
Status: Point in time view as at 01/01/2006.

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STATUTORY INSTRUMENTS

1992 No. 810 (N.I. 6)

The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992

- - - - - 16th March 1992

PART I INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F1} 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^{F2}.

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

F1 1954 c. 33 (NI)

F2 1972 c. 9 (NI)

Part II (arts. 3#17) rep. by 2002 c. 4 (NI)

PART III

PUBLIC SUPPLY OR WORKS CONTRACTS

Interpretation

18. In this Part—

“approved list” means such a list as is mentioned in Article 19(3)(a);

“associated body”, in relation to a contractor, means any company which (within the meaning of the Companies (Northern Ireland) Order 1986^{F3}), is the contractor's holding company or subsidiary or is a subsidiary of the contractor's holding company;

“business” includes any trade or profession;

“business activities” and “business interests”, in relation to a contractor or other person, mean respectively any activities comprised in, or any investments employed in or attributable to, the carrying on of his business and “activity” includes receiving the benefit of the performance of any contract;

“contractor”, except in relation to a subsisting contract, means a “potential contractor”, that is to say—

- (a) in relation to functions as respects an approved list, any person who is or seeks to be included in the list; and
- (b) in relation to functions as respects a proposed public supply or works contract, any person who is or seeks to be included in the group of persons from whom tenders are invited or who seeks to submit a tender for or enter into the proposed contract, as the case may be;

“employers' association” has the same meaning as in the Industrial Relations (Northern Ireland) Order^[F4 1992];

“exclusion” includes removal;

“Government policy” falls within “irrelevant fields” for the purposes of Article 19 if it concerns matters of defence or foreign or Commonwealth policy and “involve”, as regards business activities and any such field of policy, includes the supply of goods or materials or services to, or the execution of works for, any authority or person having functions or carrying on business in that field and, as regards business interests and any such field of policy, includes investment in any authority or person whose business activities are so involved;

“industrial dispute” has the same meaning as trade dispute in the^[F4 Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995] and “involve”, as regards business activities and an industrial dispute, includes the supply of goods, materials or services to or by, or the execution of works for or by, any party to the dispute, any other person affected by the dispute, or any authority concerned with the enforcement of law and order in relation to the dispute;

“political, industrial or sectarian affiliations or interests” means actual or potential membership of, or actual or potential support for, respectively, any political party, any employers' association or trade union or any society, fraternity or other association;

“suppliers or customers” and “sub-contractors” includes prospective suppliers or customers and sub-contractors; and “supplier”, in relation to a contractor, includes any person who, in the course of business, supplies him with services or facilities of any description for the purposes of his business;

“trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order^[F4 1992].

F3 1986 NI 6
F4 1996 NI 16

District council contracts: exclusion of non-commercial considerations

19.—(1) Subject to Articles 20^{F5}, 20A] and 21(1), every council shall, in exercising, in relation to its public supply or works contracts, any proposed or any subsisting such contract, as the case may be, any function regulated by this Article, exercise that function without reference to matters which are non-commercial matters for the purposes of this Article.

(2) The contracts which are public supply or works contracts for the purposes of this Article are contracts for the supply of goods or materials, for the supply of services or for the execution of works; but this Article does not apply in relation to contracts entered into before the coming into operation of this Article.

(3) The functions regulated by this Article are—

- (a) the inclusion of persons in or the exclusion of persons from—
 - (i) any list of persons approved for the purposes of public supply or works contracts with the council, or
 - (ii) any list of persons from whom tenders for such contracts may be invited;
- (b) in relation to a proposed public supply or works contract with the council—
 - (i) the inclusion of persons in or the exclusion of persons from the group of persons from whom tenders are invited,
 - (ii) the accepting or not accepting the submission of tenders for the contract,
 - (iii) the selecting of the person with whom to enter into the contract, or
 - (iv) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract; and
- (c) in relation to a subsisting public supply or works contract with the council—
 - (i) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract, or
 - (ii) the termination of the contract.

