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## STATUTORY INSTRUMENTS

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# 1985 No. 1208

## The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985

### PART I INTRODUCTORY

#### **Title and commencement**

1.—(1) This Order may be cited as the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.

(2) Subject to paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) Article 40 shall come into operation on the seventh day after the day on which this Order is made.

#### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of the Environment;

“the principal Act” means the Local Government Act (Northern Ireland) 1972.

(3) Expressions used in this Order and in the principal Act have the same meaning in this Order as in that Act.

### PART II LICENSING BY DISTRICT COUNCILS

#### **Licensing of places of entertainment**

3. Schedule 1 shall have effect with respect to the licensing by councils of the entertainments referred to in that Schedule.

#### **Licensing of sex establishments**

4.—(1) A council may resolve that Schedule 2 is to apply to its district; and if a council does so resolve, that Schedule shall come into force in its district on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

(2) A council shall publish notice that it has passed a resolution under this Article in two consecutive weeks in one or more newspapers circulating in its district.

(3) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of Schedule 2 in the council's district.

(4) The notice shall state the general effect of that Schedule.

### PART III

#### CONTROL BY DISTRICT COUNCILS OF PREMISES SUPPLYING MEALS OR REFRESHMENTS

##### *Closing orders with respect to premises supplying meals or refreshments*

5.—(1) A council may make an order under this paragraph (in this Part referred to as a “closing order”) with respect to any premises in its district to which this Article applies if it is satisfied that it is desirable to make such an order to prevent residents in the neighbourhood of the premises being unreasonably disturbed either by persons resorting to the premises or by the use of the premises for the supply of meals or refreshments.

(2) This Article applies to any premises where meals or refreshments are supplied whether for consumption on or off the premises, other than—

- (a) licensed premises within the meaning of the<sup>[F1]</sup> Licensing (Northern Ireland) Order 1996] which are not kept open for the supply of meals or refreshments to the public at any time between a time thirty minutes after the end of the permitted hours for those premises (within the meaning of<sup>[F2]</sup> that Order]) and 5 o'clock of the following morning; and
- (b) a hotel within the meaning of<sup>[F2]</sup> that Order].

(3) A closing order shall be an order specifying individual premises and prohibiting the use of the premises for the supply to or consumption by the public of meals and refreshments between such hours as may be specified in the order.

(4) The hours specified in a closing order shall commence not earlier than midnight and finish not later than 5 o'clock in the morning.

(5) A closing order may prohibit the use of the premises to which it relates for the supply to or consumption by the public of meals and refreshments between different hours on different days of the week.

(6) Nothing in a closing order shall prohibit the use of any premises in respect of which an entertainments licence is in force under Schedule 1 for the supply to or consumption by the public of meals and refreshments during any time when an entertainment to which paragraph 1 or 2 of that Schedule applies is being provided under and in accordance with the terms of that licence.

(7) A council may vary a closing order by an order under this paragraph (in this Part referred to as a “variation order”).

(8) A council may revoke a closing order by an order under this paragraph (in this Part referred to as a “revocation order”).

(9) A variation order or a revocation order may be made on the written application of the keeper of the premises to which the closing order relates, or without such an application.

(10) Subject to paragraph (11), a closing order shall cease to have effect 3 years from the date on which it was made, but without prejudice to the power of the council to make a further closing order.

(11) Paragraph (10) shall have effect in relation to a closing order which has been varied as if the reference to the date on which it was made were a reference to the date on which it was last varied.

(12) In this Part “the keeper”, in relation to any premises, means the person having the conduct or management of the premises.

F1 1996 NI 22  
F2 1990 NI 6

### ***Closing orders—procedure and appeals***

6.—(1) A council shall take all relevant circumstances into consideration when determining whether to make—

- (a) a closing order; or
- (b) a variation order which varies a closing order or a previous variation order by specifying—
  - (i) an hour later than that specified in the order which it varies as the hour at which the use of the premises for the supply to or consumption by the public of meals and refreshments may begin; or
  - (ii) an hour earlier than that so specified as the hour at which their use for that purpose is to end,

but a council may not make a closing order or such a variation order unless residents in the neighbourhood of the premises to which the order, if made, would relate have complained of disturbance such as is mentioned in Article 5(1).

(2) If a council proposes—

- (a) to make a closing order; or
- (b) to make such a variation order as is mentioned in paragraph (1)(b), it shall first serve a notice in accordance with paragraphs (12) to (14)—
  - (i) giving its reasons for seeking to make the order; and
  - (ii) stating that within 28 days of service of the notice the keeper of the premises to which the order, if made, would relate may in writing require the council to give him an opportunity to make representations to it concerning the matter.

(3) Where a notice has been served under paragraph (2), the council shall not determine the matter, until either—

- (a) the keeper has made representations to the council concerning it; or
- (b) the period during which he could have required the council to give him an opportunity to make representations has elapsed without his requiring the council to give him such an opportunity; or
- (c) the conditions specified in paragraph (4) are satisfied.

(4) The conditions mentioned in paragraph (3) are—

- (a) that the keeper has required the council to give him an opportunity to make representations to it;
- (b) that the council has allowed him a reasonable period for making his representations; and
- (c) that he has failed to make them within that period.

(5) Representations may be made, at the keeper's option, either in writing or orally.

(6) If the keeper informs the council that he desires to make oral representations, the council shall give him an opportunity of appearing before and of being heard by the council.

