

Research and Library Services



Northern Ireland Assembly

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# **THE PUBLIC AUTHORITIES (REFORM) BILL 2008**

**Research and Library Services**

This Research Paper provides information in relation to the Public Authorities (Reform) Bill 2008 and traces the origins of the Bill to the Review of Public Administration. It also highlights changes that have occurred between the provisions contained in the proposed Public Authorities Reform (Northern Ireland) Order 2007, which went out to consultation under direct rule and the current Public Authorities (Reform) Bill 2008.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

## SUMMARY OF KEY POINTS

The Review of Public Administration was launched by the Northern Ireland Executive in June 2002. The final outcome of the review was announced by the Secretary of State in two parts; in November 2005 final decisions on the future of local government, Education and Health and Social Service structures and in March 2006 decisions on the remaining public bodies. The March 2006 announcement contained a proposal to reduce the number of public bodies through abolition or transfer of functions.

Draft primary legislation, Public Authority Reform (Northern Ireland) Order 2007 ('the Draft Order'), contained provisions to reduce the number of public bodies by six. Notably, it also contained provisions designed to change how appointments to public bodies are made by removing the statutory rights of a number of organisations, referred to as 'nominating bodies', to have their interests represented on the board of a particular public body. The Draft Order proposed to *'remove statutory representation obligations and obligations to consult in relation to appointments to a number of public bodies'*.

The Public Authorities (Reform) Bill 2008 ('the Bill') has two significant differences from the Draft Order. Firstly, provision to abolish the Northern Ireland Housing Council has been withdrawn in the Bill and secondly provisions relating to changes to the existing arrangements for making public appointments have also been withdrawn.

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## 1.0 INTRODUCTION

This Research Bill Paper provides information relating to the Public Authorities (Reform) Bill 2008 ('the Bill'). The Bill seeks to abolish or make changes to a number of public bodies and its origins lie in the decisions made as part of the Review of Public Administration (RPA) in 2006<sup>1</sup> under direct rule.

Section 2 of the paper provides background to the decisions, from their origins through to a Draft Order in Council 2007 ('the Draft Order') which sought to implement the final decisions on the RPA<sup>2</sup>.

Section 3 considers the provisions that were contained in the Draft Order.

Section 4 outlines the proposed legislation contained in the Bill and compares this with the provisions that were proposed in the Draft Order.

## 2.0 BACKGROUND

The RPA in Northern Ireland was launched by the Northern Ireland Executive in June 2002 but, due to suspension of the devolved Assembly in October 2002, it was taken forward by direct rule Ministers. Extensive research was carried out before an initial public consultation in 2003<sup>3</sup> when 170 written responses<sup>4</sup> showed broad support for a more streamlined and locally based system of public administration. A further consultation was undertaken in 2005<sup>5</sup> resulting in 1032 responses from organisations in the public, private, voluntary and community sector and from private individuals.

The Secretary of State announced final decisions following the RPA in two parts. Decisions on the future of education, health and social structures were announced in November 2005 followed in March 2006<sup>6</sup> by recommendations that included a reduction in the overall number of Executive Agencies<sup>7</sup> and Non-Departmental Public Bodies (NDPBs)<sup>8</sup>.

The RPA considered all public bodies that were '*significant in terms of their role, influence, expenditure or staffing without regard to their precise status as a Non-Departmental Public Body, Company Limited by Guarantee, or any of the other legal forms they can take.*' Other than Local Government, Health and Education Bodies, there were 79 significant public bodies (listed in Annex A). This list includes 18 Executive Agencies within government departments.

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<sup>1</sup> Better Government for Northern Ireland: Final Decisions of the Review of Public Administration (March 2006) [http://www.rpani.gov.uk/bettergovernment\\_doc-final\\_decisions.pdf](http://www.rpani.gov.uk/bettergovernment_doc-final_decisions.pdf)

<sup>2</sup> Consultation on 'The Public Authorities Reform (Northern Ireland) Order' 2007. [http://www.ofmdfmi.gov.uk/consultation\\_on\\_draft\\_primary\\_legislation.pdf](http://www.ofmdfmi.gov.uk/consultation_on_draft_primary_legislation.pdf)

<sup>3</sup> The Review of Public Administration in Northern Ireland (2003) available at: [http://www.rpani.gov.uk/consult2003\\_doc.pdf](http://www.rpani.gov.uk/consult2003_doc.pdf)

<sup>4</sup> An analysis of the written responses is available at: <http://www.rpani.gov.uk/index/rpa-reviewresearch-decisions/consultation>

<sup>5</sup> 'The Review of Public Administration in Northern Ireland: Further Consultation' (March 2005) available at: [http://www.rpani.gov.uk/2005\\_consultation\\_doc.pdf](http://www.rpani.gov.uk/2005_consultation_doc.pdf)

<sup>6</sup> 'Better Government for Northern Ireland: Final Decisions of the Review of Public Administration' (March 2006).

<sup>7</sup> Executive Agencies are part of government departments, but set up separately to deliver services directly e.g. Social Security Agency and Driver Vehicle Licensing Authority.

<sup>8</sup> Non-Departmental Public Bodies, often referred to as Quangos (quasi-autonomous non-governmental organisations), operate at arms length from government and are run by boards who are appointed through the public appointments process.

