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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY ANN McCLURE
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Mr Larkin KC with Ms McIlveen (instructed by McIvor Farrell Solicitors) for the Applicant
Ms Kiley KC with Ms Smyth (instructed by Belfast City Council) for the Proposed Respondent
Mr McGleenan KC with Mr McAteer (instructed by the Departmental Solicitor) for the First Notice Party, Dept for Communities
Mr Fegan (instructed by the Derry City & Strabane District Council) for the Second Notice Party, Derry City & Strabane District Council

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McLAUGHLIN J

Introduction

[1] This rolled-up application for leave to apply for judicial review arises out of two decisions of Belfast City Council ("BCC") dated 1 October 2025 and 3 November 2025. Both decisions were subject to a requisition for reconsideration, pursuant to section 41 of the Local Government Act (Northern Ireland) 2014 ("the 2014 Act). The decision of 1 October 2025 related to the adoption of a new Irish Language Policy and has not yet been reconsidered. The decision of 3 November 2025 related to the flying of the Palestinian flag from Belfast City Hall on the International Day of Solidarity with the people of Palestine. As required by section 41(1) of the 2014 Act, BCC has standing orders, governing call-in procedures. Following the first decision (but before a reconsideration), the applicant issued pre-action correspondence contending, *inter alia*, that the relevant standing orders were *ultra vires*. BCC responded, stating that it would not apply the relevant standing orders to the call-in requisition. Several days later, BCC held a special meeting on foot of the call-in requisition for the second decision. In the course of the meeting, it followed a new procedure whereby the full Council decided to "screen out" the requisition. It then

proceeded to affirm the decision to fly the Palestinian flag from City Hall, albeit on a different date. The applicant now challenges: (i) the relevant BCC standing orders and their application to both call-in requisitions; (ii) the new decision-making procedure and the associated decision on the Palestinian flag call-in requisition; (iii) the action of BCC not to progress a third call-in requisition in relation to the decision to screen-out the second call-in requisition; and (iv) a failure to take account of guidance issued by the Department. BCC's standing orders are in line with the model standing orders originally proposed by the then Department of the Environment (now the Department for Communities ("the Department"), following enactment of the 2014 Act. In an unusual turn of events, the Department now supports the applicant's challenge and contends that both BCC's standing orders in the form originally proposed by it and the new procedure followed by BCC for the Palestinian flag decision are *ultra vires* section 41 of the 2014 Act and are unlawful.

PART 1: THE IMPUGNED DECISIONS AND RELEVANT BACKGROUND

[2] Two decisions by BCC lie at the heart of these proceedings. However, four separate call-in requisitions are relevant. Each one is described separately below.

Call-in requisition No.1: Irish Language Policy – 1 October 2025

[3] In 2018, BCC adopted a Language Strategy, with support from all political parties. Its objectives were to create a place where linguistic diversity is celebrated and respected and where all those who live, work and visit Belfast can access the city using languages with which they are familiar and comfortable. In May 2024, the Council approved a Language Strategy Action Plan, which sets out proposals for delivering the objectives of the Language Strategy. On 22 August 2025, following public consultation and equality impact assessment, a draft Irish Language Policy was brought before BCC's Strategic Policy and Resources Committee ("the Committee"). The Committee considered the draft policy and the consultation responses on 19 September 2025 and again on 26 September 2025 when the Committee voted to approve a final version of the Irish Language Policy.

[4] On 1 October 2025, the minutes of the Committee (with the approved Irish Language Policy attached), came before the full Council for ratification. Some members of the Council objected to some aspects of the policy, but it was approved by a majority vote (42 in favour, 17 against).

[5] On 3 October 2025, a call-in requisition was presented to the Clerk signed by 12 members of the Council. It was presented pursuant to standing orders and section 41(1)(b) of the 2014 Act, requesting reconsideration of the decision to approve the Committee minutes and the draft Irish Language Policy, on the ground that it would disproportionately affect adversely the "Protestant, unionist, loyalist, Ulster British community." The requisition described the nature and extent of the anticipated disproportionate adverse impact in the following terms:

> "The imposition of Irish language signage is significant and controversial, generating community division and opposition. On 24 May 2025, polling was published by the Belfast Telegraph, commissioned by established polling agency LucidTalk. This was focused on Irish language at Grand Central Station. The results demonstrated that 91% of DUP voters, 97% of TUV and 71% of UUP voters opposed the imposition of Irish language signage.
>
> In LucidTalk polling published on 19 March 2025, showed 88% of people who identify as Unionist would feel uncomfortable to have Irish language signage imposed in their street. …
>
> The impact on community relations will be significant, with the Unionist community – and those members of staff who identify as Unionist/British – will under this strategy be forced to display Irish language, despite fundamental disagreement with such displays."

[6] In accordance with section 41(2) of the 2014 Act and standing order 48(7), BCC has sought an opinion on the call-in requisition. To date, the opinion has not been received and no further steps have been taken in furtherance of the call-in requisition.

[7] On 18 November 2025, the applicant's solicitor wrote a pre-action letter to BCC contending that its standing orders 48(8) and (9) were *ultra vires* section 41(1) of the 2014 Act. Those standing orders prescribe the procedures to be followed upon receipt of the legal opinion following a call-in requisition. The pre-action letter contended that standing orders could not lawfully permit a legal opinion on the "merit" of the call-in to be determinative of whether there should be a reconsideration of the decision. The council was asked to confirm *"… that Standing Orders 48(b)(8)&(9) will not be applied to the call-in concerning the 1 October 2025 decision and that the matter will proceed to reconsideration by the council under Standing Order 25, requiring a qualified majority and a recorded vote."*

[8] Alternatively, the Council was asked to pause the call-in process pending judicial review proceedings.

[9] In a pre-action response dated 25 November 2025, BCC stated:

> "… The council accepts that it was not the intention of the 2014 Act that counsel's opinion should be treated as determinative of the question of whether the ground for call-in under section 41(1)(b) has merit. … It has already

> been confirmed to the applicant's solicitors by way of correspondence dated 21 November 2025 that the barrister's opinion will be presented to council when it is reconsidering its decision, regardless of its conclusions.
>
> For the avoidance of doubt, the council can confirm that it will not apply Standing Orders 48(b)(8)-(9) when reconsidering the original decision regarding the draft Irish Language Policy. Council members will determine for themselves whether there is a disproportionate adverse impact on a section of inhabitants of the district, having regard to the legal opinion received and any other relevant considerations …"

[10] These proceedings were commenced the following day on 26 November 2025.

[11] On 6 October 2025, Councillor McDowell sent a letter by email to the Council's Chief Executive and the City Solicitor setting out his political party's "*legal position with regard to the call-in*." The letter set out a summary of his party's legal analysis and the reasons why it considered the relevant standing orders to be *ultra vires* section 41.

Call-in requisition No.2: Amendment of Standing Orders – 21 November 2025

[12] On 21 November 2025, the Strategic Policy and Resources Committee of the Council considered and approved proposed amendments to standing orders 48(b)(8)-(9).

[13] The amendments included deletion of the current paras (8) and (9) and their replacement with a mechanism whereby the legal opinion received under section 41(2) would be tabled at the next Council meeting and the Council would conduct a form of screening exercise. The proposed new procedure involved the full Council deciding, on a simple majority basis, whether the original decision would disproportionately affect adversely a section of the inhabitants of the district, having regard to the opinion and all other material considerations (proposed clause 48(8)&(9)). If not, the reconsideration of the decision would take place on the basis of a simple majority vote (proposed clause 48(10)). If so, the reconsideration of the decision would take place on the basis of a qualified majority vote (proposed clause 48(11)). A consequential amendment was also proposed to standing order 25(e), which sets out those decisions requiring a qualified majority vote.

[14] On 1 December 2025, a call-in requisition of the Committee's decision was delivered to the Clerk of the Council requesting reconsideration pursuant to both section 41(1)(a) and 41(1)(b). The requisition identified the community affected by the decision to be the "Protestant, unionist, loyalist, Ulster British community

represented by the councillors who identify as unionist and/or any numerical minority within council."

[15] The nature and extent of the anticipated disproportionate adverse impact was described as:

> "The proposed new standing orders provide for a majority veto over the exercise of the minority safeguard, contrary to the purpose of the statutory scheme, nullifying the protective minority safeguards and acting contrary to the 2014 Regulations. …
>
> Therefore, it not only has a clear adverse impact on the minority community, who have regularly had to try and exercise the protective safeguard due to the increasingly aggressive approach of the nationalist majority and will now be deprived of access to that safeguard, but more fundamentally, the decision to adopt the proposed amendments are in fact plainly unlawful for reasons set out above."

[16] The timing of this call-in requisition overlapped with the commencement of these proceedings and the call-in procedure has not been progressed by BCC, pending the outcome of this challenge.

Call-in requisition No.3: Palestinian Flag – 3 November 2025

[17] On 24 October 2025, the Strategic Policy and Resources Committee decided that on 10 December 2025, the Human Rights Day flag and the United Nations flag would be flown from City Hall.

[18] On 3 November 2025, the minutes of the Committee decision of 24 October 2025 came before the full Council for consideration. Upon a motion from Councillor Brennan, the Council agreed to approve the Committee's decision and amend it to include the flying of the national flag of Palestine from City Hall on 29 November 2025, International Day of Solidarity with the Palestinian people. The motion, as amended, was passed (41 votes in favour, 15 votes against).

[19] On 12 November 2025, a call-in requisition of the decision of 3 November 2025 was presented to the Clerk of the Council, signed by 12 councillors. The requisition was presented on both the procedural ground under section 41(1)(a) and the disproportionate adverse effect ground under section 41(1)(b). The section of the community which was identified as affected by the decision was the "Jewish community." The requisition described the effect as follows:

> "This decision will have a specific adverse impact on, in particular, the Jewish community. The Jewish community have repeatedly and consistently spoken out about their concerns around antisemitism and there have been attacks on their properties, threats to boycott their goods and a general campaign of hate against that community. This has sadly been encouraged by the aggressive political campaign of those championing the cause of Palestine, who have openly expressed their determination to remove the Jewish community for their Israeli homeland, including by use of extreme violence.
>
> There is an ongoing extremely divisive international conflict between Israel and Palestine. This invokes strong views on all sides, but Belfast City Council is actively taking a "side" in this international conflict, which is outside any statutory or policy responsibilities of the council and it is therefore properly to be described as a pure "brute force" political decision designed to weaponise the council's prime civic building to send a message which is overtly hostile to the Jewish community. It is rhetorically asked: How could that do anything other than have an adverse impact on the Jewish community within the Belfast City Council area?"

[20] Pursuant to section 41(2) of the 2014 Act, BCC commissioned an opinion from senior counsel which addressed both grounds for the requisition. Counsel considered that it had merit on the procedural ground as an equality impact screening exercise had not been undertaken, as required by the Council's Equality Scheme. Counsel also concluded that the adverse impact ground had <u>no merit</u>. In summary, counsel's opinion was based upon a number of decided cases arising out of the flying of the Union flag from public buildings in Northern Ireland and in which the courts held that the flying of flags on a small number of selected days preferred neither one community over the other and involved no disrespect to those who objected to the flag (*Re Murphy* [2001] NI 425, per Kerr J; *Re McMahon* [2019] NICA 29, per Horner J.). The opinion stated:

> "75(ii) … for the reasons outlined above, I do not consider that the impact of the decision would be adverse, having regard to the nature, purpose and effect of the decision. Further, if I am wrong about that and assuming *arguendo* that the decision would have an adverse impact, I do not consider that any such impact would be disproportionate, again having regard to the nature, purpose and effect of the decision."

[21] On Monday 1 December 2025, a first review hearing was undertaken in these proceedings. At that time, the challenge related to the Irish Language Policy decision only and the *vires* of standing orders 48(8)&(9). In the course of the hearing, the court was informed of the Council meeting which was due to take place that evening when the call-in requisition for the Palestinian flag decision would be considered. By that time, the decided date of 29 November 2025 had already passed. The court was informed of the prospect that these proceedings might be expanded to include a new challenge to the flag decision and also to the prospect of an urgent interim relief application, depending upon events at the meeting that evening.

[22] On the evening of 1 December 2025, the Council held a special meeting to consider the Palestinian flag call-in requisition. The meeting had been convened using the procedure under section 36 of and Schedule 5, para 5 to the 2014 Act. The meeting papers included the call-in requisition, the opinion of counsel, a draft equality impact screening decision and a briefing note prepared by officials setting out the background and the relevant Council procedures.

[23] The special meeting on 1 December 2025 was opened by the Lord Mayor who concluded her remarks by stating: "*Council is therefore asked to … reconsider the decision which was taken on 3 November …*" She also referred to the equality impact screening assessment which had subsequently been completed in light of the opinion of counsel. Councillor Murphy then spoke in favour of flying the Palestinian flag from the City Hall and stated:

> "… and with that in mind and taking account of the legal opinion received as well as the equality screening document, I will make the same proposal that we made last month, that we fly the Palestinian flag above Belfast City Hall on the next available day to us, commencing from midnight tonight until 11:59 on 2 December."