*Status: Point in time view as at 01/01/2006.*

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(7) The council shall not reveal to the keeper the name or address of any person who has made a complaint concerning the premises, unless it has first obtained the consent of the person who made the complaint.

(8) Where the keeper of any premises has applied for a variation order or a revocation order, the council shall be deemed to have refused the application if it fails to determine the matter within 8 weeks from the date on which the application was made.

(9) When a council makes an order under Article 5, it shall serve a copy in accordance with paragraphs (12) to (14).

(10) A closing order and any such variation order as is mentioned in paragraph (1)(b) shall come into force 21 days after the date of service.

(11) A variation order other than a variation order such as is mentioned in paragraph (1)(b) and a revocation order shall come into force on such date as may be specified in it.

(12) Any document required to be served under this Article shall be served on the keeper of the premises to which it relates and may be served on him by post.

(13) For the purposes of service any such document may be addressed to the keeper at the premises to which it relates.

(14) The keeper may be addressed either by name or by the description of “the keeper” of the premises (describing them).

(15) An appeal—

(a) against a closing order or a variation order; or

(b) against a refusal by the council to make a variation order or a revocation order,

may be brought to the county court by the keeper of the premises to which the order relates or would relate.

(16) No appeal against an order may be brought after it has come into force, and if an appeal is brought against an order, the order shall not come into force until the appeal has been determined or abandoned.

(17) No appeal against a refusal to make a variation order or a revocation order may be brought after the expiry of the period of 21 days from—

(a) the date on which the keeper was notified of the refusal; or

(b) in a case to which paragraph (8) applies, the end of the period referred to in that paragraph.

(18) On an appeal to the county court under this Article relating to any premises the court may confirm an order relating to the premises made under Article 5 or set it aside or give directions to the council as to the making of such an order relating to the premises and the decision of the county court shall be final.

(19) It shall be the duty of the council to comply with any directions under paragraph (18).

### ***Contravention of closing orders***

7.—(1) In the event of a contravention of any of the provisions of a closing order, whether as originally made or as varied by a variation order, the keeper of the premises to which the order relates shall be guilty of an offence.

(2) It shall be a defence for a person charged with an offence under this Article to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.

(3) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Part IV (Arts. 8-11) rep. by 2003 NI 2

## PART V

### CONTROL BY DISTRICT COUNCILS OF ACUPUNCTURE, TATTOOING, EAR-PIERCING AND ELECTROLYSIS

#### *Application of Part V*

12.—(1) The provisions of this Part, except this Article, shall come into force in accordance with the following provisions of this Article.

(2) A council may resolve that the provisions of this Part which are mentioned in subparagraph (a), (b) or (c) of paragraph (3) are to apply to its district; and if a council does so resolve, the provisions specified in the resolution shall come into force in its district on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).

(3) The provisions that may be specified in a resolution under paragraph (2) are—

- (a) Articles 13, 15 and 16; or
- (b) Articles 14 to 16; or
- (c) Articles 13 to 16.

(4) A resolution which provides that Article 14 is to apply to the district of a council need not provide that it shall apply to all the descriptions of persons specified in paragraph (1) of that Article; and if such a resolution does not provide that Article 14 is to apply to persons of all of those descriptions, the reference in paragraph (2) to the coming into force of provisions specified in the resolution shall be construed, in its application to Article 14 and to Article 15 so far as it has effect for the purposes of Article 14, as a reference to the coming into force of those Articles only in relation to persons of the description or descriptions specified in the resolution.

(5) If a resolution provides for the coming into force of Article 14 in relation to persons of more than one of the descriptions specified in paragraph (1) of that Article, it may provide that that Article, and Article 15 so far as it has effect for the purposes of that Article, shall come into force on different days in relation to persons of each of the descriptions specified in the resolution.

(6) A council shall publish notice that it has passed a resolution under this Article in two consecutive weeks in one or more newspapers circulating in its district.

(7) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the provisions specified in it in the council's district.

(8) The notice shall state which provisions are to come into force in that district.

(9) The notice shall also—

- (a) if the resolution provides for the coming into force of Article 13, explain that that Article applies to persons carrying on the practice of acupuncture; and
- (b) if it provides for the coming into force of Article 14, specify the descriptions of persons in relation to whom that Article is to come into force.

(10) Any such notice shall state the general effect, in relation to persons to whom the provisions specified in the resolution will apply, of the coming into force of those provisions.

**Acupuncture**

13.—(1) A person shall not in any district in which this Article is in force carry on the practice of acupuncture unless he is registered by the council for the district under this Article.

(2) A person shall only carry on the practice of acupuncture in any district in which this Article is in force in premises registered by the council for the district under this Article; but a person who is registered under this Article does not contravene this paragraph merely because he sometimes visits people to give them treatment at their request.

(3) Subject to Article 15(8)(b), on application for registration under this Article, a council shall register the applicant and the premises where he desires to practise and shall issue to the applicant a certificate of registration.

(4) An application for registration under this Article shall be accompanied by such particulars as the council may reasonably require.

(5) The particulars that the council may require include, without prejudice to the generality of paragraph (4),—

- (a) particulars as to the premises where the applicant desires to practise; and
- (b) particulars of any conviction of the applicant under Article 15,

but do not include information about individual people to whom the applicant has given treatment.

(6) A council may charge such reasonable fees as it may determine for registration under this Article.