(4) The following matters are non-commercial matters as regards the public supply or works contracts of a council, any proposed or any subsisting such contract, as the case may be, that is to say—

- (a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces;
- (b) whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;
- (c) any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;
- (d) the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons;
- (e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;

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- (f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;
 - (g) financial support or lack of financial support by contractors for any institution to or from which the council gives or withholds support.
- (5) The matters specified in paragraph (4) include matters which have occurred in the past as well as matters which subsist when the function in question falls to be exercised.
- (6) Where any matter referable to a contractor would, as a matter specified in paragraph (4), be a non-commercial matter in relation to him, the corresponding matter referable to—
- (a) a supplier or customer of the contractor;
 - (b) a sub-contractor of the contractor or his supplier or customer;
 - (c) an associated body of the contractor or his supplier or customer; or
 - (d) a sub-contractor of an associated body of the contractor or his supplier or customer;
- is also, in relation to the contractor, a non-commercial matter for the purposes of this Article.

F5 1997 NI 6

Fair employment matters

20.—(1) A council which takes any action to comply with^[F6] Article 64 of the Fair Employment and Treatment (Northern Ireland) Order 1998] (restriction on execution of works, etc., by unqualified persons) does not exercise any function regulated by Article 19 by reference to a non-commercial matter.

- (2) Subject to paragraph (3), nothing in Article 19 shall preclude a council from—
- (a) asking questions or seeking undertakings of any person relating to whether any person is or is not an unqualified person for the purposes of^[F6] Article 64 of that Order of 1998] and considering the responses to them, or
 - (b) including in a draft contract or draft tender for a contract terms or provisions requiring that the person or persons who are to carry out work under the draft contract or draft tender are to be considered not to be unqualified for the purposes of that^[F6] Article 64] and considering the responses to them,

if, as the case may be, consideration of the information, the giving of the undertaking or the inclusion of the terms or provision is reasonably necessary to secure compliance with that^[F6] Article 64].

(3) Paragraph (2) does not apply to the function of terminating a subsisting contract and, in relation to functions as respects approved lists or proposed contracts, does not authorise questions in other than written form.

(4) Where it is permissible under paragraph (2) to ask a question it is also permissible to make, if it is in writing, a request for—

- (a) evidence in support of an answer to the question; or
- (b) information as to whether any person is or is not unqualified for the purpose of^[F6] Article 64 of that Order of 1998].

(5) In this Article “unqualified” has the same meaning as in^[F6] Articles 62 and 63 of the Fair Employment and Treatment (Northern Ireland) Order 1998].

F6 1998 NI 21

[^{F7}Race relations matters

20A.—(1) Except to the extent permitted by paragraph (2) Article 67 of the Race Relations (Northern Ireland) Order 1997 (councils to have regard to need to eliminate unlawful racial discrimination and promote equality of opportunity, and good relations, between persons of different racial groups) shall not require or authorise a council to exercise any function regulated by Article 19 by reference to a non-commercial matter.

- (2) Subject to paragraph (3), nothing in Article 19 shall preclude a council from—
- (a) asking approved questions seeking information or undertakings relating to workforce matters and considering the responses to them, or
 - (b) including in a draft contract or draft tender for a contract terms or provisions relating to workforce matters and considering the responses to them,

if, as the case may be, consideration of the information, the giving of the undertaking or the inclusion of the term is reasonably necessary to secure compliance with Article 67 of the 1997 Order.

(3) Paragraph (2) does not apply to the function of terminating a subsisting contract and, in relation to functions as respects approved lists or proposed contracts, does not authorise questions in other than written form.

(4) Where it is permissible under paragraph (2) to ask a question it is also permissible to make, if it is in writing, an approved request for evidence in support of an answer to the question.

- (5) The Department may specify—
- (a) questions which are to be approved questions for the purposes of this Article; and
 - (b) descriptions of evidence which, in relation to approved questions, are to be approved descriptions of evidence for those purposes.
- (6) Any specification under paragraph (5)—
- (a) shall be in writing; and
 - (b) may include such transitional and consequential provisions as appear to the Department to be necessary or expedient.

- (7) In this Article—
- “approved question” means a question for the time being specified by the Department under paragraph (5);
 - “approved request for evidence” means a request for evidence of a description for the time being specified by the Department under paragraph (5) in relation to an approved question;
 - “workforce matters” means matters falling within sub-paragraph (a), but no other sub-paragraph, of Article 19(4).]