These were not included in the 2005 consultation as there were no strong opinions expressed about Executive Agencies in the 2003 consultation. For the purposes of the review, 61 public bodies were considered and divided into three groups:

- Executive Public Bodies – wholly, or almost wholly dependent on public funding, run by a board and employing staff. There are 34 in Northern Ireland consisting of Executive Non-Departmental Public Bodies (NDPBs), Companies Limited by Guarantee and some other bodies.
- Advisory Public Bodies – do not spend any public money and employ few if any staff. There are 16 in Northern Ireland and they usually have a board. Their role is to provide advice to Ministers and departments.
- Tribunals – there are 11 tribunals in Northern Ireland and they perform a judicial role<sup>9</sup>.

Annex A of this Bill Paper provides a list of these public bodies and the impact of proposals identified in the RPA further consultation in March 2005.

The first RPA consultation<sup>10</sup> between October 2003 and the end of February 2004 provided an overview of the administration of Northern Ireland with four models for future governance as a basis for discussion. A key theme that emerged from this initial consultation was a broad consensus on the need for fewer public bodies with more collaboration and less fragmentation<sup>11</sup>.

The document launching further consultation on the RPA in March 2005<sup>12</sup> stated that there were 79 significant public bodies and 18 Executive Agencies<sup>13</sup> delivering public services in Northern Ireland. Based on the previous consultation in 2003, the 2005 consultation document stated:

*There were strong views voiced about the remaining public bodies, also referred to collectively as Quangos. Two options are proposed. The first is that, in the context of strong local government, there should be no public bodies – all functions deemed necessary should be transferred to either central or local government.*

*An alternative approach, which is recommended, is that all public bodies should be reviewed with a view to transferring some functions to central or local government, achieving a reduction in the number of bodies through mergers and transfers out of the public sector, and improving accountability arrangements of those that remain.*

*There was an absence of strong views about the future of Executive Agencies, and it is proposed that decisions on their future should best be left to the returning Executive and the Assembly<sup>14</sup>.*

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<sup>9</sup> 'The Review of Public Administration in Northern Ireland: Further Consultation' (March 2005) (pp 95/96)

<sup>10</sup> The Review of Public Administration in Northern Ireland (2003).

<sup>11</sup> Review of Public Administration Implementation 2003 Analysis of responses to Consultation October 2003 – February 2004 available at:

<http://www.rpani.gov.uk/index/rpa-reviewresearch-decisions/consultation>

<sup>12</sup> The Review of Public Administration in Northern Ireland: Further Consultation (March 2005).

<sup>13</sup> Executive Agencies are part of government departments, but are set up separately to deliver services directly, for example the Social Security Agency and Driver Vehicle Testing Agency.

<sup>14</sup> The Review of Public Administration in Northern Ireland: Further Consultation (March 2005) (p7).

The 1032 responses to the 2005 RPA further consultation showed that a reduction in the number of public bodies and an enhancement of their accountability was supported across all sectors.

The final outcome of the review was announced by the Secretary of State in two parts: in November 2005 he announced final decisions on the future of local government, Education and Health and Social Service structures; in March 2006 he announced decisions on the remaining public bodies.

In relation to the November 2005 announcements, work is being taken forward in the following ways:

#### Health and Social Services

In February 2008 the Health Minister Michael McGimpsey launched a full public consultation on his proposals to reform health and social care in Northern Ireland. 'The Health and Social Care (Reform) Bill' is currently at Assembly Committee stage and Health and Social Care Reforms are on schedule for April 2009<sup>15</sup>.

#### Local Government

At the 5 July 2007 Executive Committee meeting, proposals for a review of the decisions of the RPA as they relate to local government were agreed, together with proposals for governance of the review, its timeline and key milestones. In a Ministerial statement to the Assembly in March 2008 it was announced that a reform package had been agreed by the Executive for 11 new councils<sup>16</sup>.

#### Education

In July 2007, the Education Minister, Caitríona Ruane, received the support of the Executive to establish an Education and Skills Authority (ESA) by April 2009 at the latest. In addition, the Education Minister is considering the arguments relating to the transfer of youth services to local councils.

The final decisions on the RPA announced in March 2006<sup>17</sup> addressed bodies outside of Health, Social Services, Local Government and Education. The decisions included a reduction in the overall number of public bodies and changes to the existing arrangements for making appointments to the boards of public bodies. In relation to NDPBs<sup>18</sup> or Quangos it stated that:

*In order to streamline public administration, clarify accountability, and ensure public services are easily accessible and customer-focused the number of these bodies will go from 81 to 53. This will be achieved, in the main, by merging bodies or transferring complete functions to local government or central government. Many of the remaining bodies will have reduced responsibilities through some of their functions transferring to local government. All of the bodies that remain will be required to work with councils in the community planning process<sup>19</sup>.*

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<sup>15</sup> Review of Public Administration Implementation website at: <http://www.rpani.gov.uk/>

<sup>16</sup> Official Report for 31 March 2008 available on NI Assembly website at: <http://www.niassembly.gov.uk/record/reports2007/080331.htm#2>

<sup>17</sup> 'Better Government for Northern Ireland: Final Decisions of the Review of Public Administration' (March 2006).

<sup>18</sup> Non-Departmental Public Bodies for example the Equality Commission.

<sup>19</sup> 'Better Government for Northern Ireland: Final Decisions of the Review of Public Administration' (March 2006) (pp 14/15).