(7) A council may make byelaws for the purposes of securing—

- (a) the cleanliness of premises registered under this Article and fittings in such premises;
- (b) the cleanliness of persons so registered and persons assisting persons so registered in their practice;
- (c) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with the practice of acupuncture.

(8) Nothing in this Article shall extend to the practice of acupuncture by or under the supervision of a person who is registered as a medical practitioner or a dentist<sup>[F3]</sup> or a chartered physiotherapist or a state registered physiotherapist or a state registered chiropodist] or to premises on which the practice of acupuncture is carried on by or under the supervision of such a person.

[<sup>F3</sup>(9) In this Article—

“chartered physiotherapist” means a member of the Chartered Society of Physiotherapy;

“state registered physiotherapist” means a person registered as a physiotherapist under section 2 of the Professions Supplementary to Medicine Act 1960;

“state registered chiropodist” means a person registered as a chiropodist under section 2 of that Act of 1960.]

**F3** 1992 NI 6

**Tattooing, [<sup>F4</sup>semi-permanent skin-colouring, cosmetic piercing] and electrolysis**

14.—(1) A person shall not in any district in which this Article is in force carry on the business—

- (a) of tattooing;

[<sup>F4</sup>(aa) of semi-permanent skin-colouring;

- (b) of cosmetic piercing; or]

(c) of electrolysis,  
unless he is registered by the council for the district under this Article.

(2) A person shall only carry on a business mentioned in paragraph (1) in any district in which this Article is in force in premises registered under this Article for the carrying on of that business; but a person who carries on the business of tattooing,<sup>[F4</sup> semi-permanent skin-colouring, cosmetic piercing] or electrolysis and is registered under this Article as carrying on that business does not contravene this paragraph merely because he sometimes visits people at their request to tattoo them, or as the case may be, to<sup>[F4</sup> carry out semi-permanent skin-colouring on them, pierce their bodies] or give them electrolysis.

(3) Subject to Article 15(8)(b), on application for registration under this Article, a council shall register the applicant and the premises where he desires to carry on his business and shall issue to the applicant a certificate of registration.

(4) An application for registration under this Article shall be accompanied by such particulars as the council may reasonably require.

(5) The particulars that the council may require include, without prejudice to the generality of paragraph (4)—

- (a) particulars as to the premises where the applicant desires to carry on his business; and
- (b) particulars of any conviction of the applicant under Article 15,

but do not include information about individual people whom the applicant has tattooed or given electrolysis<sup>[F4</sup>, whose bodies he has pierced or on whom he has carried out semi-permanent skin-colouring].

(6) A council may charge such reasonable fees as it may determine for registration under this Article.

(7) A council may make byelaws for the purposes of securing—

- (a) the cleanliness of premises registered under this Article and fittings in such premises;
- (b) the cleanliness of persons so registered and persons assisting persons so registered in the business in respect of which they are registered;
- (c) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with a business in respect of which a person is registered under this Article.

(8) Nothing in this Article shall extend to the carrying on of a business such as is mentioned in paragraph (1) by or under the supervision of a person who is registered as a medical practitioner or to premises on which any such business is carried on by or under the supervision of such a person.

<sup>[F4</sup>(9) In this Article “semi-permanent skin-colouring” means the insertion of semi-permanent colouring into a person's skin.]

**F4** 2005 NI 18

### ***Provisions supplementary to Articles 13 and 14***

**15.—**(1) Any persons who contravenes—

- (a) Article 13(1) or (2); or
- (b) Article 14(1) or (2),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who contravenes a byelaw made—

- (a) under Article 13(7); or
- (b) under Article 14(7),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If a person registered under Article 13 is found guilty of an offence under paragraph (2) (a), the court, instead of or in addition to imposing a fine under paragraph (2), may order the suspension or cancellation of his registration.

(4) If a person registered under Article 14 is found guilty of an offence under paragraph (2) (b), the court, instead of or in addition to imposing a fine under paragraph (2), may order the suspension or cancellation of his registration.

(5) A court which orders the suspension or cancellation of a registration by virtue of paragraph (3) or (4) may also order the suspension or cancellation of any registration under Article 13 or, as the case may be, Article 14 of the premises in which the offence was committed, if they are occupied by the person found guilty of the offence.

(6) Subject to paragraph (7), a court ordering the suspension or cancellation of registration by virtue of paragraph (3) or (4) may suspend the operation of the order until the expiration of the period for giving notice of appeal to the county court.

(7) If notice of appeal is given within the period referred to in paragraph (6), an order under paragraph (3) or (4) shall be suspended until the appeal is finally determined or abandoned.

(8) Where the registration of any person under Article 13 or 14 is cancelled by order of the court under this Article—

- (a) he shall within 7 days deliver up to the council the cancelled certificate of registration, and, if he fails to do so, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale and thereafter to a daily fine not exceeding £5; and
- (b) he shall not again be registered by the council under Article 13 or, as the case may be, Article 14 except with the consent of the court which convicted him.

(9) A person registered under this Part shall keep a copy—

- (a) of any certificate of registration issued to him under this Part; and
- (b) of any byelaws under this Part relating to the practice or business in respect of which he is so registered,

prominently displayed at the place where he carries on that practice or business.

(10) A person who contravenes paragraph (9) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(11) It shall be a defence for a person charged with an offence under paragraph (1), (2), (8) or (10) to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

(12) Nothing in this Part applies to anything done to an animal.

