Written Evidence submitted by the Northern Ireland Local Government Association for the Northern Ireland Affairs Committee’s inquiry into Devolution and democracy in Northern Ireland – dealing with the deficit (DDD0035)

1. Introduction

NILGA, the Northern Ireland Local Government Association, is the representative body for local authorities in Northern Ireland. NILGA regionally co-ordinates policy, development, training, advocacy, promotion and investment work on behalf of and with its 11-member councils, to represent the best interests of local authorities to government, business, strategic partners and the wider community.

NILGA welcomes the opportunity to participate in this Inquiry, the timing of which coincides exactly with the commissioning by the Association in November 2017 of an independent report on “The Case for Devolution within Northern Ireland”, to be completed by April 2018. This will be shared with the NIAC, preferably through an evidence based presentation.

NILGA asserts that whilst the terms of reference for this Inquiry are very clear and valid, the case for Devolution is a long standing one, something which has merely been crystallised by the suspension of the Legislative Assembly at Stormont and by Brexit. Therefore, we do not wish to overemphasise either of these elements which are strongly referred to in the Inquiry’s terms. Similarly, and respectfully, we wish to cover the questions posed by the Inquiry in a strategic, overarching manner rather than through bespoke answers.

At the outset we vehemently state that we seek the restoration of an Assembly for Northern Ireland, strong North – South and East – West governmental links, and have worked diligently to maintain strong political and policy alignment with parties and Institutions across these islands in the present impasse. NILGA fully supports the transfer of legislative, fiscal and related powers and functions from national government to regional assemblies including Stormont, and seeks the restoration of a NI Executive as soon as possible, not least because the Association’s role as a policy, co-ordinating and delivery “axis” between regional and local government in NI has (obviously) been severely impacted because of the suspension of the Assembly.

Our proposals to NIAC regarding devolution and democracy have pre-dated and will work beyond the return of the NI Assembly and a “post Brexit” environment.

The independent report follows on from NILGA’s “Programme for Local Government 2016 – 21 and beyond” publication and initiative (summary document provided) which sought to develop greater understanding of and momentum around devolution within Northern Ireland, together with 10 key solutions to strengthen local democracy and social cohesion in the communities we commonly serve. This Programme is endorsed by all councils and the all-Party Executive of NILGA.

NILGA is formally supported by all the main political parties in Northern Ireland and is presently the only constituted, all party mechanism working and representing any tier of
government – for example an all council, all Party Executive Committee as referred to above and within the UK Local Government Forum’s engagements with DEXEU Ministers.

The Association wishes to put on record the agreement of its Executive Committee of 8th December 2017, which approved an interim response only within the submission deadline, respectfully but firmly requesting of the NIAC a means to extend the Inquiry process beyond the 29th December 2017 written submission deadline. This is so that a full policy debate within the 11 local councils in NI can occur, in order to cement a robust and thorough final submission by local government in Northern Ireland, respecting the governance of councils who uphold the committee structure and standing orders for decision taking and policy making. NILGA commits to completing this and producing an Outcomes Paper by April 2018, and welcomes the flexibility and engagement already demonstrated by NIAC staff.

This interim response will be considered as a final draft by NILGA’s next Executive meeting of 12th January 2018 and any amendments will be conveyed to the NIAC.

2. Context

Following the Review of Public Administration (RPA) in N. Ireland in 2013 – 2015, 11 new councils with some new powers and functions were created in April 2015. In the context of this Inquiry, NILGA considers this outcome to be an important first step to realising stronger local democracy, the normalisation of public service provision in NI and to committing to further internal devolution within a Policy Framework set by the Assembly in Stormont, in partnership with NILGA and the 11 councils, subject to public consultation, delivered between the two internal tiers of government – regional and local. This commitment to further devolution is enshrined in the Local Government (NI) Act 2014, which enabled an “Augmentation Review” to take place once the 11 new councils have taken shape and their services consolidated. The Review has not taken place due to the incomplete nature of the local government reforms compounded by the wider impasse. NILGA, however, has continued to engage with government and strategic partners at all levels, to find means to make progress despite the Assembly’s suspension. In parallel, councils have integrated as far as possible into the structures set up to deliver the overall Programme for Government in NI (PfG).