In addition to the transfer of functions, the following three public bodies were to be abolished: Enterprise Ulster; Agricultural Wages Board; and the Northern Ireland Housing Council. Annex 1 identifies the impact of the decisions announced in March 2006 on those public bodies originally identified in the 2005 consultation document.

Since the decisions were announced in March 2006, there have been significant developments in relation to a number of public bodies, including:

Establishment on 1st April 2007 of Land & Property Services as an Executive Agency within the Department of Finance and Personnel for Northern Ireland. The Agency has been established initially from the merger of the former Rate Collection Agency and the Valuation and Lands Agency. This was followed by the addition of Land Registers of Northern Ireland and Ordnance Survey of Northern Ireland from 1 April 2008<sup>20</sup>.

The Public Record Office Northern Ireland, previously an Executive Agency, now operates as part of the Department of Culture, Arts and Leisure.

The Driver and Vehicle Agency (DVA), as part of the Review of Public Administration, brings together the Driver and Vehicle Licensing Northern Ireland (DVLNI) and the Driver & Vehicle and Testing Agency (DVTA). This means that a single organisation will now be responsible for licensing and testing vehicles and drivers in Northern Ireland.

Creation of the Agri-Food & Biosciences Institute (AFBI) on 1st April 2006 as an amalgamation of the Department of Agriculture and Rural Development (DARD) Science Service and the Agricultural Research Institute of Northern Ireland (ARINI)<sup>21</sup>.

The process of reducing numbers and transferring powers from public bodies developed further with the launch by the Office of the First Minister and Deputy First Minister (OFMDFM) in January 2007, of a consultation exercise on a *Proposal for a Draft Order in Council: The Public Authorities Reform (Northern Ireland) Order 2007* ('the Draft Order')<sup>22</sup>. The closing date for responses to the Draft Order was 20 April 2007<sup>23</sup>.

The Draft Order was intended to provide legislation to implement a small number of the final decisions by Peter Hain, then Secretary of State, as part of the RPA and included:

- Abolition of the Northern Ireland Housing Council;
- Abolition of the Disability Living Allowance Advisory Board for Northern Ireland;
- Transfer of functions of the Fisheries Conservancy board to the Department of Culture, Arts and Leisure;
- Consequential primary legislation repeals in respect of Enterprise Ulster and the Pig Production Development Committee to remove primary legislation in respect of these bodies that is now redundant;
- Dissolution of the Laganside Corporation which had already been effected as it had achieved its statutory obligation;
- Removal of statutory representation obligations and obligations to consult in relation to appointments to a number of public bodies; and

<sup>20</sup> <http://www.lpsni.gov.uk/splash.htm/>

<sup>21</sup> <http://www.afbini.gov.uk/index/about-us.htm>

<sup>22</sup> Consultation on Draft Primary Legislation: Proposal for a Draft Order in Council: The Public Authorities Reform (Northern Ireland) Order 2007 available at: [http://www.ofmdfmi.gov.uk/consultation\\_on\\_draft\\_primary\\_legislation.pdf](http://www.ofmdfmi.gov.uk/consultation_on_draft_primary_legislation.pdf)

<sup>23</sup> Consultation responses on proposal for a Draft Public Authorities Reform (Northern Ireland) Order 2007 are available at: <http://www.ofmdfmi.gov.uk/index/making-government-work/legislation.htm>

- Regulation making powers for the Department for Employment and Learning (DEL) to address the future appointment needs of the Industrial Court and the removal of a statutory obligation to consult in relation to making appointments to the Court and having to provide a Court case manager.

Information relating to the provisions of the Draft Order and the responses to consultation on the proposed legislation are provided in section 3 below. The current Bill is a further development of the proposals contained in the Draft Order.

### **3.0 THE PUBLIC AUTHORITIES (REFORM) BILL 2008**

The Bill contains 8 clauses and 3 schedules and is designed to reduce the number of public bodies through both abolition and transfer of functions.

Clause 1 provides for the abolition of the Fisheries Conservancy Board for Northern Ireland and the transfer of its powers to the Department of Culture, Arts and Leisure (DCAL). Schedule 2.3.-(3) applies the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) to the transfer of the functions of the Fisheries Conservancy Board to DCAL.

The Northern Ireland Public Service Alliance (NIPSA) in its response to the consultation on the draft Order and in talks with the RPA Central Joint Forum argued that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) must apply in any transfer of functions to the Department for Culture, Arts and Leisure<sup>24</sup>.

#### **3.1 TRANSFER OF FUNCTIONS OF THE FISHERIES CONSERVANCY BOARD**

The Fisheries Conservancy Board is responsible for the conservation and protection of the salmon and inland fisheries of Northern Ireland other than those which are the responsibility of the Foyle, Carlingford and Irish Lights Commission. On 5 November 2007 the Assembly approved a motion that legislation to abolish the Fisheries Conservancy Board and transfer its responsibility to the Department of Culture, Arts and Leisure should be brought forward as a matter of urgency<sup>25</sup>.