### ***Power to enter premises***

**16.**—(1) Subject to paragraph (2), an authorised officer of a council may enter any premises in the council's district if he has reason to suspect that an offence under Article 15 is being committed there.

(2) The power conferred by this Article may be exercised by an authorised officer of a council only if he has been granted a warrant by a justice of the peace.



- (3) A justice may grant a warrant under this Article only if he is satisfied—
- (a) that admission to any premises has been refused, or that refusal is apprehended, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
  - (b) that there is reasonable ground for entry under this Article.
- (4) A warrant shall not be granted unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.
- (5) A warrant shall continue in force—
- (a) for seven days; or
  - (b) until the power conferred by this Article has been exercised in accordance with the warrant, whichever period is the shorter.
- (6) Where an authorised officer of a council exercises the power conferred by this Article, he shall produce his authority if required to do so by the occupier of the premises.
- (7) Any person who without reasonable excuse refuses to permit an authorised officer of a council to exercise the power conferred by this Article shall be guilty of an offence and shall for every such refusal be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## PART VI

### MISCELLANEOUS FUNCTIONS OF DISTRICT COUNCILS

#### *Provision of crematorium by council*

- 17.—(1) A council may provide and maintain a crematorium.
- (2) No cremation shall be carried out in any crematorium provided under this Article until the cremation has been certified to the Department by the council to be complete and to be properly equipped for the purposes of cremations.
- (3) The Department may make regulations with respect to crematoria provided under this Article as to—
- (a) their maintenance and inspection;
  - (b) the cases in and the conditions under which cremations may take place;
  - (c) the disposition or interment of the ashes resulting from cremations;
  - (d) the forms of the notices, certificates and applications to be given or made before any cremation is permitted to take place;
  - (e) the registration of cremations;
  - (f) the notification of cremations to the Registrar General or to registrars of births and deaths;
  - (g) the fees that may be charged in respect of the issue of any medical certificate required under the regulations.
- (4) Regulations under paragraph (3) shall be subject to negative resolution.
- (5) A certified copy of an entry in any register of cremations kept under paragraph (3) purporting to be signed by an officer of the council authorised by the council for that purpose or under the seal of the council shall in any legal proceedings be evidence of the cremation to which it relates.
- (6) A council may fix the charges or fees for or in connection with cremations in any crematorium provided by it and such charges or fees, and any other expenses properly incurred in or in connection

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with the cremation of a deceased person, shall be deemed to be part of the funeral expenses of that deceased person.

(7) Nothing in this Article shall authorise a council to create or permit a nuisance.

(8) Any person who—

- (a) contravenes any regulations made under paragraph (3); or
- (b) knowingly carries out or procures or takes part in the burning of any human remains otherwise than in accordance with such regulations and the provisions of this Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) Any person who wilfully makes a false representation, or signs or utters any false certificate, with a view to procuring the cremation of any human remains in a crematorium provided under this Article shall be guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

(10) Without prejudice to Article 10 of the Perjury (Northern Ireland) Order 1979, sections 36 and 37 of the Forgery Act 1861 (destruction, falsification, etc. of registers of burials or copies thereof) shall, with the necessary modifications, apply to any register of cremations kept under paragraph (3).

(11) This Article (except paragraph (2)) shall apply to any crematorium maintained by a council immediately before the coming into operation of this Order as if it had been provided by the council under this Article.

(12) In this Article “crematorium” means a building fitted with appliances for the purpose of burning human remains, and includes everything incidental or ancillary thereto.

### ***Removal of graffiti and fly posters***

**18.**—(1) Subject to paragraphs (7) and (8)(a), a council may remove or obliterate—

- (a) any graffiti which, in the opinion of the council, is detrimental to the amenity of any land in its district;
- (b) any placard or poster which is displayed in its district and which, in the opinion of the council, is so displayed in contravention of the advertisement regulations.

(2) Where—

- (a) any graffiti on any land in the district of a council is, in the opinion of the council, detrimental to the amenity of the land; or
- (b) any placard or poster displayed on any land in the district of a council is, in the opinion of the council, so displayed in contravention of the advertisement regulations,

the council may serve a notice under this Article on the responsible person.

(3) A notice under this Article shall—

- (a) require any graffiti, placard or poster specified in the notice to be removed or obliterated within the period of 14 days beginning with the date of service of the notice; and
- (b) where it specifies any graffiti, state the effect of paragraph (4) and where it specifies any placard or poster state the effect of paragraphs (4) to (6).

(4) If within the period of 14 days beginning with the date of service of a notice under this Article any graffiti, placard or poster specified in the notice has not been removed or obliterated, then—

- (a) subject to paragraph (5), any person duly authorised in writing by the council may remove or obliterate that graffiti, poster or placard; and
- (b) subject to paragraphs (5) and (6), the council may recover summarily as a civil debt from the responsible person any expenses reasonably incurred by it in that behalf.

(5) Paragraph (4) shall not apply where within the period of 14 days referred to in that paragraph the person on whom a notice under this Article specifying any placard or poster is served satisfies the council that on the date of service of the notice the placard or poster was displayed in accordance with the advertisement regulations.

(6) Paragraph (4)(b) shall not apply where within the period of 14 days referred to in paragraph (4) the person on whom a notice under this Article specifying any placard or poster is served satisfies the council that on the date of service of the notice the placard or poster was displayed without his knowledge or consent.

(7) Nothing in this Article authorises the removal or obliteration by a council of any graffiti, placard or poster which is—

- (a) within a building to which there is no public right of access; or
- (b) on land owned or occupied by a body established by or under a statutory provision.