By way of further context, it should be noted by the NIAC that, in broad, overall investment terms, councils in Northern Ireland are directly responsible for around £0.9 billion of NI’s £20 billion public purse – a miserly 4%. This compares to 25% + of public purse investment by councils in Scotland, England or Wales. The Treasury figures for 2017 graphically illustrate this:
Greater powers, resources and spending decisions taken by local councils with and for local communities through policies which create *place shaped* development and investment would go a long way to creating a long-term devolutionist driven solution – as sought by the terms of reference of this Inquiry - to the fragility of NI’s institutions and democratic governance. More importantly, they would create better policy conditions to sustain cities, towns and villages throughout Northern Ireland. The Committee might consider the importance of this also from the perspective of creating a revitalised engagement with communities around public sector investment – “locking in” community involvement, community cohesion and community wealth and avoiding institutional, top down edicts.

In the recent past, councils and wider government have been part of an administratively successful Review of Public Administration. However, the new powers conferred upon councils in NI in 2015 fall far short in quantity, responsibilities and financial terms to those originally proposed some years earlier. New (since 2015) councils have Community Planning powers, are the local Planning Authority, have enhanced Economic Development powers and control Off Street Parking. They do not have functions typically associated with councils elsewhere such as built heritage, on street parking, museums, libraries, local transport, local roads or other “basic” responsibilities such as emptying gullies, nor large powers such as housing, education or social care. NILGA only seeks, through the Programme for Local Government, additional practical powers offered in the recent past but retained – arguably for bureaucratic and ideological reasons rather than for political ones. The suite of investment generating powers had included regeneration, but this was also not given following a policy reversal in 2016. Councils therefore, whilst only seeking the same powers as the Department in this instance, cannot assemble land and other assets for regeneration purposes without Departmental permissions – a competitive disadvantage for Belfast compared to Edinburgh, or for Fermanagh &
Omagh compared to the Vale of Glamorgan. This is merely a move to the “norm” – and would lift local councils direct investment role in Northern Ireland to the dizzy heights of about 8%.

There are numerous reasons behind the massive limitations to what councils do in Northern Ireland compared to all other jurisdictions on these islands. There are also numerous justifications as to why these differences exist and perpetuate. NILGA simply asserts that all these justifications are based upon one key premise:

NILGA refutes this completely. We do not believe that such justifications are credible unless Northern Ireland is not able to institutionally change. It has changed for the better, and further changes (proposed in legislation but currently awaited) of a non-radical nature could make it a more stable, innovative, equitable and prosperous place by embedding greater local democracy within local councils, who themselves would be accountable to strong ethical standards, codes of conduct and directly accountable to the people in the local District Electoral Areas they live in, work in and represent.

3. Review and Preview

(i) Review (what’s gone before?)

NILGA asserts that the NIAC considers the 6-slide summary piece used by the Association in its all council meeting of 8th December 2017. Entitled “the Long and Winding Road to Devolution within NI...2006 – 2017” it is an attempt to capture 11 years of devolution in 2 pictures and four additional slides (therefore it is attached as an aide memoire only).

NILGA also commends to the NIAC the excellent piece delivered by and for the NI Assembly, in June 2012, which still has resonance today, entitled “Local Government Reform Past and Present” (also attached).

(ii) Preview (what might happen next?)

In terms of considering “what can be done to make things better?” NILGA respectfully draws the NIAC’s attention to the forward planning aspects of the above-mentioned summary piece, as laid in out in slide 5 of 6. The past - in terms of devolution in Northern Ireland – is best described as “much promised, less delivered”. Over 11 years (2006 – 2017) the transferred powers and functions to councils diminished by over 70%, to what exists now. NILGA, however, realises that there are reasons for this – not least the emergence of a devolved Assembly, which the Association wants restored. As our Programme for Local Government 2016 – 2021 states:

Government must always have an eye on the future despite the relative shortness of mandates. Strengthening democracy and developing sustainable communities are not time bound initiatives; therefore, the Association has done its level best to balance aspiration with pragmatism. Over the next decade, it is imperative that NI’s local councils make the case to government and the public that they are.... a confident, resourced, essential and growing part of sustainable democracy and world-class public service provision. This must happen, for any Programme for Government to be truly citizen centred” (Programme for Local Government, NILGA, Conclusion, Page 7).
Councils in Northern Ireland have sustained civic representation and service delivery uninterrupted in the main since 1972. This gives some credence to the assertion that challenging local councils in N. Ireland to do more, better, locally, with the requisite powers and resources to deliver such additional responsibilities, whether through Direct Rule or a Regional, Legislative Assembly, will provide much greater stability and resilience in times of wider uncertainty and when other institutions are in difficulty. Northern Ireland’s local councils at corporate and political leadership levels have all completed or are completing the accredited national “Charter” for Elected Member Development and Leadership. This is a unique success.