F7 1997 NI 6

Provisions supplementary to or consequential on Article 19

- 21.**—(1) The Department, for the purposes of Article 19, may by order—
- (a) specify as a non-commercial matter any other matter which appears to the Department to be irrelevant to the commercial purposes of public supply or works contracts of any description;
 - (b) specify the criteria to be applied by a council in drawing up an approved list;

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- (c) specify questions relating to non-commercial matters which may be included in questionnaires circulated by councils to potential contractors in such cases as may be specified in the order.
- (2) The power conferred by paragraph (1) includes power to apply Article 19(5) and (6) to any matter specified in the order and to amend any definition in Article 18 of an expression used in any sub-paragraph of Article 19(4) without making any other provision.
- (3) An order under paragraph (1) may include such consequential and transitional provisions as appear to the Department to be necessary or expedient.
- (4) No order under paragraph (1) shall be made unless a draft of it has been laid before and approved by a resolution of the Assembly.
- (5) Article 19 applies to a council where, in exercising functions regulated by that Article, the council is, as well as where it is not, acting on behalf of a government department.
- (6) The duty imposed by Article 19(1) does not create a criminal offence but—
 - (a) in proceedings for judicial review, the persons who have a sufficient interest in the matter shall include any potential contractor or, in the case of a contract which has been made, former potential contractor (or, in any case, any body representing contractors), as such; and
 - (b) a failure to comply with it is actionable by any person who, in consequence, suffers loss or damage.
- (7) In any action under Article 19(1) by a person who has submitted a tender for a proposed public supply or works contract arising out of the exercise of functions in relation to the proposed contract the damages shall be limited to damages in respect of expenditure reasonably incurred by him for the purpose of submitting the tender.
- (8) Nothing in paragraph (1) or Article 19 implies that the exercise of any function regulated by that Article may not be impugned, in proceedings for judicial review, on the ground that it was exercised by reference to other matters than those which are non-commercial matters for the purposes of that Article.

Duty of councils to give reasons for certain decisions within Article 19

- 22.—**(1) Where a council exercises a function regulated by Article 19 by making, in relation to any person, a decision to which this Article applies, the council shall forthwith notify that person of the decision and, if that person so requests in writing within 15 days from the date of the notice, furnish him with a written statement of the reasons for the decision within 15 days from the date of the request.
- (2) This Article applies to the following decisions in relation to any person, namely—
 - (a) in relation to an approved list, a decision to exclude him from the list,
 - (b) in relation to a proposed public supply or works contract—
 - (i) where he has asked to be invited to tender for the contract, a decision not to invite him to tender,
 - (ii) a decision not to accept the submission by him of a tender for the contract,
 - (iii) where he has submitted a tender for the contract, a decision not to enter into the contract with him, or
 - (iv) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract, or
 - (c) in relation to a subsisting public supply or works contract with him—

(i) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract, or

(ii) a decision to terminate the contract.

(3) The Department may by order subject to negative resolution amend paragraph (1) so as to substitute for any period specified in that paragraph such other period as the Department thinks fit.

Transitional duty of councils as regards existing lists

23.—(1) Subject to paragraph (3), a council which, at the coming into operation of this Article, maintains an approved list shall—

(a) consider whether persons have been included in or excluded from the list by reference to non-commercial matters, and

(b) if it appears to the council that that is the case, compile the list afresh in accordance with paragraphs (4) to (6).

(2) Persons shall be treated by a council as having been excluded from a list by reference to non-commercial matters if, in relation to the list, the council has—

(a) notified potential contractors of its intention to have regard to non-commercial matters, or

(b) issued statements of policy framed by reference to non-commercial matters.

(3) Inclusion or exclusion by a council from its list by reference to a non-commercial matter does not give rise to the duty to compile the list afresh under paragraph (1) if that matter relates only to the question as to whether or not any person is unqualified for the purpose of section 41 of the Fair Employment (Northern Ireland) Act 1989^{F8} and the council's action was reasonably necessary to secure compliance with that section.

(4) The duty of a council to compile afresh an approved list shall be discharged as follows—

(a) the council shall publish notice of its intention to compile the list afresh and (by the notice) invite persons to apply, within a specified period, to be included in the list; and

(b) at the end of that period the council shall proceed to compile the list afresh from among the applicants in accordance with the duty imposed by Article 19.