The response from the Fisheries Conservancy Board to the 2005 Consultation<sup>26</sup> in relation to the absorption of their functions into the Department said that in the view of the Board it would:

*....inevitably result in the loss or diminution of stakeholder involvement ...*

*The Board would also have reservations about the compatibility of conservation functions with DCAL's wider remit. ....The Board would [sic] is of the view that fisheries functions absorbed into the Department would be likely to struggle to achieve priority among the competing priorities of the Department.*

*The Board acknowledges that there are a number of potential advantages of absorption such as proximity to Ministerial influence, streamlining of decision-making and regulatory process and the integration of functions within a wider*

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<sup>24</sup> The Transfer of Undertakings (Protection of Employment) Regulations 2006. Explanation available on CIPD website at: <http://www.cipd.co.uk/subjects/emplaw/tupe/tupe.htm>

<sup>25</sup> 'The Public Authorities (Reform) Bill Explanatory and Financial Memorandum' available on NI Assembly website at: [http://www.niassembly.gov.uk/legislation/primary/2007/niabill19\\_07efm.htm](http://www.niassembly.gov.uk/legislation/primary/2007/niabill19_07efm.htm)

<sup>26</sup> RPA 2005 consultation responses: [http://www.rpani.gov.uk/index/rpa-reviewresearch/decisions/consultation/consultation\\_2005/2005\\_consultation\\_responses.htm](http://www.rpani.gov.uk/index/rpa-reviewresearch/decisions/consultation/consultation_2005/2005_consultation_responses.htm)



*government network. However the Board considers that these would be achieved by effecting changes to the functions of the FCB and how it interfaces with the Department without losing the advantages of continued NDPB status<sup>27</sup>.*

### **3.2 ABOLITION OF THE DISABILITY LIVING ALLOWANCE ADVISORY BOARD FOR NORTHERN IRELAND**

Clause 2 of the Bill provides for the abolition of the Disability Living Allowance Advisory Board for Northern Ireland.

The role of the Disability Living Allowance Board (DLAAB) is to advise the Department for Social Development on such matters in relation to Disability Living Allowance and Attendance Allowance as it refers to the DLAAB. This includes advice to the Department's medical officers on specific cases or questions. The Department would continue to have access to independent expert advice in relation to these two important benefits, as legislation will be brought forward to extend the remit of the DLAAB in GB to include provision of advice to the Department for Social Development.

This would provide a single source of advice to both the Secretary of State for Work and Pensions in GB and to the Department for Social Development (DSD) in Northern Ireland and bring provision of advice on these allowances into line with the other two statutory bodies in the social security field. It was not anticipated by DSD that there would be any material difference in the quality or timeliness of advice<sup>28</sup>.

In response to the consultation document on the Draft Order<sup>29</sup> and the proposal to abolish the Board, the DLAAB did not oppose the abolition, but suggested that:

*The ideal arrangement would be to have a seamless transition of functions from DLAAB (NI) to the expanded role of the GB Board. It is accordingly requested that the transfer of functions be considered as part of the process. This would ensure that the Department for Social Development will have a minimum break of continuity of advice from the DLAAB<sup>30</sup>.*

### **3.3 REPEAL OF PRIMARY LEGISLATION**

Clauses 3 – 5 provide for the repeal of primary legislation in relation to the dissolution of public bodies, namely the Northern Ireland Pig Production Development Committee, Enterprise Ulster and the Laganside Corporation.

Separate subordinate legislation has already been used to wind up the Northern Ireland Pig Production Development Committee and for the dissolution of Enterprise Ulster and the Laganside Corporation.

Clause 6 provides for repeals as set out in schedule 3, clause 7 commencement of the Act and clause 8 the short title which may be cited as the Public Authorities (Reform) Act (Northern Ireland) 2008.

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<sup>27</sup> Fisheries Conservancy Board RPA 2005 consultation response available at: [http://www.rpani.gov.uk/fisheries\\_conservancy\\_board-2.pdf](http://www.rpani.gov.uk/fisheries_conservancy_board-2.pdf)

<sup>28</sup> The Public Authorities (Reform) Bill Explanatory and Financial Memorandum.

<sup>29</sup> [http://www.ofmdfmi.gov.uk/consultation\\_on\\_draft\\_primary\\_legislation.pdf](http://www.ofmdfmi.gov.uk/consultation_on_draft_primary_legislation.pdf)

<sup>30</sup> <http://www.ofmdfmi.gov.uk/disability-living-allowance-advisory-board.pdf>

#### **4.0 PUBLIC AUTHORITIES REFORM (NORTHERN IRELAND) ORDER 2007 (THE DRAFT ORDER)**

The provisions in the Draft Order that were subsequently not included in the Bill are outlined in this section. There is also a table providing an easy reference comparison between the Draft Order and the Bill.

The two most significant differences between the Draft Order and the Bill are the withdrawal in the latter of the provision to abolish the Northern Ireland Housing Council and the withdrawal of provisions relating to changes to the existing arrangements for making public appointments.

#### **4.1 ABOLITION OF THE NORTHERN IRELAND HOUSING COUNCIL**

The Northern Ireland Housing Council ('the Housing Council') was established in 1971 under the same statute as the Northern Ireland Housing Executive (NIHE) and has one elected member from each of the 26 District Councils. It represents local government in the development and implementation of housing policies and strategies and four of its members are on the board of NIHE<sup>31</sup>.