[24] A point of order was then raised by Councillor McCullough. He referred to standing order 25(e) and Schedule 3, para 2 to the Local Government Transitional Supplementary, Incidental Provisions and Modifications) Regulations (NI) 2014 ("the 2014 Transitional Regulations"). He contended that any decision to reconsider a decision which had been subject to a call-in on the ground of disproportionate adverse effects must take place by way of qualified majority vote. Councillor McDowell also raised a point of order. He referred to the advice provided to councillors in the briefing materials to the effect that it was for councillors themselves to determine whether there was merit in a call-in requisition based upon adverse community impacts. He objected to this advice then continued:

> "In a previous version of this council, it was for legal opinion to determine whether there was merit in a community impact ground, and that was wrong. It is also wrong for council officers then to assert that it is for the

> council itself to determine whether there is merit in the community impact ground. In the agenda, council officers have purported to take the decision to create a new interim process for dealing with the call-in. This process is to ask the pan-nationalist, pan-republican majority to vote upon whether they, the very people who brought this motion, want to permit it to be subject to a qualified majority vote. The interim process effectively amends Standing Order 25(e) and is also plainly contrary to Schedule 3, para 2 to the … [2014 Transitional Regulations] … can I therefore ask, firstly, on what lawful basis have council officers purported to effectively disapply standing orders which require a qualified majority of this council vote to do so and, secondly, on what lawful basis has the council purported to put in place a process which directly contradicts the clear requirements of standing order 25(e) and Schedule 3, para 2 to the 2014 Regulations …"

[25] The Lord Mayor asked the City Solicitor for her contribution and advice which included the following:

> "… section 41 requires the council to reconsider a decision … and to make sure … that the correct process has been followed and that there is no disproportionate adverse impact upon a section of inhabitants of the district. That is what is required under the legislation. If the council finds that there is a disproportionate adverse impact on any section of the inhabitants, that is when qualified majority kicks in. The purpose of the process is to protect minority rights, not QMV applies every single time that a call-in is received. That is the clear legal advice that I am giving the council. That … is also supported by the advice that we have received from senior counsel … I am giving you legal advice which is not the subject of any adverse criticism or comment or restriction from the courts and my clear advice is set out in the Committee paper which is before you."

[26] After further contributions and exchanges from councillors, the Chief Executive invited a vote from members on the following motion:

> "… so having regard to the legal opinion and all other information received, the council agrees that the flying of the flag on Belfast City Hall does not have … a disproportionate adverse community impact."

[27] A vote by councillors then took place and the motion was carried by 43 votes in favour and 17 votes against. Having decided the issue of disproportionate adverse effect, the Council proceeded to vote on the motion to fly the Palestinian flag from Belfast City Hall for 24 hours commencing at midnight. Members spoke both for and against the motion. Councillor Long proposed an amended motion by which the City Hall would be illuminated in Palestinian colours for one week in the new year after closure of the Christmas market. The amendment was defeated by 49 votes to 11. The motion to fly the flag for 24 hours commencing at midnight was approved by 32 votes in favour and 28 votes against.

[28] Following the meeting, an urgent application for interim relief was moved in the High Court on the evening of 1 December 2025, before Humphreys J. He refused interim relief on the ground that the balance of convenience and the public interest favoured respecting the decision of a democratically elected public body. He considered that the legal issues raised in the challenge should be determined through these proceedings, with the benefit of evidence and full argument by all parties.

[29] A further case management hearing of these proceedings took place on Friday 5 December at which directions were issued for a rolled-up hearing on 14 and 16 January 2026.

[30] It is clear from events during the Council meeting of 1 December 2025 that councillors considered the opinion of counsel together with the equality impact screening determination and advice from the City Solicitor. Councillors decided on a simple majority basis that the call-in requisition did not have merit and that the original decision would not disproportionately affect adversely the Jewish community. In practical terms, the Council appears to have followed the procedure which had been the subject of proposed amendments to standing order 48 which had been approved by the Committee, but which had been the subject of a call-in requisition and had not been approved by the full Council.

Call-in requestion No.4: Date for flying Palestinian flag – 1 December 2025

[31] At approximately 6:40pm on 1 December 2025, Councillor McDowell handed the City Solicitor a call-in requisition seeking a reconsideration of the decision which had just been taken in relation to the flying of the Palestinian flag. The requisition was signed by 11 councillors and requested reconsideration on both procedural grounds and adverse impact grounds. The community alleged to be affected by the decision was the Jewish community. The description of the nature and extent of the disproportionate impact was in materially identical terms to those contained in Requisition No.3. The evidence which has been filed in these proceedings reveals some dispute over whether the call-in requisition was “accepted” by the City Solicitor. She has indicated that the relevant papers were simply handed to her by Councillor McDowell, whose evidence is in the same terms. However, no evidence

has been adduced by any party which addresses whether or not the call-in requisition was presented to the Clerk of the Council, as required by section 41(1) of the 2014 Act and standing order 48(b)(1), within the requisite time period. This is a mandatory procedural statutory requirement and the legal consequences of this procedural deficiency are addressed below.

PART 2: RELEVANT STATUTORY FRAMEWORK

[32] The central issue in these proceedings is the interpretation and application of section 41 of the 2014 Act. It forms part of a broader framework of primary and secondary legislation, governing decision making within councils and the statutory call-in procedure. The broader statutory framework is summarised below.

Local Government Act (NI) 2014

[33] Part 7 of the 2014 Act makes provision for the meetings and proceedings of councils. Every council "*must make standing orders for the regulation of the proceedings and business of the council*" **[section 37(1)]** which include the power to vary or revoke standing orders **[section 37(2)]**. The department has a power to make regulations requiring councils to incorporate "*such provision as may be prescribed*" into standing orders and to refrain from making other modifications as may be prescribed **[section 38(1)]**. The general rule for decision making within councils is simple majority voting, namely more than half of the votes of the members at present and voting **[section 39(1)]**. It provides:

> "39—(1) Subject to this Act and any other statutory provision, every decision of a council must be taken by a simple majority."

[34] Section 40 provides for decision making by qualified majority vote, namely 80% of the votes of the members present and voting. Those decisions to be taken by qualified majority vote "*must*" be specified in standing orders **[sections 40(1)&(2)]**.

[35] Section 41 provides for the call-in and reconsideration of the decision of a council or a committee in two circumstances. It provides in relevant part as follows:

> "41—(1) Standing orders must make provision requiring reconsideration of a decision if 15 per cent. of the members of the council (rounded up to the next highest whole number if necessary) present to the clerk of the council a requisition on either or both of the following grounds—
>
> (a) that the decision was not arrived at after a proper consideration of the relevant facts and issues;

> (b) that the decision would disproportionately affect adversely any section of the inhabitants of the district.
>
> (2) Standing orders must require the clerk of the council to obtain an opinion from a practising barrister or solicitor before reconsideration of a decision on a requisition made wholly or partly on the ground mentioned in subsection (1)(b).
>
> (3) Regulations may amend the percentage mentioned in subsection (1) and the process by which a legal opinion is obtained in subsection (2)."

[36] Section 41(4) contains a number of definitions. The word "*section*" is defined to mean "*any section of a specified description." Belfast City Council has defined this to mean "any section of the inhabitants that is clearly identifiable by location, interest or other category (including those categories identified in section 75(1) of the Northern Ireland Act 1998)"* **[standing order 48(4)]**. The call-in procedure therefore operates to protect *any* section of the community and not simply the nationalist or unionist community.

[37] In a new departure for councils, section 2(1) of the 2014 Act, requires all councils to have a constitution, comprising its standing orders, the Local Government Code of Conduct for Councillors, information directed by the department and such other information as the council considers appropriate. Section 84 also imposes a general duty upon councils to "*secure continuous improvement in the exercise of its functions*." In discharging this duty, councils must have regard to a series of express objectives. Those relevant for present purposes are (a) strategic effectiveness, (d) fairness and (f) efficiency. Section 101 also confers a new power upon the department to modify or exclude the application of any statutory provision which "*prevents or obstructs compliance by councils with their duty under section 84*." The department may also confer new powers upon councils in order to facilitate compliance with the section 84 duty. In doing so, a council must have regard to any guidance issued by the department.

[38] Section 111 confers upon the department a general power to issue guidance to councils for the purpose of the Act. Councils must have regard to any guidance issued under the section.

[39] Schedule 5 to the 2014 Act also makes detailed provision for council meetings. In addition, to an annual meeting **[para 1]**, councils may hold such other meetings as they think are necessary for the transaction of general business **[para 2]**. Meetings may be called by the Chair of the council **[para 3]** or upon a requisition from not less than five members **[para 4]**. Three days before any meeting of the council, a summons must be served on every member which specifies the business proposed to be transacted and a notice must be published on the council's website. Where the

meeting is called by members of the council, the notice must also specify the business proposed to be transacted **[para 5]**.

Local Government (Transitional, Supplementary, Incidental Provisions and Modifications) Regulations (NI) 2014 [SR 2014/148] ("the 2014 Transitional Regulations")

[40] As set out below, the 2014 Transitional Regulations were approved by the Assembly on 27 May 2014 and made on 28 May 2014, coming into operation the same day.

[41] Five days later, on 2 June 2014, sections 37, 39, 40 and 41 of the 2014 Act were commenced [Local Government (2014 Act)(Commencement No.2) Order (NI) 2014. S.R. 2014/153].

[42] As the title suggests, the 2014 Transitional Regulations were originally intended to apply during a transitional period following the elections to the 11 new councils in May 2014 and pending new regulations by the department. The Explanatory Note contains the following:

> "These Regulations make transitional provision with respect to local government reorganisation and, in particular, the 11 new councils to be established under the Local Government Act (NI) 1972, as amended by the Local Government (Boundaries) Act (Northern Ireland) 2008. The new councils will come into existence on 26 May 2014, following the election on 22 May, and will take over full responsibility for local government on 1 April 2015 when the 26 current councils will cease to exist. These Regulations cover that period and the initial period after 1 April 2015."

[43] The 2014 Transitional Regulations do not contain a "sunset" provision. They have never been repealed and no new Regulations have ever been made. Accordingly, in the absence of any repealing measure, they have continued in force. For present purposes, the key provisions of the 2014 Transitional Regulations are regulation 7 and Schedule 3. As set out below, both were included in the draft laid before the Assembly but were not contained in the original consultation draft.

[44] Regulation 7 provides as follows:

> "7(1) A new council must incorporate each provision of Schedule 3 in its standing orders for regulating its proceedings and business.

> (2) A council shall refrain from modifying its standing orders for regulating its proceedings and business to enable provisions incorporated under paragraph (1) in those standing orders to be amended or disapplied unless those provisions so permit."

[45] Schedule 3 contains the following relevant provisions:

> "(1) For the purposes of paragraphs (2) to (4):
>
> 'Call-in' means a requisition for the reconsideration of a decision as provided for in section 41(1) of the 2014 Act.
>
> …
>
> (2) A qualified majority vote shall be required in relation to a council's decision on:
>
> (a) A call-in made in accordance with section 41(1)(b) of the 2014 Act;
>
> (b) The suspension of standing orders."

[46] The 2014 Transitional Regulations were made pursuant to a number of enabling provisions, including section 38 of the 2014 Act. The combined effect of regulation 7 and Schedule 3 is that councils are obliged to make standing orders which require a qualified majority vote on the reconsideration of a decision for which a call-in requisition on disproportionate adverse impact grounds has been made *"in accordance with"* section 41(1)(b) of the 2024 Act and also for decisions to "*suspend*" (as distinct from modify or amend) standing orders.

Standing Orders - Belfast City Council

[47] As explained in more detail below, on 11 June 2014, BCC adopted as its own, the model standing orders which had been published by the Department on 3 June 2014 for consultation, including the Department's proposals for standing orders to govern the section 41 call-in procedure. At that time, section 41 was already in force (2 June 2014). Since that time, BCC has amended its standing orders on a number of occasions but has not amended standing order 48 (call-in procedures).

[48] At the time of the events relevant to these proceedings, the most recent version of BCC's standing orders was approved in September 2024. Several standing orders are relevant. These are summarised below.

[49] Standing order 25 identifies those decisions which require a qualified majority vote of not less than 80% of the members present and voting. The relevant decisions are described as follows:

> "25…. (e) A call-in made in accordance with section 41(1)(b) of the 2014 Act, ie on the grounds of adverse community impact; and
>
> (f) The suspension of Standing Orders, other than Standing Orders 25, 34, 35 which cannot be suspended …"

[50] Standing order 33 provides for the suspension of standing orders. It states:

> "For the purpose of affording greater freedom of debate, any of the Standing Orders may be suspended at any meeting of the council. Upon a motion duly proposed, seconded and carried by a weighted majority vote, such standing orders shall be suspended for that item of business. Previous notice of any such motion shall not be necessary. This standing order shall not apply in respect of those standing orders that are mandatory under the provisions of the Local Government (Standing Orders) Regulations (NI) 2015."

[51] As explained below, the "Local Government (Standing Orders) Regulations (NI) 2015" was the name of the draft model standing orders which were published by the Department for consultation, but which were never made. A revised version of the proposed regulations was laid in draft before the Assembly but negatived following a cross community vote. The final sentence of BCC's standing order 33 is therefore nugatory, but it reflects the fact that, at the time BCC adopted the Department's proposed model standing orders, the regulations were expected to made at a later date.

[52] Standing order 48 governs the statutory call-in procedure. Part (b) governs "*call-in admissibility*." Its requirements are summarised below, with paras (8), (9) & (10) set out in full:

> (1) A call-in requisition must be submitted in writing "*to the Clerk*" within five days of the relevant decision.
>
> (2) The call-in requisition must "*specify the reasons why a decision should be reconsidered*." The requisition must therefore state whether it is made on the ground of procedural irregularity and/or disproportionate adverse effect.

(3) Requisitions made on the ground of disproportionate adverse effect must specify the grouping which would be affected, together with the "*nature and extent of the disproportionate adverse impact*."

(4) A "*section of the inhabitants of the district*" is defined to mean any clearly identifiable grouping by location, interest or other S.75 category etc.

(5) Within one working day of receipt, the clerk must confirm that the requisition has the support of 15% of councillors and that the "*reasons for the call-in have been specified.*"

(6) If the reasons are not identified, the clerk must notify the relevant members and advise of the statutory deadline for submission.