(5) Publication by a council of the notice required by paragraph (4) shall be effected by causing the notice to be published—

(a) in at least 2 newspapers circulating in the district of the council; and

(b) in at least one newspaper or journal circulating among such persons as undertake contracts of the description to which the list relates.

(6) The period specified in the notice under paragraph (4) as the period within which applications are to be made shall not be shorter than the period of 28 days from the date of publication of the notice.

(7) The duty imposed by this Article shall be discharged by a council as soon as is reasonably practicable after this Article comes into operation and in any event within the expiration of 3 months from the day on which this Article comes into operation.

(8) This Article does not create a criminal offence but sub-paragraph (a) of Article 21(6) applies for the purposes of the duty imposed by this Article as it applies for the purposes of the duty imposed by Article 19(1).

F8 1989 c. 32

Exclusion of charges for inclusion in approved list

24.—(1) A council which maintains an approved list shall not require a person to pay any sum as a condition of his inclusion or continued inclusion in the list or of his being considered for such inclusion.

(2) Paragraph (1) does not create an offence but a contravention of it is actionable by the person seeking to be included or retained in the list.

PART IV

MISCELLANEOUS

Directions to councils

25.—(1) The Department may give directions of a general or specific nature to councils as to the manner in which the councils are to discharge their functions under Parts II and III, and councils shall act in accordance with those directions.

(2) Any directions given to councils by the Department under this Article may be varied or revoked by subsequent directions so given.

Emergency financial assistance to councils

26.—(1) In any case where—

- (a) an emergency or disaster occurs involving destruction of or danger to life or property, and
- (b) as a result, one or more councils incur expenditure on, or in connection with, the taking of immediate action (whether by the carrying out of works or otherwise) to safeguard life or property, or to prevent suffering or severe inconvenience, in its district or among its inhabitants,

the Department may establish a scheme under this Article for the giving of financial assistance to those councils in respect of that expenditure.

(2) Financial assistance given pursuant to a scheme under this Article shall take the form of grants paid by the Department with the consent of the Department of Finance and Personnel and, subject to that, the terms and conditions of a scheme shall be such as the Department considers appropriate to the circumstances of the particular emergency or disaster concerned.

(3) Without prejudice to the generality of paragraph (2), a scheme under this Article may—

- (a) make the payment of grants conditional upon the making of claims of a description specified in the scheme;
- (b) make provision with respect to the expenditure qualifying for grant and the rates and amounts of grants; and
- (c) make provision in certain specified circumstances for the repayment of any grant, in whole or in part.

Promotion of safety in the home

27.—(1) A council may promote safety in the home by publishing or making arrangements for otherwise giving information or advice relating to the prevention of accidents in the home.

(2) A council may contribute to the funds of any voluntary body whose activities consist of or include the promotion of safety in the home.

Art. 28 rep. by 2002 NI 3

PART V

AMENDMENT AND REPEAL OF PROVISIONS RELATING TO DISTRICT COUNCILS

Miscellaneous amendments of the principal Act

Northern Ireland code of local government conduct

29.—(1) After section 7 of the principal Act there shall be inserted

“Northern Ireland code of local government conduct.

7A.—(1) The Department, for the guidance of members of councils, may issue a code of recommended practice as regards the conduct of members of councils to be known as the Northern Ireland code of local government conduct.

(2) The Department may revise or withdraw a code issued under this section.

(3) The Department, before issuing, revising or withdrawing a code, shall consult such councils, such associations or bodies representative of councils and such other associations or public bodies as appear to the Department to be desirable.

(4) A code shall not be issued or revised unless a draft of it has been laid before and approved by a resolution of the Assembly.

(5) The form of declaration of acceptance of office under section 7 and Part I of Schedule 1 shall include an undertaking by the declarant to be guided by the Northern Ireland code of local government conduct in the performance of his functions.

(6) In this section “member”, in relation to a council, includes any person who, whether or not a member of the council, is a member of a committee or sub-committee of the council or of any joint committee of two or more councils.”.

(2) In Part I of Schedule 1 to the principal Act (declaration of councillor) at the end of the declaration there shall be added—

“I affirm that I have read and will be guided by the Northern Ireland code of local government conduct in the performance of my functions as a councillor.”.