From the perspective of outcomes sought by the NIAC Inquiry, NILGA respectfully suggests that the following bullet points provide a road map and to avoiding the “sticking plaster” approach referred to in the terms of reference to “Devolution and democracy in Northern Ireland – dealing with the deficit”:

- Consult fully with councils and strategic partners (NILGA has formally established a Strategic Partner Forum, to draw on the full spectrum of Infrastructure, Social, Economic, Environmental, Educational, Community and Government Agency advice and resource to help drive the Policy and Delivery priorities for councils in NI to 2030) beyond the Inquiry deadline, something which NILGA can materially assist NIAC with if so desired;
- Review the developing evidence from the New Policy Institute (as commissioned to deliver the independent report referred to on Page 1, Introduction, Para. 2);
- Take forward an All Party Parliamentary Group (APPG) on Local Government’s roles, development and investment in NI as a key structure which can include elected members from councils and the NI Assembly in the absence of a Regional, Legislative Assembly;
- Consider the case for a Devolution Bill for N. Ireland, not so much in the context of the Inquiry’s Terms of reference but due to the facts that (a) neighbouring jurisdictions are moving ahead in terms of new powers, incentives and “localism”, (b) City & Region “deals” are active in Britain at local council and inter agency levels, (c) Brexit will lead to fundamental shifts in governance and policy delivery terms in NI (for example in terms of the application of regulatory, legislative and other essential policies from Brussels to London and from London to devolved Assemblies – in N. Ireland, councils are beginning to adopt resilience planning and service impact work but cannot move beyond civil service – senior council officer work as no local Ministers exist).
- In terms of Brexit, in the context of this Inquiry, NILGA asserts the following concise, key points, and the NIAC will be mindful that the Association continues to contribute with representation and evidence in other vital mechanisms to make the case and state the facts from a N. Ireland local government perspective:

(a) The voice of N. Ireland’s regionally based politicians is not being heard in the EU withdrawal negotiations and while the civil service is active in the provision of information, fully and diligently, this absence is contributing to the democratic deficit, and NILGA’s participation is of course limited to the voice of local government.
(b) It is paramount that the rights and responsibilities of local government (which currently rest in the Committee of the Regions) are brought across to the UK. NILGA requires a formal mechanism and appropriate measures to be put in place to exercise these powers, on behalf of local government, to avoid the democratic deficit which the NIAC Chair correctly identified in the Inquiry’s launch. These should include regular, formal meetings between the four UK local government associations and Government (at the equivalent level of meeting as the First Ministers’ Joint Ministerial Committee). This would ensure East / West cooperation at council level and would be linked to the devolution agenda for Northern Ireland.

(c) The support of EU funding such as ERDF and ESF has assisted Northern Ireland (and local councils) to deliver economic, community and strategic capital investment projects which have sought to combat the peripherality and connectivity issues in Northern Ireland. A Net Alternative Investment Fund must replace this EU funding and in addition NILGA seeks a distinct fund for Northern Ireland around community cohesion to maintain the long-term history and success of cooperation between all parts of Ireland, as well as between the island and the UK. In the absence of an NI Assembly there must be a mechanism to avoid undue delays in project delivery.

(d) There is an opportunity to reshape the remit of all-Island and cross-border bodies such as Tourism Ireland, SEUPB, and InterTradeIreland as well as to develop practical initiatives to maintain the distinctiveness of social cohesion in border areas (integrating electricity markets, broadband and shared health provision are existing examples). For these opportunities to be realised the NI Executive must be operational, or alternative legislative mechanisms must be explored.