(7) On receipt of an "*admissible call-in*" on the ground of disproportionate adverse effect, the Chief Executive must determine that the 15% threshold is "*still in place*" at the expiry of the statutory deadline. If so, "*the opinion of a practising solicitor or barrister in accordance with section 41(2) of the 2014 Act will be sought.*

(8) *Where the legal opinion obtained in accordance with section 41(2) of the 2014 Act <u>confirms that the call-in has merit</u>, the clerk shall:*

    (a) *furnish the opinion to members; and*

    (b) *include the decision on the agenda for the next available meeting of the council at which it will be taken by a qualified majority.*

(9) Where the legal opinion obtained in accordance with section 41(2) of the 2014 Act <u>indicates that the call-in does not have merit</u>, the clerk shall:

    (a) *furnish the opinion to members; and*

    (b) *make arrangements for the decision to be implemented or tabled for ratification by the council, as appropriate."*

> (10) *No decision shall be subject to call-in more than once for each of the reasons specified in section 41(1) of the 2014 Act.*"
>
> [emphasis added]

[53] Standing order 65 provides that standing orders may be "*altered or rescinded*" by resolution of the council.

Standing Orders – Derry City and Strabane District Council

[54] Derry City and Strabane District Council ("DCSDC") participated in these proceedings as a notice party. Like BCC, it adopted the Department's proposed model standing orders on 11 June 2014. On 14 June 2021, it modified its standing order 21.2(8), which was identical to 48(8) of BCC's standing orders. The current version of DCSDC's standing orders is set out below, with the amendment underlined:

> "21.2(8) Where the legal opinion obtained in accordance with section 41(2) of the 2014 Act indicates that the call-in does not have merit, the clerk shall:
>
> (a) furnish the opinion to members; and
>
> (b) include the decision on the agenda for the next available meeting of the council at which it will be taken by simple majority."

[55] The difference between the procedures required by the BCC and DCSDC standing orders arises where the legal opinion indicates that the call-in on adverse impact grounds "*does not have merit*." In the case of BCC, the earlier decision is "*implemented or tabled for ratification*." Depending upon the decision, the Council may therefore have no further input prior to implementation. In the case of DCSDC, the decision will always return to the council or committee for reconsideration, with a final decision taken by simple majority vote.

Other district councils in Northern Ireland

[56] A review of the standing orders of other district councils relating to the call-in procedure suggests that six councils follow the BCC model (Newry, Mourne and Down; Armagh, Banbridge and Craigavon; Fermanagh and Omagh; Causeway; Mid & East Antrim and Antrim & Newtownabbey). Mid-Ulster District Council uses the DCSDC formulation. Ards & North Down Borough Council and Lisburn and Castlereagh City Council both use a different model. In summary their standing order require that once the procedural requirements for making a requisition on the ground of disproportionate adverse effects have been observed, the legal opinion is

obtained. Thereafter, the opinion is provided to members and the matter is tabled for reconsideration on a qualified majority vote basis. The legal opinion therefore *informs* the decision, rather than filters those requisitions which the opinion indicates do not have merit. All decisions for which a called-in requisition is received on this ground are therefore subject to reconsideration by these two councils on the basis of qualified majority voting. In practical terms, this is the procedure which the applicant contends is compelled by the requirements of section 41. The applicant's challenge on Ground 1 therefore affects the standing orders of 9 out of 11 of Northern Ireland's district councils.

Cross-community voting and minority protections

[57] In Northern Ireland, public authority decision making procedures which include minority protections are provided for in three other areas. All are contained in the Northern Ireland Act 1998 ("the NIA"), as amended. Each one operates in a different way and each one shares both similarities and differences with the call-in procedure under the 2014 Act. They are summarised below.

[58] Northern Ireland Assembly: Petition of Concern – section 42 of the NIA provides for a petition of concern, which applies to voting within the Northern Ireland Assembly. As originally enacted, 30 members of the Assembly may present a petition of concern on any matter to be voted on by the Assembly. The procedure was amended by the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022. There are now some limitations on the breadth of the necessary support for the petition and a very narrow category of decisions are excluded. However, the core features of the procedure remain. Once a petition of concern is presented, the relevant vote requires "cross-community support", as defined by section 4(5) of the NIA (ie a majority of both designated nationalist and designated unionist MLAs). It is not necessary for MLAs to explain their concern, nor is there any statutory mechanism for assessing the merit of the petition. Assembly Standing Orders prescribe some procedural requirements such as timings etc, but do not provide a mechanism for identifying any irregularities in the petition. It is therefore likely that they would be assessed by the Speaker. Once a petition of concern has been presented, the matter is simply debated in the Assembly with a vote taken on a cross-community basis. The procedure therefore provides a strong measure of minority protection and is available to all votes, not only ones where adverse effects on one section of the community might arise. Accountability for use of the procedure lies in the political domain.

[59] Executive Committee. Section 28A(8) of the NIA makes provision for cross-community voting within the Executive Committee. This procedure was introduced following the St Andrew's Agreement. It provides that if "*any three members of the Executive Committee*" require that a vote within the Executive should take place on a cross-community basis any vote on that matter in the Executive Committee shall require cross-community support in the Executive Committee. Like the Petition of Concern procedure, it is available for any vote within the Executive.

There is no requirement for Ministers to explain the reasons for their request, nor is there a mechanism for assessing the merit of their concerns. The matter is simply left for debate amongst Ministers.

[60] Public Law Equality obligations. Section 75 of the NIA requires all public authorities (including councils) to have regard to both the need to promote equality of opportunity and the desirability of promoting good relations between persons on grounds of certain specified characteristics (eg religious belief, political opinion, gender, race etc). Schedule 9 to the NIA sets out a detailed regime for decisions which are likely to have adverse effects for these groupings. Procedures must be prescribed within an approved equality scheme and will invariably involve equality impact screening and/or assessment prior to final decision making. Section 75 obligations differ from cross community voting requirements insofar as public authorities are not prohibited from taking decisions which might have adverse effects upon specified groupings. Rather, they are subject to an obligation of prior screening and/or assessment to ensure that the public authority is both informed about and confronts those effects in a transparent manner. Compliance with equality schemes is carried out by the Equality Commission rather than the courts (*Re McMinnis* [2024] NICA 77) and accountability for decisions with adverse effects lies largely in the political domain.

[61] All of the above statutory procedures provide some form of minority protection within the legislative, executive and local branches of government. Each has its own unique characteristics and effectiveness and none provide a precise parallel with the section 41 call-in procedure. Unlike decision making in the Assembly or Executive, Cross-community voting is never required under section 41. Rather, an 80% voting threshold is required where the decision would disproportionately adversely affect a particular section of the district population. Where the relevant section of the community identified in a section 41(1)(b) requisition also comprises a section 75 grouping, the original council decision is likely to have been preceded by equality screening and/or impact assessment.

History of call-in decision making since 2014

[62] The evidence in these proceedings includes a summary of the experience of call-in decision making by both BCC and DCSDC. It reveals that the number of call-in requisitions has been reasonably low in both councils.

[63] Prior to the requisitions in this case, there have been 13 call-in requisitions in BCC. Two were made on procedural grounds only. Two were made on the ground of disproportionate adverse effects only and nine were made on both grounds. Of the 11 requisitions raising a concern about disproportionate adverse effects, the requisition was found to have merit on three occasions. Two of those decisions were overturned and one remains ongoing.

[64] In DCSDC, seven call-in requisitions have been presented, of which only three have relied upon disproportionate adverse effects.

PART 3: ROLE OF THE DEPARTMENT

[65] Following the coming into force of the Departments (NI) Act 2016, the Department of the Environment was dissolved and its functions in relation to local government were transferred to the Department for Communities. Since that time, the new department has had policy responsibility for responding to the Assembly decisions to negative draft regulations providing for model standing orders. It also has a statutory power under section 111 of the 2014 Act to issue guidance on any aspect of the Act.

[66] On 27 January 2017, the Department wrote to all council Chief Executives advising that recent legal advice indicated that the 2014 Transitional Regulations remained in effect. It then advised:

> "The continuing effect of these provisions means that all decisions called in under section 41(1)(b) must be reconsidered by way of a qualified majority, as prescribed by paragraph 2(a) in Part 1 of Schedule 3.
>
> I would be grateful if you could ensure that the council is aware of the effect of the existing legislative provisions and that it should operate its call-in procedure in keeping with the requirements of the Transitional Regulations. The council should arrange for its standing orders to be amended to reflect this position as soon as possible."

[67] The Department's advice is silent on the role of the legal opinion required by section 41(2). It offered no further advice upon whether the phrase "*all decisions called in*" means "*all requisitions received*" or "*decisions assessed as meeting the requirements of section 41(1)(b)*." The 2017 advice is also silent on whether or by what means councils might assess that issue. In summary, the department's advice left unanswered many of the key practical and legal questions facing councils where call-in requisitions are received. As appears from the analysis of standing orders across all district councils, this advice has been interpreted and applied in different ways by different councils.

[68] On 11 May 2017, councils' legal officers and other representatives attended with officials from the Department to discuss a range of issues, including call-in procedures. The Department was advised that councils were encountering difficulties with the proper interpretation and implementation of the section 41 call-in procedures in the absence of any guidance on the key issues summarised above. Save as set out below, until its submissions were made in this case, no

further substantive guidance or advice has been provided by the Department to councils on this issue since that time.

[69] On 31 October 2023, the Department wrote to Chief Executives requesting information about the operation of the call-in process within their council but offered no further guidance.

[70] On 31 March 2025, the Chief Executive of Ards and North Down Borough Council ("ANDBC") wrote to the Minister for Communities seeking advice on the interpretation and application of both section 41 and the Council's standing orders. As set out above, the Council had amended its standing orders in January 2025, following a decision of Humphreys J to grant leave to apply for judicial review in the case of *Re Bryson* [2024] NIKB 86. Under its new standing orders, all admissible call-in requisitions on the disproportionate adverse impact ground, together with the legal opinion were to be placed before the Council for reconsideration and decision by qualified majority vote. The Chief Executive contrasted the Council's new standing orders with the BCC model, which continues to be used by the majority of councils. The Chief Executive's letter referred to the arguments raised in the *Re Bryson* [2024] NIKB 86 case and requested assistance from the Department in the following terms:

> "… I consider that it would be of great assistance if the scope of the Chief Executive's role in this respect, to consider the validity or admissibility of a call-in and, in particular, whether it extends beyond noting whether the request has been made in time, by the required number of members and on one of the stipulated grounds, to also assessing the merits of the reasons which have been specified … I have not been able to find any guidance on this matter although the department may well be more aware of the legislative background and intention …"

[71] On 13 May 2025, the Minister responded with the following advice (emphasis added):

> "… the legislation provides that the Chief Executive receives the request for call-in and where the request is made under section 41(1)(b) of the Local Government Act (NI) 2014, the Chief Executive must also obtain the opinion of a practising barrister or solicitor before the reconsideration of a decision. <u>Beyond these provisions, it would be for a council to determine the content of its standing orders in relation to meeting the requirements of section 41 of the 2014 Act and seeking its own legal opinion if necessary</u> …

> The original intention of the call-in procedure and the use of qualified majority vote in this process was to protect the interest of minority communities. The use of a qualified majority vote was agreed by the political parties on the Strategic Leadership Board's Policy Development Panel on Governance and Relationships, with the provisions as a whole being agreed by the Assembly."

[72] On 7 October 2025, the Chief Executive of ANDBC responded to the Minister, seeking further clarification. She stated:

> "As I outlined in my previous letter, it is my understanding of the governing statutory provision that it does not provide for preliminary assessment by the Chief Executive of the merits of the reasons given for presentation of the requisition on either ground.
>
> However, in the course of the recent legal challenge brought by Jamie Bryson by way of application for leave to apply for judicial review, Mr Bryson's argument was that the Chief Executive must make such determinations on receipt of a requisition. From my reading of the governing statutory provision and as referred to in your letter, it appears to provide that standing orders must make provision requiring reconsideration where the necessary percentage of members presents a requisition.
>
> It is my view that it does not provide for preliminary assessment by the Chief Executive of the merits for the reasons for presentation of the requisition on either ground. Do you agree that to import such a requirement would appear to run contrary to the statutory scheme?"

[73] On 14 October 2025, Mr Bryson wrote to the Minister in relation to the BCC standing orders. In summary, he contended that standing orders 48(7),(8) & (9) were *ultra vires* section 41 of the 2014 Act, insofar as they treated the legal opinion as determinative of the merits of a call-in on disproportionate adverse impact grounds. He requested the Minister to exercise his powers under section 111 of the 2014 Act to issue guidance on the call-in procedure.

[74] On 21 November 2025, the Minister wrote to all Chief Executives, stating that it had been drawn to his attention that some councils have provisions within their standing orders which are not in keeping with section 41(1) of the 2014 Act. The letter then repeated the content of the January 2017 letter, advising that the 2014 Transitional Regulations remain in effect and that the "*continuing effect of these provisions means that all decisions called-in under section 41(1)(b) must be reconsidered by*

way of qualified majority, as prescribed by paragraph 2(a) in Part 1 of Schedule 3." The Minister's advice therefore repeated precisely the same language which had been used in 2017, which was silent on the key issues of interpretation. A copy of the Department's January 2017 letter was also enclosed. Notably, the Minister did not offer Chief Executives the advice which he had provided to the ANDBC Chief Executive in May 2025, regarding the ability of councils to determine the content of their own standing orders to satisfy the requirements of section 41.