(8) Any person duly authorised in writing by a council may at any reasonable time enter any land—

- (a) for the purpose of exercising a power conferred on the council by paragraph (1) if the land is unoccupied and it would be impossible to exercise the power without entering the land; and
- (b) for the purpose of exercising a power conferred on the council by paragraph (4)(a).

(9) In this Article “the advertisement regulations” means regulations made under<sup>[F5]</sup> Article 67 of the Planning (Northern Ireland) Order 1991].

(10) For the purposes of this Article a person is “the responsible person”

- (a) in relation to any graffiti, placard or poster, if it is displayed on land of which he is the owner or occupier; and
- (b) in relation to any placard or poster, if it gives publicity to his goods, trade, business or other concerns.

(11) This Article and Article 19 are without prejudice to<sup>[F5]</sup> Articles 67 and 84 of the Planning (Northern Ireland) Order 1991] (control of advertisements) and to any regulations made under that Order by virtue of those Articles.

**F5** 1991 NI 11

### ***Advertising on council property***

**19.** A council may enter into agreement with any person for the display of advertisements on or in—

- (a) any land vested in or maintained by the council;
- (b) any moveable property owned by the council;
- (c) any vehicle or machinery operated by the council.

### ***Use of spare capacity of computers of council***

**20.**—(1) If a council—

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- (a) has provided a computer for the purpose of enabling the council to perform any of its functions other than functions under this Article; and
- (b) considers that the computer can, without detriment to its use for that purpose, be used for the benefit of the council in pursuance of the following provisions of this Article,

the council may enter into agreements with other persons for the provision by the council of facilities for using the computer or of services provided by means of the computer.

[<sup>F6</sup>(1A) If a council has developed software for the purpose mentioned in paragraph (1) the council may enter into agreements with other persons for the supply by the council of the software.]

(2) An agreement in pursuance of this Article may contain such terms as to payment or otherwise as the parties consider appropriate; and it shall be the duty of a council, in settling the terms of such an agreement, to ensure that they are terms on which the council considers that a person other than a council could reasonably be expected to provide the facilities or services[<sup>F6</sup> or supply the software] in question.

(3) In this Article “computer” means any device for storing and processing information[<sup>F6</sup> and “software” means instructions required by a computer to perform intended tasks].

(4) This Article is without prejudice to section 105 of the principal Act (arrangements for the supply of goods and services).

**F6** 1992 NI 6

*Art. 21 rep. by 1993 NI 15*

### ***Payment of sums due to deceased or mentally disordered officers of council***

**22.**—(1) If, on the death of any person who is or has been an officer of a council, there is due to him or his personal representatives from the council a sum not exceeding £5,000 and not being a pension, allowance or gratuity payable by virtue of Article 9 of the Superannuation (Northern Ireland) Order 1972 the council may, without requiring the production of probate or letters of administration of the estate of the officer, pay the whole or any part of that sum to the officer's personal representatives or to the person, or to or among any one or more of any persons, appearing to the council to be beneficially entitled to the estate of the officer, and any person to whom such a payment is made, and not the council, shall be liable to account for the sum paid to him under this paragraph.

(2) The council may, if it thinks fit, pay out of the said sum the funeral expenses of the officer or so much thereof as it considers reasonable having regard to any death grant which has been or is to be paid under section 32 of the Social Security (Northern Ireland) Act 1975.

(3) <sup>F7</sup> Paragraph (1) shall be included among the provisions with respect to which the Department of Finance and Personnel may make an order under section 6(1) of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967, substituting for references to £5,000 references to such higher amount as may be specified in the order.

*Para. (4) rep. by 1986 NI 4*

**F7** mod. by SR 2004/68

## PART VII

### AMENDMENT AND REPEAL OF PROVISIONS RELATING TO DISTRICT COUNCILS

#### *Miscellaneous amendments of the principal Act*

*Art. 23 rep. by 1995 NI 5*

#### ***Payment of allowance to vice-chairman of council***

**24.** In section 13 of the principal Act (vice-chairman) after subsection (2) there shall be inserted the following subsection—

“(2A) A council may pay to the vice-chairman of the council such allowance as the council considers to be reasonable to meet the expenses of his office.”.

#### ***Loans to officers for purchase of motor cars or motor cycles***

**25.** After section 41A of the principal Act there shall be inserted the following section—

##### **“Loans to officers for purchase of motor cars or motor cycles.**

**41B.** A council may make loans to such of its officers and subject to such conditions as the Department, with the approval of the Department of Finance and Personnel, may determine to facilitate such officers in the purchase of motor cars or motor cycles essential to the efficient carrying out of their official duties.”

#### ***Delegation of functions to officers***

**26.—**(1) After section 47 of the principal Act there shall be inserted the following section—

##### **“Delegation of functions to officers.**

**47A.—**(1) A council may arrange for the discharge of any of its functions, except the power of making a rate, or of borrowing money or of acquiring, holding or disposing of land, by an officer of the council and any transferred provision regulating the exercise of a function by a council shall also apply to regulate the exercise of that function by an officer of the council.

(2) Where any functions of a council may be discharged by a committee of the council, then, unless the council otherwise directs, the committee may arrange for the discharge of any of those functions by an officer of the council.