The proposal in the Draft Order<sup>32</sup> to abolish the Housing Council was strongly opposed by NIHE and the District Councils<sup>33</sup>. In its consultation response to the Draft Order NIHE argued that the Housing Council had played a significant role in:

- Ensuring political input into the Housing Policy debate;
- Holding the Housing Executive to account; and
- Addressing wider housing and planning issues<sup>34</sup>.

District Councils argued that the Housing Council was the only democratically elected representation for housing matters in Northern Ireland and that it had provided a 'monitoring, advisory and consultative service on housing and housing policy'<sup>35</sup>. Also, since as a statutory body it has the power to call the Department for Social Development and NIHE to account<sup>36</sup>.

The response to the Draft Order 2007 consultation from the Housing Council itself stated:

*The Housing Council has operated successfully for 35 years and under every form of public administration in Northern Ireland during that time. It has already operated within two devolved governments, both of whom recognised the value in having such a body oversee housing in the province. No rational argument has been forthcoming from the Secretary of State or his Ministers as to why the Housing Council is no longer required<sup>37</sup>.*

The withdrawal of the provision to abolish the Northern Ireland Housing Council has been made following strong opposition in the 2007 consultation and representations from the Social Development Minister to an Executive Sub-Committee established to review the decisions of the RPA as they relate to local government. An interim report from the Executive Sub-Committee states that:

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<sup>31</sup> Northern Ireland Housing Council consultation response to Draft Order available at:

[http://www.rpani.gov.uk/the\\_northern\\_ireland\\_housing\\_council-2.pdf](http://www.rpani.gov.uk/the_northern_ireland_housing_council-2.pdf)

<sup>32</sup> Consultation on 'The Public Authorities Reform (Northern Ireland) Order' 2007

<sup>33</sup> Consultation responses on proposal for a Draft Public Authorities Reform (Northern Ireland) Order 2007 are available at: <http://www.ofmdfmi.gov.uk/index/making-government-work/legislation.htm>

<sup>34</sup> NIHE's consultation response to Draft Order available at:

<http://www.ofmdfmi.gov.uk/northern-ireland-housing-executive.pdf>

<sup>35</sup> Ards Borough Council Draft Order consultation response available at:

[http://www.ofmdfmi.gov.uk/ards\\_borough\\_council.pdf](http://www.ofmdfmi.gov.uk/ards_borough_council.pdf)

<sup>36</sup> As above

<sup>37</sup> Northern Ireland Housing Council response to the Draft Order 2007 consultation (para. 2.2).

The Northern Ireland Housing Council was earmarked for abolition under the original RPA proposals. However, the Minister for Social Development wants to retain the Council, along with statutory nominating rights to the body, and set it a more challenging remit<sup>38</sup>.

#### **4.2 APPOINTMENTS TO PUBLIC BODIES**

Public appointments are made by Ministers or Departments to public bodies which are performing some public function. In March 2006 there were 2070 public appointments held in 107 public bodies in Northern Ireland<sup>39</sup>.

Of the 1032 responses to the 2005 RPA consultation<sup>40</sup> with regard to 'democratic accountability', the analysis of responses showed:

*... there was considerable support from the political parties and local government for the inclusion of elected representatives on all public bodies. This was viewed as key to increasing the accountability of such organisations. There were mixed views from other sectors, including an acknowledgement that elected representatives had a place on boards but should be recruited on the same basis as others.'*

The Draft Order 2007 proposals contained legislation for the removal of statutory obligations to consult in relation to appointments to a number of public bodies<sup>41</sup>. In relation to remaining public bodies and the need for clear accountability, the Final Decisions document states that 'Board members must be chosen solely on the basis of the skills and expertise necessary to do the job'<sup>42</sup>.

One District Council in response to the Draft Order consultation stated:

*The Council is strongly opposed to the removal of the obligation for statutory representation on certain boards as well as the removal for the need to consult in relation to appointments to certain bodies. This removal is in total contradiction to the original principles of the Review of Public Administration which emphasises the need for strong accountable local government at the heart of the community providing civic leadership now and into the future. The proposed change will result in the absence of democratic accountability in major public services with an un-elected and unaccountable Board being responsible for the governance of major public service functions particularly in Health and Education'<sup>43</sup>.*

During the RPA the Northern Ireland Commissioner for Public Appointments<sup>44</sup> emphasised that:

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<sup>38</sup> Emerging Findings of the Executive Sub-Committee are available on the DOE website at: [http://www.doeni.gov.uk/index/local\\_government/emerging\\_findings.htm](http://www.doeni.gov.uk/index/local_government/emerging_findings.htm)

<sup>39</sup> Briefing Paper NI Assembly Research Service 'The Commissioners for Public Appointments throughout the United Kingdom' 1 October 2007 by Carol Doherty, Research Officer.

<sup>40</sup> The Review of Public Administration in Northern Ireland: Further Consultation (March 2005).

<sup>41</sup> Consultation on 'The Public Authorities Reform (Northern Ireland) Order 2007.

<sup>42</sup> 'Better Government for Northern Ireland: Final Decisions of the Review of Public Administration' March 2006 (p15).

<sup>43</sup> Omagh District Council Consultation response available on OFMDFM website at: <http://www.ofmdfmi.gov.uk/execsec.pdf>

<sup>44</sup> Dame Rennie Fritchie.