[75] In contrast to the Department's position in correspondence and notwithstanding the short passage of time between November 2025 and the hearing in January 2026, the Department now takes a much more definitive position. It now supports in full the position advocated by the applicant and contends that the combined effect of section 41 and the Transitional Regulations is that *every* call-in requisition on the disproportionate adverse impact ground, which is supported by 15% of council members, must be reconsidered on a qualified majority vote, informed by the legal opinion, provided the core procedural requirements are observed. It contends that section 41 imposes a requirement of "form" only and that it prohibits councils from adopting any procedure which imposes any restriction upon the reconsideration of a call-in requisition which satisfies the formal procedural requirements. Accordingly, it now contends that BCC's standing orders (and those of the six other councils) are *ultra vires*, notwithstanding that they follow the model originally proposed by the Department itself. In the course of submissions, the Department confirmed that it had not undertaken any further policy work in this area since 2017 which had not been disclosed.

PART 4: LEGISLATIVE HISTORY

[76] The 2014 Act represented a milestone in the reform of local government in Northern Ireland. Its enactment followed many years of political discussion and policy development. The headline changes included the reduction in the number of councils from 26 to 11 and the transfer of new functions (including planning powers) from the then Department of the Environment to councils. Elections to the new councils were held on 22 May 2014 and they operated in shadow form and in parallel with the old councils until 1 April 2015, when the transfer of powers commenced in full. The transition included many logistical and financial challenges which required a suite of statutory regulations. The new procedure for the call-in and reconsideration of decisions under section 41 of the 2014 Act and the statutory regulations to support the procedure therefore represented only a very small part of the reforms. Some of this legislative history and post-enactment developments are relevant to the issue of statutory interpretation raised in these proceedings. The key events are summarised below.

Relevant pre-legislative history

[77] On 31 August 2008, the then Minister of the Environment (Mrs Arlene Foster MLA) made an oral statement to the Assembly announcing policy proposals for the

Review of Public Administration. At that time, the broad outline of the reform of local government had been agreed, by the political parties, including the reduction in council numbers. The Minister's statement set out the broad policy direction and objectives of the forthcoming reforms. It included the following:

> "The overarching aim of the Executive's Programme for Government is to build a peaceful, fair and prosperous society in Northern Ireland that has respect for the rule of law. We expect local government to help deliver on that aim. A report on governance arrangements, agreed across the parties has already been provided by the Local Government Task Force. That provides a starting point to develop new governance models. An integral and urgent part of the work of that task force will be to develop a range of models with appropriate checks and balances that can be piloted and evaluated. Those models will be designed to be mindful of the need to ensure effective and inclusive local democracy, to protect the rights of minorities, to prevent any direct or indirect discrimination and to promote the need of equality of opportunity. Those will include arrangements to allocate council chairs, deputy chairs and positions on council committees and to facilitate cross-community decision-making."

[78] The more detailed policy formation process envisaged by the Minister was taken forward by a Strategic Leadership Board made up of elected representatives from the main political parties, under the chairmanship of the Minister of the Environment. The Board also oversaw the work of a number of Policy Development Panels, which in turn were comprised of cross-party political representatives.

[79] Policy Development Panel A (Governance, Community Planning and Central/Local Relations) was responsible for developing governance arrangements for the new councils. The initiative for a call-in procedure emerged through the work of this panel. Minutes from the November 2008 meeting of Panel A reveal that the following policy objectives were identified from Minister Foster's Assembly statement:

(i) Efficient and effective decision making;

(ii) Checks and balances;

(iii) Proportionality in allocating key positions; and

(iv) Transparency and oversight.

[80] At that time, the Panel agreed upon the principle of Qualified Majority Voting for certain types of council decision making, together with the need for a call-in procedure for reconsidering council decisions. It was also agreed, in principle, that the procedure should be available in cases of procedural irregularity and for the protection of minorities. The more detailed policy work to develop an appropriate procedure was to follow.

[81] On 9 January 2009, Policy Panel A produced a paper summarising policy proposals, including an outline of the proposed call-in procedure. Members remained agreed that it should be available for both procedural irregularities and for the protection of minorities. The paper suggests that the parties envisaged the procedure operating in a manner similar to a petition of concern in the Assembly, however, there was no support for the use of cross-community voting. Rather, it was proposed that qualified majority voting should be used for all call-ins, with a trigger of 15% of council members and a requirement for qualified majority voting of 80% of council members present and voting, in order to maintain the original decision. The January 2009 paper included the following description of how it envisaged the call-in procedure would operate when used for the protection of minorities:

> "6. Where the call-in procedure is used on the basis of the protection of minorities – for example, adverse community impact – members proposed that an independent validation mechanism would be required, in order to avoid the potential for internal disputes. It is further proposed that all call-ins in this category would be referred to full council for final decision."

[82] Policy Development Panel A's paper of 9 January 2009 was discussed at a meeting of the Strategic Leadership Board on 23 January 2009. The Board was also advised about Alliance Party concerns that a call-in based upon adverse impact should not be limited to impacts on the nationalist or unionist community, in light of the diversity of the population in Northern Ireland.

[83] Policy Panel A's work continued over the following year and a final policy paper was considered and approved by the Strategic Leadership Board on 25 February 2010. The paper is entitled "Draft Call-in Procedure for Statutory Transition Committees." It provides for the use of both a call-in process where correct procedures were not followed in "*developing a recommendation*" and for a call-in followed by qualified majority voting where the decision "*if taken, would result in an adverse impact on either the unionist or nationalist community*" (paragraph 1). The proposals appear to envisage a call-in procedure in advance of a decision being taken, rather than after it had been taken. The proposals include a call-in trigger of 15% of the members of the committee and a qualified majority voting requirement of

80% of the members present at the meeting and voting. In relation to an "adverse impact" call-in, the paper provides as follows:

> "5(g)(i) Where the call-in is on the basis of potential adverse impact … the Duly Appointed Officer shall, within a period not exceeding five working days from receipt of the call-in, arrange for independent legal advice on the validity of the call-in. This advice should be provided to the Duly Appointed Officer within a period not exceeding five working days from the date of the request. The independent advice will indicate whether, in their opinion, the call-in request demonstrates that the decision, if taken, would result in an adverse impact on either the unionist or nationalist community in the new council area."

[84] The paper envisaged that the duly appointed officer would then distribute the advice "on the validity of the call-in" to members of the committee. The paper then include the following description of the proposed procedure:

> "5(g)(iii) If it is determined that the call-in request is valid, the decision to which the request refers shall be scheduled on the agenda for the next meeting of the Statutory Transition Committee. In these circumstances, it will automatically be subject to a qualified majority vote of at least 80% of members of the Statutory Transition Committee who are present and voting.
>
> (iv) If it is determined that the call-in request fails to demonstrate that the criterion has been met, the matter will be scheduled on the agenda for the next available meeting of the statutory transition committee for the consideration as per standing orders."

[85] The cross-party policy development process, which was endorsed by the Strategic Leadership Board, appears clearly to have a recommendation for a call-in procedure which would be available for decisions involving procedural irregularity or adverse community impacts. It would be operated by means of qualified majority voting, rather than cross-community voting. An independent validation mechanism in the form of a legal opinion should be available as a safeguard against intra-council disputes and the disruption of council business. Valid call-ins which demonstrated adverse effects should proceed to a qualified majority vote. Decisions which had been called-in but which did not demonstrate that the adverse impact criteria had been met, would proceed in accordance with standing orders.

[86] In November 2010, the Department published a detailed public consultation paper on Local Government Reform. It included a series of questions about the proposals for a call-in process together with the following commentary:

> "3.23 Where the call-in procedure is used in seeking to protect political minorities from adverse impact in the council area … the Department proposes that a process to assess if the call-in is valid would be put in place. This process would be external to the council to avoid the potential for disputes between councillors. It is further proposed that all decisions subject to call-in on this basis would be referred to the full council for a final decision."

[87] In relation to the proposals for qualified majority voting, the paper stated:

> "3.24 … The use of qualified majority voting would also be available to councils for decisions that had been the subject of a legitimate call-in."

[88] In July 2012, the Department published its analysis of the consultation process. While differing views were expressed on different aspects of the proposed call-in process, there was broad general support for the proposal and the limited areas in which it would apply. There was also general support for the use of qualified majority voting. The Department commented that "*further clarification on the use of call-in and qualified majority voting will be provided through relevant guidance*." It favoured the proposed thresholds of 15% and 80% for triggering and adopting a call-in decision, with the option for these thresholds to be revised.

Passage of the Bill in the Assembly

[89] On 23 September 2013, the Local Government Bill was introduced in the Assembly. Clause 45 of the Bill has now become section 41 of the 2014 Act. Subject to one minor amendment at the Consideration Stage to clause 45(3), the provision remained unchanged during passage of the Bill.

[90] The Bill received its Second Reading on 1 October 2013. Contributions from several members raised specific queries about how the call-in procedure would operate. Ms Lo (Environment Committee Chair), Mr Elliott MLA, Mr Weir MLA and Lord Morrow all expressed concern about the lack of detail in clause 45. The contribution of Mr Weir MLA is broadly reflective of those concerns. He was a member of the Environment Committee and had also been a member of Policy Development Panel A. He said:

> "… it is a matter of protecting minorities while not having a mechanism that is so easy to trigger that it simply

> creates gridlock in councils. It is about getting that balance right. Some of those issues may have to be dealt with in subordinate legislation, but they need to be looked at. The key to qualified majority voting is the determination of the legitimacy of a call-in, which is an issue that Lord Morrow raised. Which individual or grouping will give a thumbs up or thumbs down to the legitimacy of a call-in is a difficult circle to square. I am not convinced that chief executives simply referring an issue to a barrister or solicitor of their choice is the best way forward. We will need to examine the best way forward in Committee."

[91] In his concluding remarks to the debate, the Minister of the Environment commented:

> "A point raised by Ms Lo and echoed by Mr Elliott and Lord Morrow was around the role of a solicitor or barrister through or during the call-in process. The individual concerned will have no role in the decision-making process. Their role will be to confirm whether the members requesting the reconsideration of a decision have articulated a case for the disproportionate adverse impact that would arise if the decision was implemented and that the community would be affected. Ultimately, it will be for members of the council to make the decision on the matter under consideration. The details of how the process will operate will be specified, once again, in regulations that will be subject to the affirmative procedure."

[92] During the clause-by-clause analysis at the Committee stage, considerable debate took place about the clause 45 proposals. The Minister attended a Committee session on 6 February 2014. The debate included the benefits of having an approved panel of legal advisers, rather than leaving the matter entirely to the discretion of the Council. Mr Weir MLA referred to discussions by the Policy Development Panel and commented:

> "… so there was no specific agreement or understanding that the process would be that the Chief Executive would simply refer to barristers or solicitors. What was agreed was that there would have to be some form of mechanism to determine whether a call-in was legitimate."

[93] The Minister was asked to consider an amendment requiring councils to operate a panel of legal advisers. On 13 February 2014, officials advised the

Committee that the Minister was not minded to propose such an amendment and stated that there would be guidance available to councils. A departmental official stated *"… the call-in procedure will be a mandatory element of a council's standing orders. It will be specified in Regulations*."

[94] On 6 March 2014, the Department published for consultation a draft of the Local Government (Transitional, Supplementary and Incidental Provisions and Modifications) Regulations (Northern Ireland) 2014. For present purposes, the only relevant aspect of the draft Regulations is that they contained no provision for call-in decisions or qualified majority voting. As set out below, the current regulation 7 and Schedule 3 were added at a later stage.

[95] During the Consideration Stage, clause 45(3) of the Bill was amended to enable regulations to make provision for obtaining the legal opinion envisaged by clause 45(2). Clause 45(3) was amended by the addition of the words underlined below in what is now section 41(3):

> "(3) Regulations may amend the percentage mentioned in subsection (1) <u>and the process by which a legal opinion is obtained in subsection (2)</u>."

[96] During oral Environment Questions in the Assembly on 1 April 2014 and in answer to a question by Ms McGahan MLA, the Minister confirmed that qualified majority voting would be required "*in response to a valid call-in request on the grounds of a disproportionate adverse impact on a section of the community*" and that the proposals in the Bill would *"… ensure that what is here to protect minorities is not then used to block progress unnecessarily in the work of councils. It will be closely monitored and subject to close scrutiny*." In response to a further specific question from Mr Elliott MLA about the potential for "*gridlock with the call-in and quality majority processes*", the Minister stated that officials from both the Department and local government had worked closely to develop the details of the proposed procedures and that draft regulations containing suggested model standing orders for councils would be issued for consultation later that week. As set out below, the Minister's stated intention did not materialise and the draft regulations were not published until after the Bill had achieved Royal Assent.

[97] On 8 April 2014, the Bill was debated by the Assembly during its Final Stage. The Minister once again committed to bringing forward subordinate legislation and guidance to underpin the operation of the Bill. When asked why these draft Regulations had not been produced during the Committee Stage, the Minister observed that the matter could be debated once Regulations were laid for approval.

[98] The Local Government (Northern Ireland) Act 2014 achieved Royal Assent on 12 May 2014. As set out above, section 41 was commenced on 2 June 2014.

Relevant post-legislative history

[99] On 19 May 2014, revised draft Local Government (Transitional, Supplementary and Incidental Provisions and Modifications) Regulations (Northern Ireland) 2014 were presented to the Environment Committee for consideration. This version of the regulations included a new regulation 7 and Schedule 3 which provided for qualified majority voting for call-in decisions on the ground of disproportionate adverse effects. The draft regulations were laid before the Assembly on 20 May 2014 and were approved, following a debate on 27 May 2014. During the debate, the Minister apologised personally for the late production of the regulations and further committed that guidance on suggested model standing orders would be made available to the Environment Committee "*at the earliest possible opportunity*."