(3) Where any functions of a council may be discharged by a sub-committee of the council, then, unless the council or the committee otherwise directs, the sub-committee may arrange for the discharge of any of those functions by an officer of the council.”.

(2) In Schedule 7 to the principal Act (provisions applied to joint committee) after the entry relating to section 47 of the principal Act there shall be inserted the following entry—

“**47A.** Delegation of functions to officers.”.

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*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

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***Custody and destruction of documents relating to securities created by a council***

27. In section 70 of the principal Act (regulations as to securities created by a council) in subsection (2) the following paragraph shall be inserted after paragraph (h)—

“(hh) the custody and, where appropriate, eventual destruction of documents relating to securities;” .

***Powers of auditor in relation to unlawful items of account, amounts not accounted for, etc.***

<sup>F8</sup>28.—(1) For sections 81 to 86 of the principal Act there shall be substituted the following sections—

**“Declaration that item of account is unlawful.**

81.—(1) Where it appears to a local government auditor at any audit held by him that any item of account is contrary to law he may apply to the court for a declaration that the item is contrary to law except where it is sanctioned by the Department.

(2) On an application under this section the court may make or refuse to make the declaration asked for, and where the court makes that declaration, then, subject to subsection (3), it may also—

- (a) order that any person responsible for incurring or authorising any expenditure declared unlawful shall repay it in whole or in part to the council concerned and, where two or more persons are found to be responsible, that they shall be jointly and severally liable to repay it as aforesaid;
- (b) if any such expenditure exceeds £2,000 and the person responsible for incurring or authorising it is, or was at the time of his conduct in question, a member of the council concerned, order him to be disqualified for being elected or being a member of a council for a specified period; and
- (c) order rectification of the accounts.

(3) The court shall not make an order under subsection (2)(a) or (b) if the court is satisfied that the person responsible for incurring or authorising any such expenditure acted reasonably or in the belief that the expenditure was authorised by law, and in any other case shall have regard to all the circumstances, including that person's means and ability to repay that expenditure or any part of it.

(4) Any person who has made an objection under section 79 and is aggrieved by a decision of an auditor not to apply for a declaration under this section may—

- (a) not later than six weeks after he has been notified of the decision, require the auditor to state in writing the reasons for his decision; and
- (b) appeal against the decision to the court,

and on any such appeal the court shall have the like powers in relation to the item of account to which the objection relates as if the auditor had applied for the declaration.

(5) On an application or appeal under this section relating to the accounts of a council, the court may make such order as the court thinks fit for the payment by that council of expenses incurred in connection with the application or appeal by the auditor or the person to whom the application or appeal relates or by whom the appeal is brought, as the case may be.

(6) The court having jurisdiction for the purposes of this section shall be the High Court except that, if the amount of the item of account alleged to be contrary to law does not exceed the amount over which county courts have jurisdiction in actions founded on contract, the county court shall have concurrent jurisdiction with the High Court.

### Recovery of amount not accounted for, etc.

82.—(1) Where it appears to a local government auditor at any audit held by him—

- (a) that any person has failed to bring into account any sum which should have been so included and that the failure has not been sanctioned by the Department; or
- (b) that a loss has been incurred or deficiency caused by the wilful misconduct of any person,

he shall certify that the sum or, as the case may be, the amount of the loss or the deficiency is due from that person and, subject to subsections (3) and (5), both he and the council concerned may recover that sum or amount for the benefit of that council; and if the auditor certifies under this section that any sum or amount is due from two or more persons, they shall be jointly and severally liable for that sum or amount.

(2) Any person who—

- (a) has made an objection under section 79 and is aggrieved by a decision of an auditor not to certify under this section that a sum or amount is due from another person; or
- (b) is aggrieved by a decision of an auditor to certify under this section that a sum or amount is due from him,

may not later than 6 weeks after he has been notified of the decision require the auditor to state in writing the reasons for his decision.

(3) Any such person who is aggrieved by such a decision may appeal against the decision to the court and—

- (a) in the case of a decision to certify that any sum or amount is due from any person, the court may confirm, vary or quash the decision and give any certificate which the auditor could have given;
- (b) in the case of a decision not to certify that any sum or amount is due from any person, the court may confirm the decision or quash it and give any certificate which the auditor could have given;

and any certificate given under this subsection shall be treated for the purposes of subsection (1) and the following provisions of this section as if it had been given by the auditor under subsection (1).

(4) If a certificate under this section relates to a loss or deficiency caused by the wilful misconduct of a person who is, or was at the time of such misconduct, a member of the council concerned and the amount certified to be due from him exceeds £2,000, that person shall be disqualified for being elected or being a member of a council for the period of five years beginning on the ordinary date on which the period allowed for bringing an appeal against a decision to give the certificate expires or, if such an appeal is brought, the date on which the appeal is finally disposed of or abandoned or fails for non-prosecution.

(5) A sum or other amount certified under this section to be due from any person shall be payable within fourteen days after the date of the issue of the certificate or, if an appeal is brought, within fourteen days after the appeal is finally disposed of or abandoned or fails for non-prosecution.

(6) In any proceedings for the recovery of any sum or amount due from any person under this section a certificate signed by a local government auditor stating that that sum or amount is due from a person specified in the certificate to a council so specified shall be conclusive evidence of that fact; and any certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.

(7) On an appeal under this section relating to the accounts of a council the court may make such order as the court thinks fit for the payment by that council of expenses incurred

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

in connection with the appeal by the auditor or the person to whom the appeal relates or by whom the appeal is brought, as the case may be.