Declaration of vacancy in office

30. In section 10(a) of the principal Act (declaration of vacancy in office in certain cases) after “conviction” there shall be inserted “or of a determination by the High Court that he has acted in breach of the terms of a declaration against terrorism as defined in section 7 of the Elected Authorities (Northern Ireland) Act 1989,”.

Election of chairman or vice-chairman

31.—(1) In section 11 of the principal Act (chairman)—

(a) subsection (2) shall be omitted;

(b) in subsection (3) at the beginning there shall be inserted “Subject to paragraph 3(4) of Schedule 2,”.

(2) After section 12 of the principal Act there shall be inserted

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“Election of chairman.

12A.—(1) The election of the chairman shall be the first business transacted at the annual meeting of the council.

(2) If, apart from section 11(4) or 13(1), the person presiding at the meeting would have ceased to be a member of the council, he shall not be entitled to vote in the election except in accordance with paragraph (3).

(3) In the case of an equality of votes the person presiding at the meeting shall give a casting vote in addition to any other vote he may have.”.

(3) In section 13(1) of the principal Act (vice-chairman) after “council and” there shall be inserted “, subject to paragraph 3(4) of Schedule 2,”.

(4) In paragraph 3 of Schedule 2 to the principal Act (meetings and proceedings of councils) after sub-paragraph (3) there shall be inserted—

“(4) Nothing in this paragraph shall authorise any councillor to preside at so much of any meeting of the council during which the business of the election of a chairman or of a vice-chairman is transacted where that councillor is a candidate for election to the office of chairman or, as the case may be, of vice-chairman.”.

Voting rights of members of committees, sub-committees and joint committees

32. After section 19 of the principal Act there shall be inserted

“Voting rights of members of committees, sub-committees and joint committees.

19A.—(1) A person who—

- (a) is a member of a committee appointed under section 18(1) by a council and is not a member of that council; or
- (b) is a member of a joint committee appointed under section 19(1) by 2 or more councils and is not a member of any of those councils; or
- (c) is a member of a sub-committee appointed under section 18(4) or 19(4) by such a committee as is mentioned in paragraph (a) or (b) and is not a member of the council, or one of the councils, which appointed that committee,

shall for all purposes be treated as a non-voting member of that committee, joint committee or, as the case may be, sub-committee.

(2) Where a person is treated by virtue of this section as a non-voting member of any committee, joint committee or sub-committee, he shall not be entitled to vote at any meeting of the committee, joint committee or sub-committee on any question which falls to be decided at that meeting.

(3) In this section any reference to voting includes a reference to making use of a casting vote.”.

Procedural standing orders

33.—(1) In section 22 of the principal Act (meetings and proceedings)—

(a) at the beginning there shall be inserted—

“(1) Subject to the following provisions of this section,” ;

(b) at the end there shall be added—

“(2) Regulations may require councils, subject to such variations as may be authorised by the regulations—

- (a) to incorporate such provision as may be prescribed by the regulations in standing orders for regulating their proceedings and business; and
- (b) to make or refrain from making such other modifications of any such standing orders as may be so prescribed.

(3) Without prejudice to the generality of subsection (2), regulations under that subsection may require such standing orders as are mentioned in that subsection to contain provision which, notwithstanding any statutory provision or the decision of any council or committee or sub-committee of a council, authorises persons who are members of such a council, committee or sub-committee—

- (a) to requisition meetings of the council or of any of its committees or sub-committees;
- (b) to require a decision of a committee or sub-committee of the council to be referred to and reviewed by the council itself or by a committee of the council;
- (c) to require that a vote with respect to a matter falling to be decided by the council or by any of its committees or sub-committees is to be taken in a particular manner.

(4) Regulations under subsection (2) may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Department considers appropriate.” .

(2) In paragraph 12(1) of Schedule 2 to the principal Act (meetings and proceedings of councils and committees) after “orders” in the second place where it occurs there shall be inserted “and to section 22(2) to (4)”.

Consultation with district councils

34. In section 40(3)(i) of the principal Act (appointment of the Staff Commission after consultation with councils) after “such” in the first place where it occurs there shall be inserted “councils and”.