[100] On 2 June 2014, a number of sections of the 2014 Act came into force, including sections 37, 39, 40 and 41 [Local Government (2014 Act) (Commencement No.2 Order (NI) 2014 S.R.153/2014]. From this date onwards, councils were legally obliged to make provision in standing orders which gave effect to the new call-in procedure in section 41.

[101] The following day, 3 June 2014, the Department published for consultation draft regulations containing Model Standing Orders. Draft regulation 2 provided that councils "*must incorporate*" the provisions in the Schedule, within its standing orders. Schedule 1, paragraph 1 of the draft regulations provided:

> "1. A qualified majority shall be required in relation to a council's decision on …
>
> (b) a call-in made in accordance with section 41(1)(b) of the 2014 Act; and
>
> (c) the suspension of standing orders."

[102] Schedule 1, paragraph 4 provided:

> "**Standing Order – Call-in admissibility**
>
> 4. …
>
> (6) Within one working day of receipt of an admissible call-in submitted under section 41(1)(b) of the 2014 Act, the clerk must seek the opinion of a practising solicitor or barrister in accordance with section 41(2) of the 2014 Act.

> (7) Where the legal opinion obtained in accordance with section 41(2) of the 2014 Act confirms that the call-in has merit, the clerk must:
>
> (a) furnish the opinion to members; and
>
> (b) include the decision on the agenda for the next available meeting of the council, at which it must be taken by qualified majority;
>
> (8) Where the legal opinion obtained in accordance with section 41(2) of the 2014 Act indicates that the call-in does not have merit, the clerk must:
>
> (a) furnish the opinion to members; and
>
> (b) make arrangements for the decision to be implemented or tabled for ratification by council, as appropriate." **[emphasis added]**

[103] The Department's consultation proposals therefore provided that the legal opinion required by section 41(2) (then in force), should address the "*merit*" of a call-in requisition on the ground of disproportionate adverse effects. The intended legal effect of the opinion is clear from the proposed paragraphs 4(7) and (8), namely that only those call-in requisitions with "*merit*" would proceed to qualified majority voting. The draft regulations therefore aligned with the original recommendations of Policy Development Panel A and were consistent with the Department's stated intentions following the 2010 public consultation process.

[104] The consultation paper which accompanied the draft regulations stated:

> "16. … the arrangements are designed to ensure that the appropriate balance is struck between providing the required protection for the interests of minority communities in decision-making and not unduly delaying the transaction of council business."

[105] On 11 June 2014, Belfast City Council adopted the proposed Model Standing Orders as its own. It did so while the Department's consultation process on the draft regulations remained ongoing, since section 41 was already in force including the obligation to have in place standing orders which provided for the call-in procedure. This obligation was confirmed by the Minister of the Environment in the Assembly on 14 October 2014 in answer to a Written Assembly Question.

[106] On 5 February 2015, the Environment Minister laid the draft Local Government (Standing Orders) Regulations (NI) 2015 ("the draft Standing Order

Regulations") for approval by the Assembly. The draft Regulations, as laid, contained a material difference from the consultation draft published in June 2014. The proposed Schedule 1, paragraph 4(6)-(8) were replaced with the following alternative procedure which omitted reference to a legal opinion upon the "*merit*" of the call-in. The new proposed draft stated:

> "4. …
>
> (7) Within two working days of receipt of an admissible call-in submitted under section 41(1)(b) of the 2014 Act, the clerk must seek the opinion of a practising solicitor or barrister in accordance with section 41(2) of the 2014 Act.
>
> (8) When the legal opinion obtained in accordance with section 41(2) of the 2014 Act is received, the clerk must:
>
> (a) furnish the opinion to the members; and
>
> (b) include the decision on the agenda for the next available meeting of the council for reconsideration, at which it must be taken by a qualified majority."

[107] The new proposed standing orders therefore envisaged a qualified majority vote on all call-ins which had been presented on the disproportionate adverse effect ground, provided the procedural requirements of the requisition had been satisfied. Under this revised model, the legal opinion on the call-in was simply a matter to be taken into account as part of the reconsideration.

[108] On 24 February 2015, the revised draft Standing Order Regulations were debated in the Assembly. The previous day, a petition of concern was presented in relation to the motion to approve the regulations, thus triggering an Assembly requirement for cross-community voting. During the debate which followed, the Environment Minister expressed a degree of frustration about the use of a petition of concern. He stated:

> "I wish to underline that the call-in of a decision is already provided for in primary legislation through the 2014 Act. It is, therefore, very important that councils are now provided with a consistent methodology for operating call-in. To do otherwise, could result in processes being adopted by individual councils that may not provide appropriate or adequate protections."

[109] When explaining the reasons for the petition of concern, Mr Weir MLA, expressed his party's concerns in the following terms:

> "… the danger with this is – it is something that we were mindful of at the start – that, first of all, it is used legitimately. There are plenty of examples on both sides of the community where, potentially, if this is put in place and is allowed to automatically become a qualified majority vote simply by the assertion of it, where a coach and horses could be driven through it, and it could simply become tit for tat across the board … It seems to me a nonsense that, if we put in place that legal opinion has to be sought, the import of the legislation is that, at best, it becomes entirely a tick-box exercise and, at worst, a useful device for lawyers to earn a few pounds, but that their opinion is utterly irrelevant because the decision automatically becomes subject to QMV. We believe that that element of things is wrong. If there needs to be some tweak to the legislation or in this case, to the regulations, we are quite happy to entertain that …"

[110] The draft Standing Order Regulations did not achieve cross-community support and were therefore negatived by the Assembly. The stated reason for the concern was not the *inclusion* of a mechanism for "filtering" call-in requisitions, but its *omission*.

[111] On 8 October 2015, officials briefed the Environment Committee and advised that the Department had been considering the concerns expressed during the debate on the regulations and the type of filter mechanism which could be used for deciding which call-in requisitions should proceed to qualified majority voting. The Committee was advised that legal advice had been obtained on this issue.

[112] At a further briefing to the Environment Committee on 5 November 2015, officials advised that they were still considering an alternative filter mechanism. They explained that the legal advice received indicated that if the opinion of the barrister or solicitor was used to determine whether the call-in was "sound" then the "*effect of that proposal would be to delegate the question of whether a qualified majority vote is required in the given circumstances to the barrister or solicitor*."

[113] On foot of the legal advice, fresh draft Standing Order Regulations were prepared. These were in largely identical form to the draft 2015 Regulations, save for the following addition in Schedule 1, paragraph 1:

> "1. A qualified majority shall be required in relation to a council's decision on:

> (a) a call-in made in accordance with section 41(1)(b) of the 2014 Act where a practising barrister or solicitor has opined under section 41(2) of that Act that there is a risk that the decision is outside the powers of the council, or is incompatible with EU law or Convention Rights (within the meaning of the Human Rights Act 1998), or is not in compliance with the council's Equality Scheme, insofar as it relates to equality of opportunity (within the meaning of section 75(1) of the Northern Ireland Act 1998) …"

[114] The draft Local Government (Standing Orders) Regulations (NI) 2016 were laid before the Assembly for consideration on 14 March 2016. On 11 March 2016, a petition of concern was again presented in relation to the motion to approve the regulations, thus requiring cross-community voting.

[115] In support of the motion to approve the regulations, the Minister of the Environment commented:

> "… the main change to the initial draft of the Regulations is in relation to a call-in on [section 41(1)(b)] grounds. In response to concerns raised during the debate, an amendment has been included to provide for a filter mechanism for called-in decisions, which must be taken by a qualified majority. Schedule 1 to the draft regulations has been revised to enable the opinion of a practising barrister or solicitor to act as a filter mechanism to decide which called-in decisions must be taken by a qualified majority. The draft regulations now specify that, where this opinion indicates a risk that the decision is outside the powers of the council, is incompatible with EU law or Convention rights or is not in compliance with the council's Equality Scheme insofar as it relates to equality of opportunity within the meaning of section 75(1) of the Northern Ireland Act 1998, a qualified majority vote is required."

[116] In explaining his political party's position on the draft regulations, Mr Weir MLA, identified two concerns. First, it was concerned about the absence of a panel of legal advisers from whom the section 41(2) opinion could be obtained. Second, it was concerned about non-uniformity of approach among councils. He observed that, when determining whether the call-in satisfied the statutory criteria, a finding of disproportionate adverse effects could be based upon the content of a council's Equality Scheme, which in turn might differ from one council to the next. He stated:

> "… my concern is that this moves too far away from section 41. I appreciate that the Minister has created a level of tweaking that has moved it at least a little in the right direction, but it does not go far enough. I am a little bit at a loss to understand why the language of section 41 cannot be imputed into the regulations … Equality seems to mean different things in different parts of the country. To tie in specifically what counts as a breach of equality of opportunity with 11 different equality schemes seems, to me, to go in the wrong direction. This moves further away from equality than what is in the 2014 Act. At least, in that Act, we have a guide to standing orders. … it creates a lot more of a subjective test than the objective test of the legislation. That is the flaw. …"

[117] The draft 2016 Regulations did not achieve the requisite cross-community support and were therefore negatived by the Assembly. Since that time, no further draft regulations have been laid before the Assembly. Councils have remained under a statutory duty to have standing orders regulating the procedure for call-in decisions, but regulations do not prescribe the content of those standing orders. No guidance has been issued by the Department and different councils have therefore approached the issue in different ways.

PART 5: CONSIDERATION

Grounds of challenge

[118] There are four broad grounds of challenge, which straddle three of the four call-in requisitions.

(i) **Ultra vires – Standing Orders 48(8) and (9)**. The applicant contends that these aspects of BCC's standing orders are *ultra vires* section 41 of the 2014 Act and Schedule 3 of the 2014 Transitional Regulations.

(ii) **Ultra vires – majority vote "filter" procedure**. The applicant contends that the procedure adopted for "filtering" or screening out the Palestinian Flag requisition was also *ultra vires* section 41 of the 2014 Act and Schedule 3 of the 2014 Transitional Regulations, insofar as it prevented reconsideration by qualified majority vote.

(iii) **Failure to progress second Palestinian Flag requisition**. The applicant contends that, following the requisition to reconsider the decision to fly the Palestinian flag on 29 November 2025, the Council's decision of 1 December 2025 to fly it on a different day (ie 2 December 2025) amounted to a fresh decision which was itself the subject of a further call-in requisition. It was

contended that the Council acted unlawfully by proceeding to fly the flag on 2 December, rather than to progress the requisition.

(iv) **Failure to take account of guidance**. The applicant contends that BCC failed to follow the Department's January 2017 and November 2025 guidance for use of qualified majority voting.

Submissions of the parties

[119] The applicant contends that the combined effect of section 41 of the 2014 Act and Schedule 3 of the 2014 Transitional Regulations is that every decision which has been the subject of a call-in requisition on the ground of disproportionate adverse effects must be reconsidered by qualified majority voting. She contends that the validity of the requisition must be determined by the Clerk of the council and that validity depends only upon support by the requisite number of members (per section 41(1) and that the requisition states that it is presented on the ground of a disproportionate adverse effect (section 41(1)(b)). She contends that these are requirements of form only and that the Clerk or any other body is precluded from assessing the substance of the grounds raised, with the issue being determined by the Council itself by means of a reconsideration with a qualified majority vote.

[120] The applicant contends that clerk's only other role is to obtain an opinion on the requisition in accordance with section 41(2). The purpose of the opinion is to inform the reconsideration and also the nature and extent of any adverse effects, but that it was for the council to decide, informed by the opinion and their political judgment, whether to affirm the earlier decision. It was contended that qualified majority voting was required for every requisition raising the ground of disproportionate adverse effect. It was pointed out that those supporting the requisition would still require to convince an additional 6% of council members of their views in order to prevent the original decision taking effect. The applicant contended that this interpretation was consistent with the general duty under section 84 which includes an obligation to have regard to "fairness" when securing continuous improvement in the exercise of functions. Accordingly, the applicant contends that BCC's standing orders 48(8) and (9), together with the alternative procedure adopted for the Palestinian Flag requisition were both *ultra vires*, insofar as they both involve the application of a "filter" mechanism for determining whether the original decision "*would disproportionately affect adversely*" a section of the inhabitants, otherwise than by means of a qualified majority vote.

[121] The department supports the applicant's interpretation and submissions. It also contended that standing orders 48(8) and (9) are *ultra vires* on the ground that they involved an impermissible delegation to the solicitor or barrister of the power to reconsider the original decision. The department contended that reconsideration was a function of the council and that Schedule 3 required that the decision on a reconsideration be reached by qualified majority vote. The department also emphasised that Part 7 of the 2014 Act related to the "meetings and proceedings" of

the council and its own decision making, rather than decision making by external bodies such as legal advisers, thus pointing away from the legal advisor having a decision making role. It contended that the words "*on either or both of the following grounds*" in section 41(1) limited the power of the clerk to consider the merit of the requisition and that ground (b) would be made out provided that the requisite 15% of members had expressed the view that the decision "*would disproportionately affect adversely*" a section of the inhabitants. In other words, it was a test of subjective belief, rather than an objective one. Insofar as this interpretation may facilitate "vexatious call-ins", the department contended that the solution was legislative amendment. The department also relied upon the presumption against absurdity, as explained by the Supreme Court in *R (PACCAR) v Competition Appeal Tribunal* [2023] 1 WLR 2594 at [43]. It contended that the purpose of the provision was to provide minority protection and that an interpretation which enabled councils to "filter" an otherwise valid requisition and thus to prevent a qualified majority vote, was so far removed from the statutory objectives and purposes as to be unlikely to reflect the Assembly's intention. In summary, the Department contended that the use of any mechanism to filter requisitions would "hollow out" minority protections in a manner which was inconsistent with the legislation.