(8) Any expenses incurred by an auditor in recovering a sum or other amount certified under this section to be due in connection with the accounts of a council shall, so far as not recovered from any other source, be recoverable from that council unless the court otherwise directs.

(9) The court having jurisdiction for the purposes of this section shall be the High Court except that, if the sum or amount alleged to be due does not exceed the amount over which county courts have jurisdiction in actions founded on contract, the county court shall have concurrent jurisdiction with the High Court.”

(2) In section 4 of the principal Act (disqualifications for being councillor)—

(a) in subsection (1) for paragraph (c) there shall be substituted the following paragraph—

“(c) he is disqualified for being elected or being a councillor under section 81 or 82;” ;

(b) subsection (2) shall cease to have effect.

(3) In section 10(a) of the principal Act (declaration of vacancy in office of councillor) for the words “for any reason other than by reason of a surcharge or of” there shall be substituted the words “otherwise than under section 81 or 82 or by reason of”.

(4) In section 48(1) of the principal Act for the words from “being surcharged” to the end there shall be substituted the words “the operation of sections 81 and 82”.

(5) In section 79 of the principal Act (right of electors to object to accounts) subsections (2) and (3) shall cease to have effect.

(6) In Schedule 7 to the principal Act (provisions applied to joint committees) for the entries relating to sections 81 to 86 of the principal Act there shall be substituted the following entries—

“**81** Declaration that item of account is unlawful.

**82** Recovery of amount not accounted for, etc.”.

(7) Paragraphs (1), (4), (5) and (6) apply in relation to any audit commenced after the coming into operation of this Article and paragraphs (2) and (3) do not apply in relation to any person disqualified for being elected or being a councillor by reason of a surcharge made at any audit commenced before the coming into operation of this Article.

**F8** prosp. rep. by [2005 NI 18](#)

### Regulations as to accounts and audit

<sup>F9</sup>**29.** In section 87 of the principal Act (regulations as to accounts and audit) in subsection (1) after paragraph (c) there shall be inserted

“and

(d) the publication of information relating to accounts and the publication of statements of accounts,” .

**F9** prosp. rep. by [2005 NI 18](#)



### ***Studies for improving economy, etc. of services of councils***

**F10**30. The following cross-heading and section shall be inserted in Part V of the principal Act after section 89—

#### *“Studies for improving economy, etc. of services*

##### **Studies for improving economy, etc. of services.**

**89A.**—(1) A local government auditor shall, if required by the Department, undertake comparative and other studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the provision of services by councils.

(2) Before requiring the undertaking of any study under subsection (1) the Department shall consult such associations or bodies representative of councils and of the officers of councils and such councils as appear to the Department to be appropriate.

(3) A local government auditor shall report to the Department the results of any study under subsection (1) and any recommendations made by him as a result of such study and the Department shall publish or otherwise make available any such results and recommendations.

(4) Section 78 shall apply for the purposes of a study undertaken under subsection (1) as it applies for the purposes of an audit.”.

**F10** prosp. rep. by [2005 NI 18](#)

### ***Arrangements with specified bodies for supply of goods, services and staff***

**31.** In section 105 of the principal Act (arrangements for supply of goods and services and interchange of staff) in subsections (1), (2) and (6) after the words “public body” wherever they occur there shall be inserted the words “, specified body” and at the end there shall be added the following subsection—

“(7) In this section “specified body” means a body which is specified, or is of a description specified, in regulations and any such regulations may contain provisions—

- (a) for restricting the arrangements which may by virtue of the regulations be entered into by a specified body under subsection (1) or (2); and
- (b) for securing the inclusion in any such arrangements made by virtue of the regulations of terms imposing restrictions.”.

### ***Mode of voting at council meeting***

**32.** In Schedule 2 to the principal Act for paragraph 8 there shall be substituted the following paragraph—

“**8.**—(1) The mode of voting at meetings of the council shall, except as otherwise resolved by the council, be by show of hands.

(2) On the requisition of any councillor the voting on any question shall be recorded so as to show whether each councillor present and voting gave his vote for or against that question.”.

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*Status: Point in time view as at 01/01/2006.*

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### ***Requisitioning of meetings of a council***

**33.** In Schedule 2 to the principal Act in paragraph 2 for sub-paragraph (2) there shall be substituted the following sub-paragraphs—

“(2) If a requisition for a meeting of the council signed by five councillors or by one-fifth of the whole number of the councillors, whichever is the greater, is presented to the chairman of the council, he shall call a meeting of the council to be held within the period of fourteen days from the date of service of the requisition on him.

(2A) If the chairman—

- (a) refuses to call a meeting of the council in accordance with sub-paragraph (2); or
- (b) does not, within the period of seven days from the date of service of the requisition on him, call a meeting of the council in accordance with sub-paragraph (2),

any five councillors or one-fifth of the whole number of the councillors, whichever is the greater, may on that refusal or on the expiration of that period forthwith call a meeting of the council.”.

### *Miscellaneous amendments of other statutory provisions*

#### *Article 34—Amendments*

### ***Regulations as to burial grounds of councils***

**35.** For section 181 of the Public Health (Ireland) Act 1878 there shall be substituted the following section—

**“Regulations as to burial grounds, &c.**

**181.—**(1) The Department of the Environment may by regulations make provision with respect to the management, regulation and control of burial grounds of district councils and places of reception of bodies previous to interment and such regulations may—

- (a) impose a fine for the contravention of any such regulations; and
- (b) contain such provision amending or repealing any statutory provision (including a provision in this Part) as appears to the Department to be necessary or proper in consequence of the regulations.