Appointment and management of officers

35.—(1) In section 40 of the principal Act (the Staff Commission)—

- (a) in subsection (3)(b) for “twelve” there shall be substituted “fourteen”;
- (b) after subsection (4)(b) there shall be inserted—
 - “(bb) monitoring the fair employment practices of councils and their compliance with statutory requirements in relation to fair employment;” ;
- (c) after subsection (4)(c) there shall be inserted—
 - “(cc) establishing and issuing a code of recommended practice as regards the conduct of officers of councils;” .

(2) In section 41 of the principal Act (appointment and qualification of officers)—

- (a) after subsection (3) there shall be inserted—
 - “(3A) Without prejudice to any code of procedure established by the Staff Commission, a council shall not appoint any officer unless the vacancy in the office is advertised in such manner as may be prescribed.” ;
- (b) in subsection (8)—
 - (i) after paragraph (a) there shall be inserted—

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- “(aa) may make provision with respect to the co-ordination of the provision of the service provided by the officers of that class so employed within the districts of the council by which the officers are employed and the other council or councils” ;
- (ii) at the end of paragraph (b) for “and” there shall be substituted—
 - “(bb) may provide that the other council or councils shall not appoint officers of that class; and” ;
 - (iii) the words from “and where such an order” onwards shall be omitted;
- (c) after subsection (8) there shall be inserted—
 - “(8A) If the Department is satisfied that it is expedient that officers of any class should not be employed by one of the councils on behalf of both or all of them, the Department may make an order—
 - (a) transferring officers of that class from the council by which they are employed to such other council or councils as is specified in or determined under the order;
 - (b) making provision for the protection of the interests of every officer so transferred;
 - (c) providing for the expenses incurred in connection with the transfer of the employment of the officers to be defrayed by the councils in such proportion as they may agree upon or, in case of disagreement, as may be determined by the Department; and
 - (d) making such incidental and supplemental provision as the Department thinks fit.
 - (8B) In subsection (8)(aa) “co-ordination” includes—
 - (a) advising the council by which the officers are employed and the other council or councils on the establishment of the service provided by the officers of that class, including the number of officers to be employed and the qualifications of such officers;
 - (b) making provision for training of such officers;
 - (c) issuing advisory circulars and guidelines with respect to statutory provisions or standards of inspection or advising on such circulars and guidelines issued by the Department or district councils;
 - (d) recording and reporting statistical data and on the enforcement of statutory provisions;
 - (e) reporting annually to the Department and to the council by which the officers are employed and the other council or councils;
 - (f) for the purpose of reaching agreement as mentioned in subsection (8)(b), making recommendations with respect to the apportionment of the expenses of the council by which the officers are employed in connection with the service provided by officers of that class; and
 - (g) such other functions or activities as the Department may provide in the order under subsection (8).” .

Public inspection of accounts and documents and right of challenge

36.—^{F9}(1) After section 77 of the principal Act there shall be inserted—

“Confidentiality of officers' records.

77A.—(1) Nothing in section 77(4)(b) (public inspection of statements, books and documents) shall entitle any person to inspect so much of any statement, book or document as contains personal information about an officer of the council.

(2) Information shall be regarded as personal information about an officer of the council if it relates specifically to a particular individual and is available to that council for reasons connected with the fact—

- (a) that the individual holds or has held any office or employment under that council; or
- (b) that payments or other benefits in respect of any office or employment under any other person are or have been made or provided to that individual by that council.

(3) References in this section to a payment made or benefit provided to an individual in respect of any office or employment include references to a payment made or benefit provided to him in respect of his ceasing to hold office or employment.

(4) This section shall have effect only in relation to the inspection of a statement, book or document relating to periods beginning on or after 1st April 1992.”.

^{F9}(2) In section 79(1) of the principal Act (right of objection) after “relates” there shall be inserted “or a person liable for rates, payable in respect of any hereditament situated in that district which is used wholly or mainly for the purposes of a business whether or not carried on for profit.”.

(3) In section 121 of the principal Act (inspection of documents)—

- (a) in subsection (3) for “and any such elector” there shall be substituted “or by any person liable for rates payable in respect of any hereditament situated in the district which is used wholly or mainly for the purposes of a business whether or not carried on for profit, and any such elector or person.”;
- (b) in subsection (4) the words “except where otherwise expressly provided” shall be omitted.