*....the over-arching principle of public appointments is appointment on merit with Board members being fit for purpose and appointed through a process that is open, transparent, fair and equitable. Nominating bodies, including councils, do not normally run an open process to select their nominees and they do not normally have to meet the same "person specification" and criteria as other candidates.*

And on the topic of accountability in relation to nominated members of boards:

*Ministers are ultimately accountable for public bodies but they have little or no control over the appointment of nominees. Clearly this issue is exacerbated when nominees are not subject to the Commission's Code, which includes restrictions on re-appointments and a 10-year limit on serving a particular body<sup>45</sup>.*

The Commissioner also pointed out that Northern Ireland already has a higher proportion of nominated members on boards than in GB.

Provision regarding the removal of statutory representation obligations and obligations to consult in relation to appointments to a number of public bodies has been dropped from the Bill. This has happened in the context of an analysis of responses to the further consultation in 2005 which noted that *'a reduction in the number of public bodies and an enhancement of their accountability was supported across all the sectors'*<sup>46</sup>.

Three of the 21 responses to the Draft Order 2007 consultation opposed the removal of statutory representation obligations and obligations to consult in relation to appointments to boards of public bodies. All three came from Councils who argued that elected representatives on the boards of public bodies gave local government input to policy development.

### **4.3 INDUSTRIAL COURT**

A public body which would have been affected by the legislation proposed in the Draft Order 2007 was the Industrial Court<sup>47</sup> ('the Court'). The Court is a Tribunal NDPB with statutory powers. Its main function is to adjudicate on the recognition and de-recognition of trade unions for collective bargaining purposes. It can also determine disclosure of information for collective bargaining in disputes between trade unions and employers.

Members of the Court are appointed by the Department for Employment and Learning (DEL) following consultation with the Labour Relations Agency (LRA). The draft Order 2007 proposed regulation making powers for DEL that would make appointments to the Court more flexible in that the Department would no longer have to consult with the LRA and would no longer need to provide a Court case manager to the Court.

The consultation response from the Court<sup>48</sup> concludes that the *'Court welcomes proposals to allow for the making of regulations on matters of the appointment and functioning of the Court'*.

Four consultation responses were opposed to legislation relating to the Court. The Irish Congress of Trade Unions<sup>49</sup>, NIPSA<sup>50</sup>, Down<sup>51</sup> and Omagh District Council<sup>52</sup> all argued that the

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<sup>45</sup> The Review of Public Administration in Northern Ireland: Further Consultation (March 2005).

<sup>46</sup> Consultation responses for 2005 consultation at:

[http://www.rpani.gov.uk/analysis\\_of\\_rpa\\_2005\\_consult\\_responses.pdf](http://www.rpani.gov.uk/analysis_of_rpa_2005_consult_responses.pdf)

<sup>47</sup> Industrial Court website at: <http://www.industrialcourt.gov.uk/>

<sup>48</sup> <http://www.ofmdfmi.gov.uk/industrial-court-for-northern-ireland.pdf>

statutory obligation for DEL to consult with the LRA on appointments to the Court should be maintained.

Omagh District Council went on to say that its members were *'strongly opposed to the removal of the obligation for statutory representation on certain boards as well as the need to consult in relation to certain bodies'*. It argues that this goes against the original principles of the RPA which emphasised the need for strong, accountable local government.

#### **4.4 COMPARISON OF THE DRAFT ORDER (2007) AND THE BILL (2008)**

Table 1 below provides a quick reference guide to enable comparison between the proposals contained in the Draft Order 2007 and those contained in the Bill.

**Table 1: Comparison of proposals contained in the 2007 Draft Order and the 2008 Bill**

	<b>The Public Authorities Reform (Northern Ireland) Order 2007 ('the Draft Order')</b>	<b>Public Authorities (Reform) Bill ('the proposed Bill')</b>
<b>Proposals</b>	Abolition of the Northern Ireland Housing Council.	<b>Withdrawn:</b> Having considered responses to the consultation it was decided <u>not</u> to abolish the Northern Ireland Housing Council.
	Abolition of Disability Living Allowance Advisory Board for Northern Ireland.	<b>Retained:</b> Following consultation it was decided to retain the proposed provisions to abolish the Disability Living Allowance Advisory Board for Northern Ireland in the Bill.
	Transfer of functions of the Fisheries Conservancy Board to the Department of Culture, Arts and Leisure.	<b>Retained:</b> On 5 November 2007 the Assembly approved a motion that the proposed legislation to abolish the Fisheries Conservancy Board and transfer its responsibility to the Department of Culture, Arts and Leisure should be brought forward as a matter of urgency. This legislation is contained in the Bill.
	Repeals of primary legislation to allow winding up orders to take effect for the Northern Ireland Pig Production Development Committee and Enterprise Ulster. It was possible to implement the RPA decisions in relation to the Pig Production Development Committee and Enterprise Ulster by separate subordinate legislation.	<b>Retained:</b> The repeals contained in the Bill refer to primary legislation that is no longer relevant relating to those organisations.
	The dissolution of the Lagaside	<b>Retained:</b> Repeal of statutory

<sup>49</sup> ICTU response to 2007 Draft Order consultation <http://www.ofmdfmi.gov.uk/index/making-government-work/legislation/irish-congress-of-trade-unions-northern-ireland-committee.htm>

<sup>50</sup> NIPSA response to 2007 Draft Order consultation <http://www.ofmdfmi.gov.uk/nipsa-3.pdf>