[122] Belfast City Council did not accept the submissions of the applicant and department and it emphasised both the statutory context and objectives of the 2014 Act. The legislation introduced major reform of local government in Northern Ireland, with objectives including improved decision making and efficiency, in addition to minority protection. It acknowledged that the purpose of section 41 was to provide minority protection within local government decision making but pointed to the absence of any equivalent protections in the predecessor legislation. Accordingly, *any* protection for minorities represented an improvement on previous procedures and could thus be said to further the statutory objective. The council emphasised the breadth and flexibility of the statutory framework established by section 41 and the fact that the 2014 Act did not itself require qualified majority vote for any form of decision, as this requirement was introduced by Regulations. It submitted that the interpretation contended for by the applicant and department was unreasonable and unlikely to reflect the intention of the Assembly insofar as it would, in practice, enable a minority to require qualified majority voting in an excessive range of circumstances and thus disproportionately disrupt local government decision making. It contended that nothing within section 41 prohibited the procedure set out in standing order 48(8) and (9) and that the use of the section 41(2) legal opinion was a permissible means for councils to determine whether the statutory criteria for a valid call-in had been established and, thus, whether a requirement for qualified majority voting arose. BCC also relied upon the statutory history and the fact that its standing orders merely reflected the model standing orders which had originally been recommended by the Department itself. It pointed out that two of the draft model standing order regulations published by the department (but never made) contained a form of filter mechanism. It contended that these were clear and strong indicators of legislative intention, in light of the central role of the department in promoting the legislation and regulations.

[123] The council also emphasised a distinction in the language between Schedule 3, paragraph 1 and paragraph 2 of the 2014 Transitional Regulations. The phrase "*call-in*" is defined in paragraph 1 as a requisition for reconsideration "*as provided for*" in section 41(1) of the 2014 Act. By contrast, a qualified majority vote was required by paragraph 2(a) only where the call-in was "*made in accordance with section 41(1)(b).*" It contended that the contrasting language and use of the phrase "*in accordance with*" indicated an intention to permit a filter mechanism based upon the precise requirements of section 41(1)(b).

[124] DCSDC supported the submissions of BCC on the interpretation of section 41 and the 2014 Regulations. It highlighted the difference between the call-in procedure within its standing orders (as amended) and those of BCC. As described above, the DCSDC standing orders include a filter mechanism which uses the legal opinion to determine whether or not the call-in requisition meets the statutory criteria under section 41(1)(b). However, they also provide that the matter would always return to council for a further decision, prior to implementation. Where the requisition had been screened out, the reconsideration would proceed by simple majority, rather than qualified majority.

Standing

[125] In its pre-action response, the Council contested the applicant's standing. However, it did not maintain that objection at the hearing and it was not necessary to decide the point. Similar issues may arise in future litigation and I consider it to be appropriate to make clear that if I had been required to decide the point, I would have found that the applicant does have sufficient interest to maintain the proceedings and that she had standing. The applicant is an inhabitant of the BCC district and I consider that she will be affected by both decisions under challenge. The Irish Language Policy is a generally applicable measure which affects all individuals who live in the district and who may be required to engage with the Council. Insofar as the proposed new Policy relates to issues such as signage or the delivery of services, it will affect the interests of all persons in the district. The decision on the Palestinian Flag relates to the use of the main civic centre in the city with the most prominent location and therefore affects the local population as a whole. As set out above, there are also several decided cases in this jurisdiction in which generally applicable measures relating to the flying of flags from public buildings have been the subject of judicial review challenges by members of the public (eg *Re McMahon* [2019] NICA 29) and in which standing was established.

[126] There are two further factors which I consider to be important to the question of standing. The first is that I do not consider that the applicant should be deprived standing on the basis that she is not a Council member. The procedure under challenge governs internal council decision making and may only be invoked by members of the council. However, the requirement for councils to have call-in procedures is provided by primary legislation and the issues raised in this case

concern the extent to which the relevant procedures are *ultra vires* the parent legislation. The cases therefore raise a legal issue of general application and importance. When considered alongside the fact that the ultimate decisions are generally applicable measures which affect the public as a whole, I consider that the scope for challenge should not be limited to Council members. This conclusion on standing is also not inconsistent with the decision of Scoffield J in *Re Hartlands (NI) Ltd* [2021] NIQB 94, at [132]), where he concluded that only council members had standing *to present* a call-in requisition and that section 41 did not confer a right on members of the public to do so. The second factor is that the applicant should not be denied standing on the ground that she is not a member of the Jewish Community, which was the section of the district population identified in the requisition. Her evidence is that she is a member of the unionist community. In my view, one of the clear purposes of section 41 is to provide protection for the interests of all minority groupings, without the need for personal affiliation by those who promote them. Section 41 does not impose any limit upon the groupings which councillors can identify when presenting a requisition. The process may only be initiated by Council members. As elected representatives, they are entitled to promote and/or seek to protect the rights and interests of any section of the district population, irrespective of whether they are personally associated with the same traditions. I consider that the same approach should inform the issue of standing in a challenge to a generally applicable measure on the ground of non-compliance with section 41. None of this should be interpreted as meaning that every individual will always have a sufficient interest in challenging any decision of a council in which the call-in process was engaged. It simply means that I would have decided the issue of standing in favour of the applicant in this case, if required to do so.

Ground 1: Ultra vires – Standing Orders 48(8) and (9)

[127] Standing orders 48(8) and (9) are measures of subordinate legislation, made by BCC pursuant to sections 37(1) and 41 of the 2014 Act. The legal principles governing the *vires* of subordinate legislation were explained by the Supreme Court in *R (Public Law Project) v Lord Chancellor* [2016] UKSC 39; [2016] 3 WLR 387. Lord Neuberger MR stated:

> "23. Subordinate legislation will be held by a court to be invalid if it has an effect, or is made for a purpose, which is *ultra vires*, that is, outside the scope of the statutory power pursuant to which it was purportedly made … Accordingly, when, as in this case, it is contended that actual or intended subordinate legislation is *ultra vires*, it is necessary for a court to determine the scope of the statutorily conferred power to make that legislation.
>
> …

> 26. The interpretation of the statutory provision conferring a power to make secondary legislation is, of course, to be effected in accordance with normal principles of statutory construction. …"

[128] The court's first task under this ground of challenge is therefore to determine the scope of the relevant powers to make standing orders.

[129] The principles of statutory interpretation have been explained most recently in two decisions of the Supreme Court: *R (O) v Home Secretary* [2022] UKSC 3; [2022] 2 WLR 343 (paras [29]-[31], per Lord Hodge) and *R (PACCAR) v Competition Appeal* [2023] UKSC 28; [2023] 1 WLR 2594 (paras [40]-[44], per Lord Sales). These principles have been cited and applied by courts in this jurisdiction on multiple occasions since these decisions, including most recently by the Court of Appeal in *Department of Justice v Parole Commissioners for Northern Ireland* [2025] NICA 63 (paras [22]-[23], per Colton LJ).

[130] In summary, the court must focus upon the language used in the statute and identify the meaning of the words by reference to the context of the provision. This should include an analysis of the objectives which the measure was intended to address. For this purpose, external aids to construction such as explanatory notes or official pre-legislative policy reports/papers may be of assistance. However, they cannot override clear language within a statute. The relevant statutory provisions should also be read in the context of the entire statutory scheme. In certain circumstances and in accordance with the principles in *Pepper v Hart* [1992] 3 WLR 1032, statements made in the legislature by the promoter of a Bill may be admissible aids to construction in order to resolve an ambiguity.

[131] In this case, a further principle of interpretation is relevant, namely that an instrument of subordinate legislation made under the relevant statute, may itself be a legitimate aid to the interpretation of the parent statute. This principle may be applied where the parent statute and subordinate legislation form part of an overall statutory scheme and where both measures are enacted within a broadly contemporaneous timeframe: see eg. *R (A) v B* [2010] 2 AC 1, paras [41]-[42] per Lord Hope. This principle has been affirmed most recently by the Supreme Court in *R (PACCAR) v Competition Appeal* [2023] UKSC 28; [2023] 1 WLR 2594 where Lord Sales stated:

> "45. … Where the primary legislation and the subordinate legislation are drafted by or on the instructions of the same government department at about the same time, as would be normal in this type of case, it is reasonable to suppose that they are inspired by the same underlying objective and are intended to reflect a coherent position as understood at the time the primary legislation is presented to Parliament. In that situation, it

> has been observed that the subordinate legislation made under a power in the primary legislation can be regarded as a form of parliamentary or administrative contemporanea expositio (exposition of contemporary understanding) in relation to the primary legislation which may provide some evidence of how Parliament understood the words it used in the primary legislation, even though this does not decide or control their meaning. ..."

[132] In my view, it is clear that the primary purpose of the 2014 Act was to establish the statutory framework which gave effect to the Executive's decisions on the future shape and operation of local government in Northern Ireland. In the words of the Minister at the second reading of the Bill, its provisions "*… represent the most significant shake-up of our system of local government in over 40 years*."

[133] I consider that the statutory objectives which underpin the 2014 Act remained unchanged between the Minister of the Environment's Assembly statement in 2008 and enactment. As stated by the Minister in 2008, the policies to be developed for inclusion of the Bill were to be guided by the principles of effective and inclusive local democracy, protection of the rights of minorities, prevention of direct or indirect discrimination and the need to promote equality of opportunity. The Explanatory Notes to the Bill (at para 4), describe the objective of the new governance arrangements as including "*the protection of the rights of all people and also provide for fair, transparent and efficient decision making*." The Explanatory Notes (at paras 11 and 12) also refer expressly to the Policy Development Panels which worked on detailed policy proposals and reported to the Strategic Leadership Board. They repeat that the statutory objectives include "*efficient and transparent decision making*" together with the need for appropriate systems of checks and balances with a view to protecting the interests of minorities "*in the decision-making process*." The overall statutory context was therefore the wholesale reform of local government in Northern Ireland with a specific objective of introducing new, efficient, fair and transparent decision-making processes which incorporated procedures for the protection of minority interests. These are broad objectives which are not focused upon a specific mischief, nor are they confined to any single provision or group of provisions within the Act but refer to its entire scope. The breadth and generality of the objectives means that not every objective may always have been equally reflected in every provision. There is clear scope for flexibility and for some objectives to dominate over others within individual provisions.

[134] Consideration of the language and structure of section 41, identifies three dominant features.

[135] First, section 41(1) does not itself impose or prescribe any particular procedure for the reconsideration of a decision which is subject to a call-in requisition. It is drafted in positive rather than negative terms and contains no

prohibition of any nature. Section 41(1) imposes a positive obligation upon councils to adopt standing orders and it prescribes minimum requirements for the call-in procedure, which are not extensive. The only positive requirement of section 41(1) is for reconsideration of a decision, if 15% of members present a requisition to the clerk "*on either or both of the grounds*" in sections 41(1)(a) & (b). The requirement for qualified majority voting does not feature in section 41 at all.

[136] Second, the reconsideration procedure is limited in scope. There is no statutory requirement for an open-ended procedure which enables reconsideration of all decisions. While section 41(1) does not prohibit councils from adopting a more widely available procedure, it prescribes a core minimum set of circumstances when the procedure must be available, namely those decisions which fall within sub-paras (a) and (b). In the latter case, councils are therefore only required to make available a reconsideration procedure if the original decision "*would disproportionately affect adversely*" a section of the inhabitants of the district. The language used in defining this outer limit of the requirement is notable. It connotes a level of certainty about the effects of the original decision and it stands in contrast to alternative formulations where there may be less certainty about the effects of the decision, for example if the decision "*might*", "*could*" or "*risks*" having the specified effects. An example of a provision which imposes procedural obligations in furtherance of minority protections where the effects of a proposed decision are less certain is Schedule 9, paragraph 4(2)(b) to the NIA. It prescribes the minimum requirements for an equality scheme in order to secure compliance with obligations under section 75. Screening and/or assessment must be carried out by public authorities in relation to the "*likely impact of policies adopted or proposed to be adopted*" on the promotion of equality of opportunity. These two provisions both apply to local councils but use very different language to define the threshold of application. Similarly, the word "*would*" in relation to the effects of a decision, focuses attention upon the effects, rather than upon the views of the council members who supported the requisition. It therefore stands in contrast to words such as "*belief*" or "*opinion*" of council members. In my view, these features of the language of the provision, tends to reinforce an interpretation that the minimum requirement for reconsideration pursuant to section 41 involves a higher level of certainty and objectivity an assessment of whether the statutory threshold has been reached than simply the subjective belief of the members who support the requisition.

[137] Third, section 41(2) provides that where the requisition is made on the grounds of disproportionate adverse effects, the council's standing orders must require the council "*to obtain an opinion*" from a barrister or solicitor "*on [the] requisition.*" While the section mandates the fact of an opinion and prescribes its timing (ie "*before reconsideration*"), it does not prescribe either the scope of the opinion nor prohibit the purpose(s) for which it must or may be used. Section 41(2) imposes no greater obligation than to require councils to make provision within standing orders for *obtaining* the opinion. Section 41(3) was expressly amended during passage of the Bill to include a power for the Department to make regulations governing "*the process by which a legal opinion is obtained*" but no regulations have

been made and no statutory restrictions have been placed upon the scope or purpose of the opinion. Since the procedure is mandatory, it clearly appears to be envisaged that the opinion will play some role in the process, but its limits are not prescribed or defined. It is also of note that the opinion must be obtained "*before reconsideration of a decision*" as opposed to "*before the reconsideration of the decision.*" The contrast between the language used and possible alternatives is therefore consistent with an interpretation in which not every decision which has been the subject of a requisition, will be the subject of a reconsideration.