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

Auditor's report

^{F10}37. In section 80(2) of the principal Act (auditor's report) after “he shall” there shall be inserted—

- “(a) forthwith send copies of the report to all of the members of the council;
- (b) forthwith make copies of the report available for inspection by members of the public at such time and such place as may be specified in a notice to be published in at least one newspaper circulating in the district of the council; and
- (c)” .

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

Power of auditor to issue prohibition order

^{F11}38.—(1) After section 82 of the principal Act there shall be inserted—

“Power of auditor to issue prohibition order.

82A.—(1) The local government auditor may issue an order under this section (a “prohibition order”) if he has reason to believe that the council or any officer of the council—

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 1992. (See end of Document for details)

- (a) is about to make or has made a decision which involves or would involve the council incurring expenditure which is unlawful; or
- (b) is about to take or has taken a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency; or
- (c) is about to enter an item of account, the entry of which is unlawful;

and for the purposes of this section and section 82B, the actions of a committee or sub-committee of the council or of any other person (not being an officer) authorised to act on behalf of the council shall be treated as the actions of the council itself.

(2) A prohibition order is one—

- (a) which is addressed to the council or officer concerned;
- (b) which specifies the paragraph of subsection (1) which is relevant and the decision, course of action or item of account to which the order relates;
- (c) which specifies the date on which (subject to subsection (5)) the order is to take effect, being a date not earlier than the date of service of a copy of the order in accordance with paragraph (a) or, as the case may be, paragraphs (a) and (b) of subsection (4); and
- (d) which requires the council or officer concerned to desist from making or implementing the decision, taking or continuing to take the course of action or, as the case may be, entering the item of account in question.

(3) Where 2 or more local government auditors are appointed in relation to the accounts of any council, a prohibition order may be issued by the auditors acting jointly or by such one of them as they may determine; and, in relation to such an order, any reference in subsections (4) and (5) to the auditor is a reference to the auditor or auditors by whom the order is issued.

(4) A copy of a prohibition order—

- (a) shall be served on the council to which, or to an officer of which, it is addressed; and
- (b) in the case of an order addressed to an officer, shall also be served on him; and
- (c) may be served on such other person or persons as appears to the local government auditor to be appropriate.

(5) A prohibition order shall not have effect unless, not later than the expiration of 7 days from the date of service referred to in subsection (2)(c), the local government auditor serves on the council concerned and on any officer on whom a copy of the order was served under subsection (4)(b), a statement of the auditor's reasons for the belief referred to in subsection (1).

(6) A prohibition order may at any time be revoked (but not varied) by the local government auditor.

Effect of and appeals against prohibition orders.

82B.—(1) So long as a prohibition order has effect, the council concerned or any officer of that council shall not make or implement the decision, take or continue to take the course of action or, as the case may be, enter the item of account to which the order relates.

(2) A prohibition order—

- (a) takes effect, subject to section 82A(5), on the date specified in the order in accordance with subsection (2)(c) of that section; and
- (b) continues to have effect, subject to any order or decision of the High Court on an appeal under subsection (3), until revoked under section 82A(6).

(3) Not later than 28 days from the service under section 82A(5) of a statement of reasons relating to a prohibition order, the council concerned (but not any officer of that council) may appeal against the order to the High Court in accordance with rules of court.

(4) On an appeal against a prohibition order under subsection (3), the High Court may make such order as it thinks fit for the payment by the council concerned of expenses incurred by a local government auditor in connection with the appeal.

(5) Any expenses reasonably incurred by a local government auditor in or in connection with the issue of a prohibition order shall be recoverable by him from the council concerned.

(6) In this section “the council concerned”, in relation to a prohibition order, means the council to which, or to an officer of which, the order is addressed.

Supplementary provisions as to prohibition orders.

82C.—(1) In any case where—

- (a) before a prohibition order is issued, a council enters into a contract to dispose of or acquire an estate in land, and
- (b) before the disposal or acquisition is completed, a prohibition order takes effect as a result of which it is unlawful for the council to complete the disposal or acquisition,

the existence of the prohibition order shall not prejudice any remedy in damages which may be available to any person by reason of the council's failure to complete the contract.