(2) Regulations under subsection (1) containing any such provision as is referred to in paragraph (b) of that subsection shall be subject to affirmative resolution and regulations not containing any such provision shall be subject to negative resolution.

(3) Regulations under subsection (1) may only be made after consultation with the district councils and other bodies appearing to the Department to be concerned.”.

### ***Minor amendments relating to burial grounds of councils***

**36.—**(1) The following statutory provisions (which prohibit the appropriation of land within one hundred yards of a dwelling house as a burial ground without the written consent of the owner) shall cease to have effect, namely—

- (a) section 10 of the Cemeteries Clauses Act 1847 (including that section as incorporated with any other Act);
- (b) in section 174 of the Public Health (Ireland) Act 1878 the words from “but no ground” to the end.

(2) At the end of Part III of the Public Health (Ireland) Act 1878 there shall be inserted the following section—

### **“Interpretation of Part III.**

**199A.** In this Part—

“burial ground” means any place for the interment of the dead, including any part of any such place set aside for the interment of a dead person's ashes;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954,”.

(3) Sections 189 and 190 of the Public Health (Ireland) Act 1878 (which have been superseded by provisions of the principal Act) and section 29 of the Local Government (Ireland) Act 1898 (which is spent) are hereby repealed.

### ***Public health inspectors to be known as environmental health officers***

**37.** For any reference to a public health inspector in—

*Para. (a) rep. by 1989 NI 6*

(b) section 8(6) or 153(2) of the Factories Act (Northern Ireland) 1965;

or in any other statutory provision there shall be substituted a reference to an environmental health officer appointed by a council in the exercise of its powers under section 41 of the principal Act.

### ***Nuisances under the Public Health (Ireland) Act 1878***

**38.—**(1) In section 107(7) of the Public Health (Ireland) Act 1878 (nuisances for purposes of the Act include any grit, dust or effluvia which is a nuisance to, or injurious to the health of, any of the inhabitants of the neighbourhood) for the words from “a nuisance to” to “neighbourhood” there shall be substituted the words “injurious, or likely to cause injury, to the public health or a nuisance”.

(2) In Article 23(1) of the Clean Air (Northern Ireland) Order 1981 (smoke deemed to be nuisance for the purposes of section 107 of the Public Health (Ireland) Act 1878 if it is a nuisance to any of the inhabitants of the neighbourhood) for the words “a nuisance to any of the inhabitants of the neighbourhood” there shall be substituted the words “injurious, or likely to cause injury, to the public health or a nuisance”.

### ***Extension of licensing of knackers' yards by councils***

**39.—**(1) In section 2 of the Public Health (Ireland) Act 1878 for the definition of “knackers' yard” there shall be substituted the following definition—

““knacker's yard” means any place used for the purposes of, or in connection with,—

(a) the slaughtering of animals not slaughtered for the purpose of the flesh being used for human consumption; or

(b) the flaying, cutting up or processing of the carcasses of animals the flesh of which is not intended for human consumption;” .

(2) Section 106 of the Public Health (Ireland) Act 1878 (which requires the owner or occupier of any licensed or registered knacker's yard to affix a notice to the premises) shall cease to have effect.

### ***Filling of casual vacancy on council by co-option or election***

**40.—**(1) Section 11 of the Electoral Law Act (Northern Ireland) 1962 (election and term of office of members of district councils) shall have effect subject to the following provisions of this Article.

(2) In subsection (4) for the words “shall be filled in accordance with the Local Election Rules” there shall be substituted the words “shall be filled in accordance with subsection (4A)”.

(3) After subsection (4) there shall be inserted the following subsections—

**Status:** Point in time view as at 01/01/2006.

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“(4A) A casual vacancy to which subsection (4)(c) applies shall be filled by a person elected at an election to fill the vacancy and any other casual vacancy shall be filled—

- (a) by a person chosen by the council in accordance with subsection (4B); or
- (b) if no person is chosen as mentioned in paragraph (a), by a person elected at an election to fill the vacancy.

(4B) Where a casual vacancy in a district council falls to be filled in accordance with this subsection—

- (a) a meeting of the council to choose a person to fill the vacancy shall be held not less than 14 days nor more than 42 days after the occurrence of the vacancy;
- (b) the clerk of the council shall give every member of the council not less than 7 days written notice of the meeting which notice shall state as the first business of the meeting the choice of a person to fill the vacancy;
- (c) the council may at that meeting choose to fill the vacancy any person who is qualified to be a member of the council and is not objected to by any member of the council present at the meeting; and
- (d) any person so chosen shall be deemed for all purposes to have been duly elected a member of the council.

(4C) Where a meeting of a district council held in accordance with subsection (4B) fails to choose a person to fill a casual vacancy, the clerk of the council shall, within 7 days of the meeting, notify the Chief Electoral Officer—

- (a) that a casual vacancy has arisen in the council and that a meeting held in accordance with subsection (4B) has failed to choose a person to fill that vacancy;
- (b) of any other matter concerning the casual vacancy which has come to the knowledge of the clerk of the council.” .

*Para. (4) rep. by 1992 NI 6*

*Art. 41 rep. by 2002 NI 3*

*Article 42—Amendments*

*Article 43—Repeals*

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.