[138] When interpreting these provisions as a whole, I consider it is also appropriate that they should be considered alongside and harmoniously with the 2014 Transitional Regulations. As set out above, those regulations were laid in draft before the Assembly one week after Royal Assent of the 2014 Act and they were made 16 days later, following Assembly approval. It is also patently clear from the legislative history that the 2014 Transitional Regulations were the chosen statutory mechanism for giving effect to the intention that a reconsideration should take place by qualified majority vote. Accordingly, when interpreting section 41 as a whole, I consider that it is appropriate to do so on the basis that requisitions presented on the ground of disproportionate adverse effect would attract qualified majority voting on a reconsideration.

[139] Taking account of these features and looking at section 41 as a whole, in light of its statutory purposes, in the context of the entire statute and of the 2014 Transitional Regulations, I consider that section 41 establishes a broad framework for call-in decision making, which sets minimum requirements for the procedure, but which leaves discretion to councils to determine the precise content of that procedure. In summary, it establishes a framework within which Councils must devise decision making procedures, rather than prescribing an exhaustive decision making code. In my view, this is illustrated most clearly by the opening language of sections 41(1) and 41(2). Both paragraphs begin with the phrase "*standing orders must.*" In my view, this language indicates, in the clearest possible terms, that prescription of the detail for the reconsideration procedure is for councils to decide. The Act makes express provision for that discretion to be narrowed by means of regulations made under section 38. Section 41(3) also enables regulations which govern the process by which the opinion is obtained. The only regulations which have been made are the 2014 Transitional Regulations. As set out below they provide only a limited constraint upon Councils' procedural autonomy and make no provision at all about the legal opinion. The 2014 Regulations require qualified majority voting only where a requisition is presented "*in accordance with*" section 41(1)(b). They do not prescribe any procedure for determining that question, nor do they place any alternative substantive constraint upon council's power to make standing orders. The Department did propose two sets of regulations which contained constraints and proposed mandatory provisions for standing orders. However, the Assembly negatived both proposals, with the result that the scope of the rule making discretion conferred upon councils remains largely unrestricted. The legislative intention to allow councils scope for discretion in devising standing

orders under section 41 also finds some support in section 41(4) which defines the word "*section*" as a "*section of a specified description*." Accordingly, rather than the Act defining the groupings to be protected against disproportionate adverse effects, it leaves the matter for councils to decide. The Assembly therefore clearly intended to allow councils to decide how broadly or narrowly the substantive minority protections should span.

[140] Considering BCC's standing orders 48(8) and (9) in light of all of these principles, I am ultimately of the view that they are not *ultra vires* section 41 of the 2014 Act or the 2014 Transitional Regulations, because I do not consider that they have been made for a purpose or have an effect which is in conflict with the scope or requirements of the parent provisions. I consider that the framework established by those provisions leaves a sufficient level of procedural autonomy for councils to devise standing orders which give effect to the minimum statutory requirements which are set out in section 41. The parent provision does not prescribe, promote or prohibit any express procedure for responding to a call-in requisition and I consider that BCC's standing orders fall within the scope of procedural discretion which is available. In particular, I am of the clear view that section 41(1) does not <u>require</u> that a reconsideration based on qualified majority voting must take place in response to every requisition presented on the ground of disproportionate adverse effect, solely on account of the belief of 15% of councillors as to the effects of the decision. I consider that the language of the provision, read in light of the twin objectives of minority protection and efficient decision making, confers sufficient procedural autonomy upon councils to permit the inclusion of a mechanism for ensuring that the views of the council members who supported the requisition are sufficiently well-founded and for there to be sufficient certainty about the effects of the decision to meet the statutory threshold defined in section 41(1)(b). Where councils choose to devise such a procedure, it will be *intra vires* the parent statute if it is directed towards that purpose and is capable of ensuring those effects. I consider that a standing order which uses the compulsory legal opinion as an independent mechanism to assess the "*merit*" of the requisition, is such a procedure.

[141] I consider that this interpretation is also consistent with the broad purpose of the 2014 Act, namely to introduce reform of local government which includes improved decision making procedures, which in turn reflect the broad statutory objectives, including efficiency and minority protection. Section 41 does not mandate that one objective should have priority over the other in this area. I consider that the balance between those objectives which is reflected in standing orders 48(8) and (9) remains consistent and in accordance with these broad statutory objectives. It certainly cannot be said that their purpose or effect is in conflict with those objectives.

[142] I also consider that the requirement for a legal opinion under section 41(2) is sufficiently broadly defined to permit councils to use it as a form of "filter" mechanism. Nothing in the language of section 41(2) prohibits such a procedure. In my view, the requirement in standing order 48(8) for the opinion to express a view

on the "merit" of the requisition, represents nothing more than an independent and verifiable mechanism by which the Council can determine whether the beliefs of council members about any disproportionate adverse effects of the decision are sufficiently well-founded to meet the statutory threshold for reconsideration connoted by the word "*would*" in section 41(1)(b). One issue which was raised in submissions was that a legal opinion could never achieve that standard, as it is just an opinion rather than a decision. Hence it was argued that the effect of a standing order which treated the opinion as determinative would be in conflict with this requirement of section 41. In my view, the Applicant's submission on this point overstates the content and requirements of section 41. It is important to consider the purpose for which the opinion is obtained. Section 41 is entirely silent as to the purposes of the opinion or the use which may be made of it by councils. BCC's standing order 48(7) requires that an opinion is obtained. Standing Orders 48(8)&(9) prescribed the procedure depending upon whether or not the opinion "indicates" that the requisition has "*merit*". This provision must also be read with standing order 48(2)&(3) by which those supporting the requisition must state the reasons and must also explain the nature and extent of the anticipated adverse effects upon the identified community. Read cumulatively, I consider that these provisions simply create a requirement for the opinion to address the question of whether the beliefs of council members about adverse effects explained within the requisition are sufficiently well-founded to reach the statutory threshold for reconsideration. The use of the word "*indicates*" contains a recognition that it is not a requirement for the opinion to determine to a scientific standard whether or not the decision would have the feared effects. Rather, it is a requirement for an informed and reasoned assessment of whether the requisition is based upon sufficiently well founded concerns and where there can be sufficient certainty about the effects of the decision. I consider that the purpose and effect of such a procedure, within standing orders does not conflict with any requirement of the parent statute.

[143] In *Re Bryson* [2024] NIKB 86, the applicant challenged the validity of a call-in requisition in relation to a council decision to fly the union flag 365 days per year from war memorials in the Borough. In granting leave, Humphreys J expressed the view that in any given scenario the question of whether a decision would have a disproportionate adverse effect upon a section of the district population was "*properly a matter for political judgment*" (at [40]). I agree that judgment plays an important role in any assessment of whether the statutory threshold has been reached, since the question of disproportionate adverse effects is rarely, if ever likely to yield a scientific answer. However I do not consider that it is exclusively a matter of subjective belief. In deciding whether the statutory threshold is met, BCC's procures will ensure that the nature and extent of the apprehended effects are identified and explained. The reasons put forward and any materials referred to in the requisition to support the belief of the council members is available to the lawyer. An assessment of the strength of the relevant reasoning is a matter which is well suited to the skills of a lawyer. The use of a qualified lawyer also adds a vital element of independence in the assessment, which is precisely what was recommended by the Policy Development Group. In many cases, the lawyer will

also have the benefit of equality screening or an assessment which has been undertaken by council officials, which also adds a further layer of objectivity to the process. As the facts of this case demonstrate, there will be some types of decisions where questions of law arise which will inform the opinion. Here, the decisions in *Re McMahon* and *Re Murphy* provided a very important objective and authoritative basis for determining whether concerns about the adverse effects of flying flags from public buildings were sufficiently well founded. In summary, I do not consider that the process of instructing a lawyer to provide an opinion on the "merit" of a requisition on the grounds of disproportionate adverse effects is purely a question of political judgment. While judgment is inevitably involved, it is a mixed issue and it is one which I consider is sufficiently suited to the skills of a lawyer that I do not consider it to be beyond the scope of the rule making autonomy conferred upon councils by section 41.

[144] In reaching this conclusion, I am also influenced by a number of other matters which inform the broader context and purpose of these provisions. First, it is relevant to consider the connection between section 41 of the 2014 Act and section 75 of the NIA. While councils have autonomy to specify in standing orders the sections of the population which may be protected against disproportionate adverse effects, section 75 identifies a core minimum of the minority groups for which protection is likely to be contemplated by councils. If it is sufficiently clear that the decision of the council is "*likely*" to affect adversely any of those groupings, the decision will (or at least should) have been preceded by equality impact screening and/or assessment in accordance with its equality scheme and the council ought to have taken account of those likely effects. The exercise will have been conducted by council officials rather than by council members, prior to the initial decision and hence ought to have been compiled without regard to political considerations. This statutory protection had been in place for many years at the time of enactment of section 41 and must therefore have been within the contemplation of the Assembly. As explained above, in many cases this equality analysis will also provide an objective and verifiable basis for the lawyer to assess the merit of the requestion and, if appropriate, the decision of council members, upon a reconsideration. In my view, this broader statutory context informs the likely intention of the Assembly and the regime for the minority protection which it created. The Assembly expressly declined to adopt for local government the model of cross-community voting which is used within the Assembly and Executive. It also expressly declined to prohibit councils from taking a decision which "*would have disproportionate adverse effects*" upon a section of the population. On the contrary, as with section 75, councils *may* take such a decision subject to compliance with the procedural requirements of reconsideration and qualified majority voting. To this extent, the section 41 model for minority protection shares more in common with section 75 NIA, than with decision making in the Assembly or Executive. If equality impact screening and/or assessment has not taken place, it is likely that the requisition could also be presented on procedural grounds (as occurred in this case). In this way, the screening/assessment exercise will invariably be undertaken before the opinion is provided. In light of this broader statutory context for council taking decisions of this nature, it is less likely that the

Assembly intended the opposite outcome, namely that councils should be mandated to require reconsideration on qualified majority voting based solely upon the belief of 15% of council members, irrespective of the outcome of equality impact screening/assessment. If it had so intended, I consider it to be likely that clearer language to that effect would have been used.

[145] Second, I also consider that the above interpretation is consistent with intention of the Assembly insofar as it can be inferred from the legislative history. I consider that the work of the Strategic Leadership Board and the Policy Development Panels are legitimate aids to the interpretation of the 2014 Act, insofar as they were the official mechanism for cross party policy development, for the express purpose of informing future legislative proposals. As set out above, their foundational influence in shaping the Bill is expressly recognised in the Explanatory Notes to the Bill. While the recommendations of the Board and of Panel A did not include a specific recommendation for a defined independent "filter" mechanism, they clearly included a recommendation that the statutory framework should accommodate such a mechanism, including one based upon a legal opinion, if councils chose to adopt such a procedure. The papers produced by the Policy Panel stated expressly that by enabling councils to adopt such a mechanism they would be able to avoid the potential for obstruction of the efficient conduct of council business by excessive recourse to qualified majority voting. While minority protections were therefore intended to be incorporated into the process, the Policy Panel did not consider that they should be the sole consideration, even where the 15% threshold for a requisition had been achieved. Accordingly, I consider that the procedure ultimately adopted by BCC is consistent with the stated intentions of the Policy Panel, which in turn are expressly stated in the Explanatory Notes to have shaped the Bill. At the very least, the procedure does not conflict with those stated intentions. Indeed at no stage of the pre-legislative and post-legislative history has any party or body ever articulated a policy intention to depart from those stated intentions.

[146] As set out above, I consider that the language and purposes of section 41 are sufficiently clear and devoid of ambiguity, that it is not necessary to have recourse to the Assembly statements, in accordance with the *Pepper v Hart* principle. However, those debates do illustrate clearly the broader policy principles and statutory context which the court is obliged to consider when interpreting the language used. I therefore consider them legitimate evidential sources for that purpose (as opposed to resolving ambiguity) and I consider that they support the interpretative conclusions which I have reached. The steadfast adherence to the original intentions of the Policy Panel is illustrated both during the passage of the Bill and during the post-legislative debates on model standing orders. Perhaps the most vivid example is the Assembly debate and decision on 24 February 2015 to negative the first proposed Standing Order Regulations. The expressed motivation of those who supported the petition of concern was that the draft regulations laid in the Assembly had *removed* the use of a legal opinion as a "filter" mechanism, which had been included within the original consultation draft and had been expressly recommended by the Policy

Panel. It was therefore the *absence* of a filter mechanism rather than its *inclusion* which was the cause for the Assembly's concern.

[147] The interpretation which I have reached is also supported by two other features of the broader statutory framework which assist when considering the 2014 Act as a whole. First, sections 39 and 40 of the 2014 Act make clear that simple majority voting should be the general rule governing council decision making. Qualified majority voting is an exception and applies only where specified. An interpretation which facilitates excessive use of qualified majority voting or an unverified basis for its use, is therefore likely to run counter to this general feature of the legislative scheme. Second, as set out above, Schedule 3 paragraph 2 to the 2014 Transitional Regulations makes clear that qualified majority voting will only be required where the requisition has been made "*in accordance with*" section 41(1)(b). The Transitional Regulations do not therefore prescribe or prohibit any specific procedure, they simply define the requirement for qualified majority voting by reference back to the threshold criteria within section 41(1)(b). The regulations do not therefore narrow the procedural autonomy which the parent statute otherwise creates.

[148] For all of the above reasons, I do not consider that the purpose or the effect of standing orders 48(8) & (9) are in conflict with the language or scope of section 41 of the 2014 Act, when read along with the 2014 Transitional Regulations and I therefore do not consider that they are *ultra vires* the parent statute. This ground of challenge must therefore be dismissed.

