



Response to Department of the Environment consultation on the Draft Northern Ireland Local Government Code of Conduct for Councillors

April 2014

1. The Commission welcomes the opportunity to respond to the Department's draft Northern Ireland Local Government Code of Conduct for Councillors. Establishing a Code is an important step in the final stages of the reform of local government. We also welcomed the opportunity to meet with the Department over recent months to discuss relevant issues as it has sought to develop the Code.
2. We have consistently stated our support for the introduction of a mandatory Code of Conduct for councillors. We consider that such a Code is of critical importance in setting and ensuring clear principles, standards and responsibilities for elected representatives in undertaking both current work and those new functions to be transferred in completion of the reform of local government. We endorse the Department's decision to ensure that the principles enshrined in the Code include and extend beyond the Nolan principles to embrace the additional concepts of equality and good relations.
3. We previously set out our recommendations as regards the proposed wording of the principles relating to equality and good relations and other matters in the Code of Conduct in a letter to the Department on 17 August 2012 and in a submission in January 2014 on the pre-consultation draft of the Code.

4. We welcome the steps taken by the Department to develop and refine the Code, including the the steps taken to clarify and avoid ambiguity in relation to the requirements placed on councillors in respect of equality. We set out below some further recommendations and comments on how the draft Code can be further strengthened in this area and also take account of the work being undertaken to define and develop understanding of good relations.

Section 1 - Guidance (p14)

5. We welcome the specific signposting of guidance available for councillors in meeting the requirements of the Code. We **recommend** that the reference to the Commission's guidance (paragraph 1.6) be expanded, in line with the other entries at that point, to read:

- *the Equality Commission for Northern Ireland, **including on duties to promote equality of opportunity and good relations.***

Section 2 - Requirements to comply with the code (p15)

6. We welcome that the Department has included (at para 2.6) a clause from the Assembly Code that makes clear that councillors are entitled to express in a legal manner, any political opinion that they hold.

"You are entitled to legally express any political opinion that you hold. In doing so, however, you should have regard to the Principles of Conduct and should not express opinions in a manner that is manifestly in conflict with the Principles of Conduct."

Section 3 – Principles of Conduct

Equality (p19)

7. We welcome the inclusion in the draft principles of conduct (part 3) of the equality principle from the Northern Ireland Assembly Code.

The current wording “by treating” however implies that one promotes equality / does not discriminate simply by treating with respect. We thus **recommend** that, to avoid ambiguity, the wording should be amended, for example:

*You should promote equality of opportunity and not discriminate against any person, **treating** people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependents.*

Good relations (p19)

8. The Commission welcomes that, further to discussion, the Draft Local Government Code has moved on from that set out in Assembly Code of Conduct. The Commission had expressed its view that ‘promoting good relations’ is not primarily concerned with ‘acting justly’ or ‘promoting a culture of respect for the law’ as set out in the Assembly code.
9. We recognise that neither ‘good relations’ nor ‘promoting good relations’ is defined in legislation. The Department is aware that the Commission had, in our 2007 guidance for public authorities on promoting good relations, set out a working definition of good relations in order to provide further clarity to public authorities:

“the growth of relationships and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms.”¹

10. We note that that the Department has, further to our earlier engagement, taken account of the Commission’s 2007 working definition of good relations in setting out the good relations principle in the draft Local Government Code.

¹ Promoting Good Relations: a Guide for Public Authorities, ECNI, 2007 (page 13)
http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/Good_Relations-Public_Authorities_Guide.pdf?ext=.pdf

11. The Department is however also aware that the Commission, as with others, are considering an updated definition of good relations in the context of the publication of Together: Building a United Community² in 2013.
12. Section 149 (Public Sector Equality duty)³ of the Equality Act 2010 in Great Britain has also advance considerations of Good Relations, by setting out that

“Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.”
13. While we and others continue to give consideration to a formal definition, the Commission considers that the Department should take account of these developments in drafting the good relations principle within its Code of Conduct

Section 4 – Rules of General Conduct

Behaviour of councillors (p21)

14. We **support** the Department’s inclusion in the draft Code of a reminder to councillors of their responsibilities under equality legislation (paragraphs 4.9 and 4.10). We welcome that the Department has taken on board the Commission’s recommendations in wording of these paragraphs in line with the content of Section 75 of the Northern Ireland Act 1998.

² OFMDFM (2103), Together: Building a United Community’ Strategy, <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf>

³ Equality Act 2010, <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

Section 8 – Decision Making

15. We recommend that the section on decision making in the draft Code refers directly to statutory responsibilities, that is, that it should make reference to the statutory equality duties to ensure that Councillors are aware of their role in paying due regard (or regard). This requires a number of actions by the decision maker at the time of making the decision. There are a number of established principles in case law which are used, should decision making be challenged.
16. The proper application of the processes and commitments in an equality scheme should enable councillors to fulfil their responsibilities when they have to make the decision.

Training

17. In addition to the above comments on the draft Code, the Department will be aware that we have continually recommended that, in order to ensure visible commitment to the principles of equality of opportunity and good relations by leaders across local government, training on equality and good relations is placed on a **mandatory** footing for all elected representatives.

Application of the Department's statutory equality duties

18. We note that the Department screened the Code of Conduct in June 2009. This screening exercise looked at the concept of introducing an ethical standards framework for councillors. We note it found no equality implications associated with introducing of an ethical standards framework and the policy was screened out.
19. We note that while the consultation document identifies changes and further issues now considered, there is no reference to the application of the statutory equality duties or scheme commitments to this consultation.
20. The Department will need to satisfy itself that it has discharged its responsibilities in relation to the statutory equality duties. Given

there will be decisions taken on proposals set out in the consultation, the Commission advises that the Department will need to pay an appropriate regard to the need to promote equality of opportunity and the desirability of promoting good relations when taking those decisions. We therefore recommend that the Department screens the proposals in the consultation.

21. The Department should also take into account the following points:

- For any equality assessment, the Department should ensure appropriate data/evidence is gathered. The Commission recommends consideration of data from the current review of the Assembly Code of Conduct⁴, given its previous implementation and impacts noted in terms of equality of opportunity and good relations.
- The Department ensures that the screening considers adverse impacts but also seeks opportunities within the Code to promote equality of opportunity and good relations. The Commission's previous policy advice, and that contained in this response, will contribute to identifying and addressing any opportunities.
- Ensure appropriate monitoring mechanisms are in place and noted in the screening form, as appropriate, to ensure that the implementation of any such code is monitored for Section 75 impacts

22. We welcome ongoing engagement with the Department on local government reform, and on the Code of Conduct. Liz Law (tel 9050 0573) can be contacted to discuss the detail of this response. Christine Stoll, Equality Officer (tel 9050 0692) can be contacted for advice on equality screening.

Equality Commission
April 2014

⁴ Committee for Standards and Privileges – Review of Members' Code of Conduct, 2014 – <http://www.niassembly.gov.uk/Your-MLAs/Code-of-Conduct/Committee-on-Standards-and-Privileges--Review-of-the-Assemblies-Code-of-Conduct/>