<sup>51</sup> Down District Council response to 2007 Draft Order consultation <http://www.ofmdfmi.gov.uk/down-district-council.pdf>

<sup>52</sup> Omagh District Council response to 2007 Draft Order consultation <http://www.ofmdfmi.gov.uk/nipsa-3.pdf>

	<p>Corporation was not included in the final decisions on the RPA<sup>53</sup>. The Corporation had already been dissolved by subordinate legislation as it had achieved its statutory remit.</p>	<p>provisions relating to the Liganside Corporation.</p>
	<p>Changes to existing arrangements for making appointments to the boards of public bodies. This included removal of statutory representation obligations where appointments were to be based on merit rather than a position held in another organisation. Also the removal of obligations to consult in relation to a number of public bodies<sup>54</sup>.</p>	<p><b>Withdrawn:</b> As a result of the consultation and the review by the Executive Sub-Committee it was decided to <u>withdraw</u> the proposed changes to the existing arrangements for making public appointments.</p>
	<p>The Order provided a proposal for regulation making powers for the Department for Employment and Learning to address the future needs of the Industrial Court<sup>55</sup>. It also proposed to remove the statutory obligation to consult with the Labour Relations Agency in relation to making appointments to the Court.</p>	<p><b>No longer relevant:</b> Changes to existing arrangements for making appointments to the boards of public bodies has been withdrawn (see above).</p>

<sup>53</sup> 'Better Government for Northern Ireland: Final Decisions of the Review of Public Administration' March 2006: [http://www.rpani.gov.uk/bettergovernment\\_doc- final\\_decisions.pdf](http://www.rpani.gov.uk/bettergovernment_doc- final_decisions.pdf)

<sup>54</sup> Provisions relate to: The Arts Council; The Certification Officer for Northern Ireland; The Drainage Council; The Industrial Court; An industrial training board; The Labour Relations Agency; The Board of Trustees of the National Museums and Galleries of Northern Ireland; The Sports Council for Northern Ireland; The Governing Body of Stranmillis University College.

<sup>55</sup> The Industrial Court is a NDPB whose members are appointed by DEL after it has consulted with the Labour Relations Agency. Its chief function is to determine statutory recognition and de-recognition of trade unions in relation to collective bargaining.

**ANNEX. A**

Impact on Public Bodies outside Health, Social Services Education, Social Services, and Local Government identified in 'The Review of Public Administration Further Consultation'  
March 2005

**Executive Agencies: [18]**

<b>Executive Agencies: [18]</b>	Impacted	Impact
Forest Service (DARD)	No	subject to review of environmental governance
Rivers Agency (DARD)	Yes	Functions transferring to new Environment Agency – subject to the outcome of the review of environmental governance
Public Record Office of Northern Ireland (DCAL)	Yes	De-agentise, incorporate into Department of Culture, Arts and Leisure
Ordnance Survey of Northern Ireland (DCAL)	Yes	Functions transferring to Land and Property Services Agency
Environment and Heritage Service (DOE)	Yes	Functions transferring to new Environment Agency – subject to the outcome of the review of environmental governance
Planning Service (DOE)	Yes	Functions to pass to local government
Driver and Vehicle Testing Agency (DOE)	Yes	Merge into a single Driver and Vehicle Agency
Driver and Vehicle Licensing Agency (DOE)	Yes	Merge into a single Driver and Vehicle Agency
Business Development Service (DFP)	Yes	Functions transferring to Department of Finance and Personnel
Valuation and Lands Agency (DFP)	Yes	Functions transferring to Land and Property Services Agency
Rate Collection Agency (DFP)	Yes	Functions transferring to Land and Property Services Agency
Northern Ireland Statistics and Research Agency (DFP)	No	
Land Registers of Northern Ireland (DFP)	Yes	Functions transferring to Land and Property

		Services Agency
Health and Social Services Estates Agency (DHSSPS)	Yes	Transfer functions into new HSS structures
Water Service (DRD)*		
Roads Service (DRD)	Yes	Local Roads functions to pass to Local Government
Child Support Agency (DSD)	No	
Social Security Agency (DSD)	No	

\* New arrangements for the delivery of water and sewerage services came into operation on 1 April 2007. The Water and Sewerage Services (NI) Order 2006 came into effect providing for an "undertaker" to run the services. A company - Northern Ireland Water - has been appointed as sole water and sewerage undertaker for Northern Ireland. The company is 100% owned by the Government (through DRD). It takes over from the Department's Water Service Agency from 1 April 2007. The land, assets and staff of the Water Service Agency transferred to the company on 1 April.