[149] The Department and the applicant also made a second *vires* challenge, namely that standing orders 48(8) and (9) impermissibly confer upon the legal adviser the power to decide whether a reconsideration should take place. For the reasons set out above, I do not consider that the broad framework established by section 41 either mandates or prohibits any procedure for making such a determination, nor does it confer any such express function upon any identifiable body. The only body upon whom any functions are conferred by section 41 is upon the clerk of the council who must receive the requisition and obtain the legal opinion (section 41(1)&(2)). It also requires that the Council must carry out the reconsideration where the statutory grounds are made out in the requisition. The provision is otherwise entirely silent about which, if any, body should determine whether the threshold for reconsideration under section 41(1)(b) has been reached. It is not a function which is either expressly or exclusively conferred upon the council, nor does section 41 preclude the role being performed by a legal advisor. In my view, section 41 is both silent and permissive on the issue. For the reasons set out above, I consider that it was within the procedural autonomy of the Council to devise standing orders which utilised the independent legal opinion for this purpose. In doing so, the effect of the standing orders is not to deprive the council of a mandatory decision-making authority nor to delegate its functions to another body. Rather, the council has simply identified an independent mechanism by which to assess whether the statutory threshold in section 41(1)(b) for a reconsideration has been reached. If so,

the reconsideration will take place by the Council and not the legal advisors, as required by section 41. Accordingly, this aspect of the ground 1 challenge must also be dismissed.

[150] Insofar as this ground of challenge also relates to BCC's handling of the Irish Language Policy requisition, it is based solely upon the applicant's contention that the standing orders were *ultra vires*. While it is of note that BCC stated in its pre-action response that it would not apply those provisions, no further action has been taken on foot of the requisition apart from instructing an opinion in accordance with section 41(2) and standing order 48(7). Since the latter standing order is not under challenge, since no further action has been taken to progress the Irish Language Policy call-in and since no reconsideration has taken place, the Council remain in a position to progress the requisition in accordance with its standing orders and with section 41. The challenge to the Irish Language Policy requisition must therefore also be dismissed.

Ground 2: Ultra vires – BCC Procedure for the Palestinian Flag Requisition.

[151] The decision of the Council to fly the Palestinian flag on 29 November 2025 was taken by the Council on 3 November 2025. A requisition on this decision was received on 12 November 2025 on both the procedural and disproportionate adverse effect grounds. The opinion of counsel was received on 21 November 2025. On the same date, the Strategic Policy and Resources Committee considered proposed amendments to standing orders to allow councillors to decide, on a simple majority basis, whether the statutory threshold under section 41(1)(b) had been reached. While the Committee approved the amendments (with an associated amendment of standing order 25), a call-in requisition was received on 1 December 2025. It is therefore common case that the amendments approved by the Committee were never considered or approved by the full Council and therefore BCC's standing order have remained unamended at all material times.

[152] Notwithstanding this clear legal position, the Council convened a special meeting on 1 December 2025 at the request of councillors, pursuant to the normal meeting procedure under Schedule 5, paragraph 4 to the 2014 Act. The events of that meeting are set out in more detail above. Councillors had the benefit of the legal opinion, which considered that the procedural call-in did have merit, since it had not been preceded by equality impact screening. The opinion also indicated that the call-in on disproportionate adverse effect grounds did not have merit. The reasons given in the opinion are summarised above but included the time limited effects of the decision and the Northern Ireland caselaw on the effects of flying flags from public buildings.

[153] By the time of the Council meeting on 1 December 2025, the procedural deficiency had been cured insofar as an equality impact screening exercise had been undertaken and the screening documentation was available to councillors. The outcome of the screening exercise was that the flag decision was not likely to have

adverse effects upon the Jewish community, as contended in the requisition. Informed by the screening assessment and by the opinion of counsel, the Council then decided, on a simple majority basis, that the decision to fly the Palestinian flag from the City Hall would not have a disproportionate adverse effect upon the Jewish community and it resolved to fly the flag for 24 hours, commencing at midnight.

[154] As set out above, I consider that the cornerstone of the section 41 decision-making framework is that procedures governing a call-in requisition and reconsideration are to be contained in standing orders. This is the opening language of both sections 41(1) & 41(2). BCC had such standing orders in the form of 48(8) & 48(9), which I have concluded were <u>not</u> *ultra vires* and therefore continued to have legal effect. BCC appears to have held concerns that those provisions may be *ultra vires* the 2014 Act and the Committee had decided that they should be amended. However, the statutory process for amending standing orders had not been completed and it is common case that no amendment was ever made. In my view, it follows inevitably from these conclusions that the procedure adopted and followed by BCC on 1 December when deciding on the effects of the flag decision were not provided for in standing orders. To that extent, I consider that the procedure which was followed by the full council when making the decision about the adverse effects of flying the Palestinian flag was without adequate legal foundation and was *ultra vires*. No resolution to suspend standing orders 48(8) and (9) had ever been proposed or passed and I consider that those provisions therefore remained in force at all relevant times and provided the mandatory process which the council was obliged to follow. In the language of section 37 of the 2014 Act, they provided the legal basis upon which the "*proceedings and business of the council*" ought to have been conducted.

[155] Notwithstanding this conclusion, I consider that different considerations apply to the second decision taken on 1 December 2025, namely the decision to fly the Palestinian flag for 24 hours, commencing at midnight. It is clear that the legal opinion indicated that the requisition on disproportionate adverse effect grounds <u>did not</u> have merit. In those circumstances standing order 48(9) required that the opinion should be furnished to members and thereafter that the decision be "*implemented or tabled for ratification by the council, as appropriate*." It is clear from the undisputed facts that the opinion clearly <u>was</u> furnished to members and the council <u>did</u> ultimately decide to maintain the earlier decision to fly the flag, albeit on a different day. There is no doubt that this decision was reached following an earlier decision about the effects of the first decision which did not have adequate legal foundation. The proposal to fly the flag that night was also not contained in the notice or summons to the meeting as required by Schedule 5, paragraph 5 to the 2014 Act. While these notice requirements may not have been observed, it is of note that Schedule 5, paragraph 5(4) provides that a failure to serve a summons calling a meeting of the council does not affect the validity of a meeting. Stepping back and looking at the matter unobscured by these procedural confusions, the legal opinion about the effects of the original decision was entirely clear. If standing orders had been followed correctly, the council was obliged either to ratify or to implement the

earlier decision to fly the flag and to do so by means of a simple majority vote. That is what the council ultimately did on 1 December 2025 and I therefore consider it to be inevitable that either the same or a sufficiently similar outcome would have followed if the requisition had been filtered by the application of standing orders 48(8) & (9), rather than by a simple majority vote of the council. Even if I could not be sufficiently certain about the likely decision if the correct procedure had been adopted, in light of the conclusion of the opinion, I do not consider it to be either necessary or appropriate to quash the decision of the Council on 1 December 2025, but I shall hear the parties as to the terms of any declaration.

[156] I also wish to make expressly clear that it is not necessary for the court to decide whether the proposed amendments to the standing orders approved by the Committee on 21 November 2025 are themselves within the scope of section 41 or whether they would, if approved by the Council, be *ultra vires*. I make no conclusion on that issue.

Ground 3: Second Palestinian Flag Requisition

[157] Following the decision of 1 December 2025 to fly the flag for 24 hours commencing that night, Councillor McDowell handed the City Solicitor a requisition, supported by 15% of the Council to call-in the decision. The applicant therefore contends that the decision to proceed to fly the flag was *ultra vires*, pending completion of the call-in procedure.

[158] In my view, this ground of challenge must be dismissed. It is common case that the call-in requisition was handed to the City Solicitor at the end of the meeting and that the council members who supported the requisition never presented it to the Clerk of the Council. As set out above, this is one of the few mandatory procedural requirements which are prescribed expressly by section 41(1). In the absence of compliance with this minimum requirement, I consider that no valid requisition has been presented to the Council in relation to the 1 December 2025 decision to fly the Palestinian flag and hence the Council has never been under an obligation to initiate the procedures required by standing orders 48(8) & (9). Accordingly, the actions of the Council in flying the Palestinian flag on 2 December 2025 were not *ultra vires* on this ground.

[159] In the course of the hearing, submissions were made by all parties on the question of whether the requisition could have been validly presented in any event, in light of standing order 48(10), which is not under challenge. It provides that no "*decision*" shall be subject to call-in more than once. It was contended by the applicant that the decision of 1 December 2025 was a different "*decision*" for the purposes of standing order 48(10), since it involved flying the flag on a different day than had originally been decided (ie on 2 December, rather than 29 November 2025). For the reasons set out above, it is not necessary to resolve this question in these proceedings. However, I did receive full argument on the point and I consider it to be appropriate to provide some *obiter* observations.

[160] I consider that the question of whether or not any change to the original decision amounts to a fresh decision or whether the change is simply an outworking of the statutory process of reconsidering the original decision will be a matter of fact and degree and will depend upon the particular circumstances of any decision. The applicant emphasised that there can be great significance in the choice of day to fly a flag and hence there can be equal significance in a decision to fly a flag on an alternative day. As a general proposition, I accept that this may be the case, depending upon the decision in question, but I also consider it to be equally clear that the statutory process of "*reconsideration*" carries with it an implicit acknowledgment that it may lead to a change in the original decision. Unless the possibility of change is available to the Council, the procedure is unlikely to have any identifiable purpose and certainly not the statutory purpose of requiring the decision maker to think again. If, like this case, the original decision included a specified date for events to take place and the time period for obtaining an opinion and convening a council meeting did not allow reconsideration before that date, an inability to change any aspect of the original decision could lead to the somewhat absurd consequence that the outcome of a requisition could only ever be either the affirmation of a decision which could not be implemented or an inability to take a fresh decision, without the risk of an unending cycle of requisitions. I consider it to be unlikely that this possibility reflects the intention of the Assembly and that the concept of "*reconsideration*" is likely to involve both some scope for change to the original decision (without itself amounting to a fresh decision) but also offering finality. Reconciling the precise boundaries of these competing considerations does not arise in these proceedings and for present purposes it is sufficient to say that, if I had been required to decide the point, I would have found that, in the absence of any evidence that any particular significance attached to the day named in the motion (both original and as revised), the decision to fly the flag on 2 December should properly be regarded as the product of a reconsideration of the earlier decision, rather than a fresh decision. Accordingly, I would have found that standing order 48(10) precluded a fresh requisition in the circumstances of this case.

Ground 4: Failure to follow guidance

[161] The applicant also challenges the decision to fly the Palestinian flag on the basis that the council did not follow the guidance contained in the Ministerial letters of 27 January 2017 and 21 November 2025. As set out above, the two letters which the Minister sent to councils were in materially identical terms. Rather than provide "guidance" to councils as to how to give effect to the 2014 Act or make recommendations as to permissible procedures, the letters simply confirmed that the 2014 Transitional Regulations continued in force and added the observation that "*all decisions called-in under section 41(1)(b) must be reconsidered by way of qualified majority*." In substance, this amounts to little more than repeating the statutory language. I do not consider that these letters offered and substantive advice whatsoever on the interpretation of section 41. I am therefore wholly unpersuaded that they could properly be regarded as "*guidance…for the purposes of the Act*", within the meaning of

section 111 of the 2014 Act. Furthermore, leaving aside the deficiencies in the content of the correspondence, section 111(2) imposes a mandatory obligation upon the Department to consult with both district councils and all of the other bodies listed in that provision, prior to issuing guidance. There is no dispute that this obligation was not observed by the Department. The content of the letter cannot therefore be regarded as "*guidance*" for the purposes of section 111 and the statutory obligation to have regard to its content simply does not arise.

[162] There are two further aspects of this correspondence which I consider to be deeply unsatisfactory. First, the letters fall far short of advising councils to interpret and apply section 41 in the manner which the department and applicant contended for in these proceedings. There is nothing in either of the letters which offers any hint that the Department now favours an interpretation which is entirely opposite to that which it favoured when promoting the two versions of the model standing order regulations in 2015 and 2016, despite the fact that the department has been repeatedly asked for assistance by council legal officers. Second, in a further act of unexplained inconsistency, even if the 21 November 2025 correspondence from the Minister could be interpreted in the manner now contended for, it offers an approach to section 41 which almost the precise opposite of the advice which the same Minister provided to the Chief Executive of Ards and Down Borough Council six months earlier. On 13 May 2025, he advised that section 41 provided for a council to receive the call-in and to obtain the opinion but that thereafter "*it would be for a council to determine the content of its standing orders, in relation to meeting the requirements of section 41 and seeking its own legal advice if necessary*." That is the interpretation which I have now concluded is correct.

[162] Properly analysed, I consider that the Minister's correspondence of 21 November 2025 is ultimately neutral as to the meaning and effect of section 41 and that it provides no substantive guidance on whether or how councils should decide that the statutory threshold under section 41(1)(b) has been reached. I do not therefore consider that it could properly amount to "guidance" to which Councils were obliged to have regard. Even if I am wrong about that conclusion, I consider that councils would be legitimately entitled to have regard to all of the statements on this issue which had been made by the Minister. In light of the wholesale inconsistency in the totality of the advice offered by the Minister and the absence of any substantive advice within the 21 November 2025 letter, I consider that it would have been entirely permissible for a council to have placed no weight on the content of the 21 November 2025 letter. This ground of challenge must therefore also be dismissed.

Conclusion

[163] For all of the above reasons, I will grant leave on all grounds, dismiss Grounds 1, 3 and 4 and will allow Ground 2 in part. I will hear the parties on costs and the terms of any declaration arising out of the Ground 2 challenge, insofar as it related to the BCC procedure whereby it decided by simple majority vote that flying

the Palestinian flag for 24 hours from the City Hall would not have a disproportionate adverse effect upon the Jewish Community.