

Draft Order laid before the Assembly under Article 33(3) of the Local Government (Northern Ireland) Order 2005 for approval

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2012 No.

LOCAL GOVERNMENT

**Draft Local Government (Indemnities for Members
and Officers) Order (Northern Ireland) 2012**

Made - - - - *******
Coming into operation *******

The Department of the Environment makes the following Order in exercise of the powers conferred by Article 33 of the Local Government (Northern Ireland) Order 2005⁽¹⁾.

In accordance with Article 33(2) of that Order, the Department of the Environment has consulted councils and such associations or bodies representative of councils, such associations or bodies representative of officers of councils and such other persons or bodies as it considered appropriate.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Local Government (Indemnities for Members and Officers) Order (Northern Ireland) 2012 and shall come into operation on [] 2012.

(2) In this Order “secure”, in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance.

Indemnities

2. A council may, in the cases mentioned in Article 4, provide indemnities to any of its members or officers.

Insurance

3. In place of, or in addition to, providing an indemnity under Article 2, a council may, in the cases mentioned in Article 4, provide an indemnity by securing the insurance of any of its members or officers.

(1) [S.I. 2005/1968 \(NI 18\)](#)

Cases in which an indemnity may be provided

4. Subject to Article 5, an indemnity may be provided in relation to any action of, or failure to act by, the member or officer in question, which—

- (a) is authorised by the council; or
- (b) forms part of, or arises from, any functions conferred upon that member or officer, as a consequence of any function being exercised by that member or officer (whether or not when exercising that function it is done so in the capacity as a member or officer of the council)—
 - (i) at the request of, or with the approval of the council, or
 - (ii) for the purposes of the council.

Restrictions on indemnities

5.—(1) No indemnity may be provided under this Order in relation to any action by, or failure to act by, any member or officer which—

- (a) constitutes a criminal offence; or
- (b) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer.

(2) Notwithstanding paragraph (1)(a), an indemnity may be provided in relation to —

- (a) subject to Article 7, the defence of any criminal proceedings brought against the member or officer; and
- (b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

(3) No indemnity may be provided under this Order in relation to the making by the member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against the member or officer.

Matters that exceed the powers of the council, member or officer

6.—(1) Notwithstanding any limitation on the powers of a council which grants an indemnity, the council may provide an indemnity to the extent that the member or officer in question—

- (a) believed that the action, or failure to act, in question was within the powers of the council; or
- (b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the council, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true,

and it was reasonable for that member or officer to hold that belief at the time when the member or officer acted or failed to act.

(2) An indemnity may be provided in relation to an act or omission which is subsequently found to be beyond the powers of the member or officer in question but only to the extent that the member or officer reasonably believed that the act or omission in question was within the powers of the member or officer at the time at which the member or officer acted.

Terms of indemnity or insurance

7.—(1) Subject to paragraph (2), the terms of any indemnity given (including any insurance secured) under this Order may be such as a council shall agree.

(2) Where any indemnity given to any member or officer (including any insurance secured for that member or officer) has effect in relation to the defence of any criminal proceedings, the indemnity shall be provided (and any insurance secured) on the terms that, if the member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, the member or officer in question shall reimburse the council or the insurer (as the case may be) for any sums expended by the council or insurer in relation to those proceedings pursuant to the indemnity or insurance.

(3) Where a member or officer is obliged to reimburse a council or insurer pursuant to the terms mentioned in paragraph (2), those sums shall be recoverable by the council or insurer (as the case may be) as a civil debt.

Sealed with the Official Seal of the Department of the Environment on ***2012

(L.S.)

Linda MacHugh
A senior officer of the Department of the
Environment

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for circumstances in which a council may provide indemnities to any of its members or officers. These powers are in addition to any existing powers that councils may have.

Article 3 enables a council to provide an indemnity by means of the council securing the provision of an insurance policy for the members or officers.

Article 4 sets out the cases in which indemnities (including those provided by insurance) may be provided. This Article restricts the power to cases in which the member or officer in question is carrying on any function at the request of, with the approval of, or for the purposes of, the council. It extends to cases where, when exercising the function in question, the member or officer does so in a capacity other than that of a member or officer of the council.

Article 5 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.

Article 6 gives a limited power to provide an indemnity (including an indemnity provided by insurance) where the action or inaction in question is outside the powers of the council itself or outside the powers of the member or officer who acts. It also covers cases in which a member or officer makes a statement that certain steps have been taken or requirements fulfilled but it later becomes clear that this is not the case. This provision is limited to cases in which the person indemnified:

- reasonably believed that the matter in question was not outside those powers, or
- where a document has been issued containing an untrue statement as to the council's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.

Article 7 provides that the terms of any indemnity (including insurance secured) may be such as a council shall agree. The terms must include provision for re-payment of sums expended by the council or insurer in cases in which a member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that conviction). Any sums recoverable may be recovered as a civil debt.