#### **Executive Public Bodies (excluding Health and Education) [34]**

<b>Executive Public Bodies (excluding Health and Education) [34]</b>	Impacted	Impact
Agricultural Research Institute for Northern Ireland -	Yes	Functions transferring to new Agri-food Biosciences Institute
Livestock and Meat Commission for Northern Ireland	Yes	Incorporate the functions of the Pig Production Development Committee
Northern Ireland Fishery Harbour Authority	Yes	Functions transferring to local government
Pig Production Development Committee	Yes	Functions transferring to Livestock & Meat Commission
Rural Development Council	Yes	Functions transferring to local government and policy role to central government
Agricultural Wages Board for Northern Ireland	Yes	Abolish
Fisheries Conservancy Board	Yes	Functions transferring to Department of Culture, Arts and Leisure



Northern Ireland Museums Council	Yes	Functions transferring to local and central government
Museums and Galleries of Northern Ireland	No	
Arts Council of Northern Ireland	Yes	Some funding to transfer to local government
Northern Ireland Film and Television Commission	No	
Sports Council for Northern Ireland	Yes	Some funding to become responsibility of local government
Northern Ireland Events Company	Yes	Functions transferring to NI Tourist Board
Enterprise Ulster	Yes	Abolish
Ulster Supported Employment Limited	No	
Construction Industry Training Board	Yes	Amalgamate with Construction Skills Sector Skills Council
Labour Relations Agency	No	
General Consumer Council for Northern Ireland	No	
Health and Safety Executive for Northern Ireland	No	
Northern Ireland Tourist Board	Yes	To incorporate the NI Events Company and local tourism functions transferring to local government
Invest Northern Ireland	Yes	Local economic development functions transferring to local government
Fire Authority for Northern Ireland	Yes	Transfer to local government as a shared operational service
Northern Ireland Local Government Officers' Superannuation	No	
Local Government Staff Commission	Yes	Staff Functions transferring to local government when new councils are established
Northern Ireland transport Holding Company	No	
Trust Ports of Belfast, Coleraine, Londonderry and Warrenpoint	No	
Laganside Corporation**		
Northern Ireland Housing Executive	Yes	A range of non-core functions will transfer to local government

ILEX	No	
Registered Housing Associations		
Equality Commission for Northern Ireland	No	
Strategic Investment Board	No	
Economic Research Institute for Northern Ireland	No	
NI Commissioner for Children and Young People	No	

\*\*Dissolved April 2007 at end of natural life.

<b>Advisory Public Bodies (excluding Health and Education) [16]</b>	Impacted	Impact
Drainage Council	Yes	Functions transferring to new Environment Agency – subject to the outcome of the review of environmental governance
Northern Ireland Higher Education Council	No	
Council for Nature Conservation and the Countryside	Yes	Functions transferring to new Environment Agency – subject to the outcome of the review of environmental governance
Historic Buildings Council	Yes	Functions transferring to new Environment Agency – subject to the outcome of the review of environmental governance
Historic Monuments Council	Yes	Functions transferring to new Environment Agency – subject to the outcome of the review of environmental governance
Waste Management Advisory Board		
Northern Ireland Building Regulations Advisory Committee	No	
Lay Observer	No	
Law Reform Advisory Committee for Northern Ireland	No	
Statistics Advisory Committee	No	
Northern Ireland Water Council		
Charities Advisory Committee	No	
Disability Living Allowance Advisory Board	Yes	Functions will transfer to the equivalent Board in Great Britain, whose remit will be extended
Planning Appeals Commission***		

(PAC)/Water Appeals Commission (WAC)		
Statute Law Committee for Northern Ireland	No	
Advisory Council on Infrastructure Investment	No	

\*\*\*Also included under Tribunals

<b>Tribunals [11]</b>	Yes	Combined Tribunal Administration Service under NI Court Service. Planning Appeals Commission to remain as a Tribunal.
Special Education Needs tribunal (DE)		
Northern Ireland Industrial Court (DEL)		
Fair Employment Tribunals (DEL)		
Office of Industrial Tribunals (DEL)		
Registered Homes Tribunal (DHSSPS)		
Mental Health Review Tribunal (DHSSPS)		
Tribunal under Schedule II to the HPSS Order 1972 (DHSSPS)		
Rent Assessment Panel (DSD)		
Office of the President of Appeals Tribunals (DSD)		
Planning Appeals Commission (OFMDFM)		
Water Appeals Commission (OFMDFM)		

Sources:

The Review of Public Administration in Northern Ireland: Further Consultation (March 2005)

[http://www.rpani.gov.uk/2005\\_consultation\\_doc.pdf](http://www.rpani.gov.uk/2005_consultation_doc.pdf)

Better Government for Northern Ireland – Final Decisions of the Review of Public Administration (March 2006)

<http://www.rpani.gov.uk/index/rpa-reviewresearch-decisions/final-announcements/21-march-2006.htm>

**ANNEX B****Number of Public Bodies by Department at 31 March 2007**

<b>Department</b>	<b>Executive NDPB</b>	<b>Advisory NDPB</b>	<b>Tribunal NDPB</b>	<b>Health and Personal Social Services Bodies</b>	<b>Public Corporations</b>	<b>Other</b>
Department for Employment and Learning	3		3			
Department for Regional Development					2	
Department for Social Development	2	3	1			1
Department of Agriculture and Rural Development	5	2				
Department of Culture, Arts and Leisure	5					
Department of Education	9					
Department of Enterprise, Trade and Investment	4					
Department of Finance and Personnel		4				
Department of Health, Social Services and Public Safety	5	2	1	14		2
Department of the Environment	2	3				
Office of the First Minister and Deputy First Minister	4	2	2			
<b>Total</b>	<b>39</b>	<b>16</b>	<b>7</b>	<b>14</b>	<b>2</b>	<b>3</b>

Source: 'Northern Ireland Public Bodies 2007' available on DFP website at:  
[http://www.dfpni.gov.uk/public\\_bodies\\_2007.pdf](http://www.dfpni.gov.uk/public_bodies_2007.pdf)