4. Further Key Assertions

In addition to the above piece, and the associated attachments, NILGA respectfully asserts the following points to the NIAC:

- Any devolution and democracy exercise will have key political, socio-economic and ideological / bureaucratic elements. Each of these will need a “case for or against”. Based on decades of knowledge through experience, NILGA asserts that the biggest hurdle in N. Ireland to achieving stronger local democracy is ideological / bureaucratic. Political leadership and the strategic voices of key partners in business, the community and other representative bodies largely seek transformation of the public service landscape and the democratic governance underpinning it. Northern Ireland’s councils are not considered in the same way by senior administrators as their counterparts are in England, Scotland, Wales, or the Republic of Ireland – not just because they are not the same in portfolio terms. They (the councils) are not as fully integrated into the design, delivery, implementation and monitoring of key policies or spending decisions in N. Ireland. They are frequently consulted as opposed to being part of what the consultation and its outcomes should look like. They are an underutilised resource and as such, have limited resources. NILGA worked forensically during the Review of Public Administration (RPA) period to seek greater legislative strength to the role of councils, for example gaining the Power of General Competence in the Local Government Act (NI) 2014, seeking strong, statutory recognition of the new Power of Community
Planning, and requiring greater performance management determinations by councils (in terms of their monitoring by government departments whose responsibilities include delivery in whole or in part by local government) and councils monitoring of government departments (in terms of what departments and agencies do to fulfil the statutory community planning model).

- There have been many local and NI wide successes (beyond the Charter example given on page 4), particularly in terms of local community and economic development, resulting from the move to 11 councils with limited new powers in 2015, over two and a half years ago. However, NILGA asserts that the NIAC Inquiry should note that significant impediments to progress exist which are holding back local economies, local accountability, local democracy and local investment. NILGA acknowledges that any further devolution within N. Ireland, to councils, will require the local authorities to diligently, fairly and transparently manage and account for their decisions and their conduct to gain the full support of government and local citizens. The performance of councils is of critical importance, as is the culture of decision taking, and NILGA further acknowledges that additional work is required, particularly as a result of the Assembly’s failure to agree the Standing Orders Regulations necessary to protect minority groupings at council level. Councils are currently working in the absence of regulations which would better interpret the primary legislation, which poses two risks:
  a. Poor interpretation of S38 of the primary legislation risks causing unqualified political veto with the potential to grind council decision-making to a halt.
  b. Limitations to councils’ ability to build cross-community confidence in decision-making will hamper the potential for local government to further normalise.

At the very least, a review of current council operations should be considered, to explore council implementation of the Local Government (NI) Act 2014, with particular reference to the use of (what should be statutory) standing orders and the NI code of conduct for councillors. NILGA is well placed to materially assist with such an exercise.

- Overall, realising the full potential of even the limited devolution to date has not been assisted by gaps in the delivery of the Local Government Act (NI) 2014. These impediments are further exacerbated by having no Legislative Assembly. In relation to local government reform, the failure to complete the intended policy direction set by the NI Executive in 2008 falls in to a number of broad categories and has serious impact on councils (and by association, the public), is a failure to address the democratic deficit and to normalise the roles of local government in the region.

  a) Failure to complete the policy and legislative framework

Local Government (NI) Act 2014

The secondary legislation needed to give effect to the Local Government Act 2014 is incomplete, resulting in an inability to give effect to a large number of sections of the Act; preventing necessary action, preventing effective council working and preventing or hampering modernisation activity. There is also an inability to amend or improve the legislation while the Assembly is not in operation and no alternative arrangement is in place.
S127 of the Local Government Act lists the Sections of the Act which require further legislation or action by the Assembly to take effect (See appendix 1), but these can be summarised as follows:

i. Preventing necessary actions  
   - Intended repeal of surcharge system (S109)  
   - Intended closure of the Local Government Staff Commission (S120)

ii. Preventing effective council working  
   - Lack of statutory standing orders (S38)  
   - Regulations/Orders necessary in relation to a council which a department decides is failing (S100) (S103)

iii. Preventing or hampering modernisation activity  
   - Departmental order required to constitute any new joint committee or body corporate (S14, S76)  
   - Inability to trial new governance arrangements (S20)  
   - Impacts on collaborative working if one council moves to an Executive governance arrangement (S25)  
   - Departmental repeal/revocation/disapplication of statutory provisions limiting councils in exercising the General Power of Competence (GPC) (S82)  
   - Inability of Department to put conditions in place as to use of the GPC (S83)  
   - Powers to facilitate duties under the duty to improve (S101)

iv. Preventing review/necessary amendments to existing legislation  
   - Review of the code of conduct (S53)  
   - Potential review of what constitutes a qualified majority (S40/S41)  
   - Review of performance management arrangements (S89)  
   - Potential review of the LG (Community Planning Partners) Order 2016 (S67)

b) Failure to complete anticipated transfers/unsatisfactory transfers

i. Regeneration Bill - resources reduced, content eviscerated then Bill stalled.

