, the Department for Infrastructure and the Department for the Economy.

However, this experience does not seem to have been replicated across all Government Departments, Agencies or other Organisations. The fact that some Departments/Organisations are consulting for a period of time less than eight weeks in duration, with minimal engagement beforehand (if any) is a matter of concern.

Furthermore, some of the invitations to the Government Department organised workshops (as part of the consultation on the Programme for Government Framework), did not demonstrate good communication (if any) between the Departments. For example, invitations were received for a 'Department for Infrastructure Stakeholder Workshop' and the Department for the Economy 'Programme for Government Workshop' on Friday, 1 July 2016. Both events were subsequently taking place on the same day (Tuesday, 5 July 2016), at approximately the same time but in different venues in Belfast. There needs to be a more joined-up approach to the way in which Government Departments manage public consultation periods.

The fact that the current Programme for Government (PfG) Public Consultation (October – December 2016) has just been launched (Friday, 28 October 2016), with all responses being expected to be collated and returned by Friday, 23 December 2016 is another example of the increased timescales facing Councils. For Fermanagh and Omagh District Council to meet its internal approval mechanisms, Officers must first seek approval for Council Powers to be delegated to December's Policy and Resources Committee. Officers must then have the final Consultation Response drafted for Thursday, 8 December 2016. Essentially this will become a six-week consultation period for Council Officers rather than the intended eight-week period. This is a very tight turn-around for such a large scale consultation. If there had been some sort of pre-consultation with the current PfG process, this may have allowed for some feedback and perhaps removing some of the time pressures felt by Public Sector organisations.

Conclusion

The Council feels that Fresh Start Agreement, and the subsequent changes to the Government consultations system, could provide a positive and practical step in how various Departments and other public authorities consult, not only with each other but indeed with the general public. However, for this to be the case, there needs to be a more 'joined-up' approach and collective buy-in.

The fact that advice on timescales differs from the Northern Ireland Executive (up to a maximum of eight weeks) and the Equality Commission for Northern Ireland (recommending a consultation period lasting for a minimum of twelve weeks) is confusing.

The Council also believes that NILGA should provide feedback to the Northern Ireland Executive outlining the various guidelines (or key criteria) to ensure that consultation is both beneficial, timely and inclusive to all. There are numerous guidelines, or key criteria, for consultation processes, for example:

- Consultation Principles (Equality Commission for Northern Ireland) available online at: <http://www.equalityni.org/Employers-Service-Providers/Public-Authorities/Section75/Section-75/PublicConsultation/Consultation-principles>

- Consultation Principles (UK Government) available online at:
<https://www.gov.uk/government/publications/consultation-principles-guidance>

There is a need for all public authorities to engage more effectively with the public. Therefore, there is also the need to make it as easy as possible for responses to be made, at the earliest possible stage in the policy-forming process. With this in mind, it is also vital that public authorities begin to utilise pre-consultation engagement, allowing engagement/feedback to have an effective impact on a policy or decision.