ii. HMO licensing – transfer underway, due for completion next year.

iii. Drip-feed of new functions without resources – e.g. enforcement of landlord registration – registration fee kept by Department for Communities – no money for enforcement (which is NOT self-financing).

c) Inability to make progress on the promised augmentation review

i. New transfers of functions as per NILGA PfLG (Transfer of powers covered by S84 and S101, assets and liabilities covered by S122).

ii. New policy and legislative tools e.g. New Burdens Doctrine or other means of funding new transfers, Pooling of Budgets to enhance community planning

d) Other issues

i. Partnership Panel not meeting – no ministers

ii. Decision making very limited – impossible when an issue is required to be laid before the Assembly.
NILGA has asserted (for over fifteen years) with knowledge through experience and evidence, that devolution within Northern Ireland will help improve democracy and better drive the economy of Northern Ireland, together with offering a means to deploy fragile, diminishing, budgets to create greater impact, greater efficiency, greater collaboration and better results. It notes well contemporary, keynote policy position pieces from notable organisations about other parts of the UK including the Local Government Information Unit (LGIU) and the Association of Public Service Excellence (APSE):


**Association of Public Service Excellence (APSE)**

Both bodies provide compelling evidence for stronger local governance through councils to better shape what the public needs, where they need it, who provides what they need and how it is delivered. Local government in Northern Ireland asserts that we need similar strategic conversations to affect similar devolution for local people here, too, and that is why NILGA has commissioned further work and is engaged in further consultation which will be provided to the NIAC. However, this “bottom up” approach would have greater traction if it was met, ideologically, with the same strategic enthusiasm from the top down, as exists in our neighbouring jurisdictions.

**5. Conclusion of Interim Written Submission**

NILGA knows through bittersweet experience that endless transition is not transformation. It is the latter that is needed, a rewriting of our public services and a new policy partnership and new delivery framework with and between colleagues at all levels of government that is needed. The NIAC will have heard on numerous occasions, as parliamentarians, the phrase “whole system review”. This is needed in N. Ireland, since our current situation is precarious, but we have the tools to embed greater resilience and future planning into our institutions.

Northern Ireland has a substantial amount of “government and government support bodies” – as evidenced by the bubble chart (attached). Local communities, however, can often find the mechanics of navigating such a Service Delivery chart difficult to say the least. Drawing local councils and local communities into enhanced roles would met the aspirations of this Inquiry in no small way, whilst also offering a democratic opportunity for Northern Ireland when it arguably needs it most, viewing the global, national and regional pictures in terms of politics, finance, the economy and the environment.

NILGA thanks the NIAC and its support team for their courtesy and advice during this Inquiry process, which we urge should be merely the beginning of an important and positive process, delivering much needed outcomes for the public we serve.

NILGA is content to provide oral evidence and follow up material as outlined, during 2018.
Appendix 1

Local Government (NI) Act 2014
Section 127

Regulations and orders

127.—(1) Before a Northern Ireland department makes regulations or orders to which this subsection applies it must consult councils and—

(a)such associations or bodies representative of councils;

(b)such associations or bodies representative of officers of councils; and

(c)such other persons or bodies,
as appear to it to be appropriate.

(2) Subsection (1) applies to any regulations and orders under this Act except regulations and orders under—

(a)section 1(2);

(b)section 30;

(c)section 76;

(d)section 100; or

(e)section 129.

(3) Regulations and orders to which this subsection applies must not be made unless a draft of the regulations or order has been laid before, and approved by a resolution of, the Assembly.

(4) Subsection (3) applies to regulations and orders which include provisions under—

(a)section 20;

(b)section 21;

(c)section 38;

(d)section 40;

(e)section 41;

(f)section 48;

(g)section 51;

(h)section 76;

(i)section 82;

(j)section 86;

(k)section 101;
(l)section 109;
(m)in Part 2 of Schedule 1, paragraph 11(3);
(n)paragraph 5 of Schedule 2.

(5) Except where otherwise provided, any other regulations under this Act and any other orders under this Act other than orders under sections 67, 106 and 129 are subject to negative resolution.

(6) Regulations and orders under this Act may contain such incidental, supplementary, consequential, transitional, transitory or saving provisions as the Northern Ireland department making them thinks necessary or expedient.