(2) No action shall lie against a local government auditor in respect of any loss or damage alleged to have been caused by reason of the issue of a prohibition order which was issued in good faith; but nothing in this subsection affects the right of a court to award costs against a local government auditor on an appeal under section 82B(3).

Power of auditor to apply for judicial review.

82D.—(1) Subject to section 18(2)(a) of the Judicature (Northern Ireland) Act 1978^{F12} (no application for judicial review without leave) the local government auditor may make an application for judicial review with respect to—

- (a) any decision of a council, or
- (b) any failure by a council to act,

which (in either case) it is reasonable to believe would have an effect on the accounts of that council.

(2) The existence of the powers conferred on a local government auditor under sections 82A to 82C and this section shall not be regarded as a ground for refusing an application falling within subsection (1) (or an application for leave to make such an application).

(3) On an application for judicial review made as mentioned in subsection (1), the High Court may make such order as it thinks fit for the payment by the council to whose decision the application relates of expenses incurred by the local government auditor in connection with the application.”.

(2) In section 148(1) of the principal Act (general interpretation) after the definition of “prescribed” there shall be inserted—

““prohibition order” means an order issued under section 82A;”.

F11 prosp. rep. by [2005 NI 18](#)

F12 [1978 c. 23](#)

Enforcement of bye-laws by constables

39. In section 93(1) of the principal Act (enforcement of bye-laws) after “behalf” there shall be inserted “or a constable”.

Expenditure for special purposes

40. In section 115 of the principal Act (expenditure for special purposes)—

(a) in subsection (1)—

- (i) after “interests” there shall be inserted “of, and will bring direct benefit to”;
- (ii) in paragraph (a) “of” shall be omitted;
- (iii) in paragraph (b) “of” shall be omitted in the first and second place where it occurs;
- (iv) in paragraph (c) “of” shall be omitted in the first and third place where it occurs;

(b) in subsection (3)—

- (i) after “section” there shall be inserted “(a)”;
- (ii) at the end there shall be inserted

“or

- (b) unless the direct benefit accruing to its district or any part of its district or to the inhabitants of its district or any part of its district will be commensurate with the payments to be made.” ;

(c) after subsection (3) there shall be added—

“(4) In any case where—

- (a) by virtue of paragraph (a) of subsection (3) a council is prohibited from making any payment for a particular purpose; and
- (b) the power or duty of the council to make any payment for that purpose is in any respect limited or conditional (whether by being restricted to a particular group of persons or in any other way),

the prohibition in that paragraph shall extend to all payments to which that power or duty would apply if it were not subject to any limitation or condition.

(5) A council may make a payment under subsection (1) on publicity only by way of assistance to a public body or a voluntary body where the publicity is incidental to the main purpose for which the assistance is given.” .

Prohibition of political publicity

41.—(1) After section 115 of the principal Act there shall be inserted—

“Publicity

Prohibition of political publicity.

115A.—(1) A council shall not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.

(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters—

- (a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;
 - (b) where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.
- (3) A council shall not give financial or other assistance to a person for the publication of material which the council is prohibited by this section from publishing itself.

Codes of recommended practice as regards publicity.

115B.—(1) The Department may issue one or more codes of recommended practice as regards the content, style, distribution and cost of council publicity, and such other related matters as it thinks appropriate, and councils shall have regard to the provisions of any such code in coming to any decision on publicity.

(2) The Department may revise or withdraw a code issued under this section.

(3) The Department shall before issuing, revising or withdrawing a code consult such councils, such associations or bodies representative of councils and such other associations or public bodies, as appear to the Department to be desirable.

(4) A code shall not be issued or revised unless a draft of it has been laid before and approved by a resolution of the Assembly.

Separate account of expenditure on publicity.

115C.—(1) A council shall keep a separate account of its expenditure on publicity.

(2) Any person interested may at any reasonable time and without payment inspect the account and make copies of it or any part of it.

(3) A person having custody of the account who intentionally obstructs a person in the exercise of the rights conferred by subsection (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) The Department may by order provide that subsection (1) does not apply to publicity or expenditure of a prescribed description.

(5) Before making an order under subsection (4) the Department shall consult such councils, such associations or bodies representative of councils and such other associations or public bodies as appear to the Department to be desirable.

Sections 115A to 115C: supplementary provisions.

115D.—(1) Sections 115A to 115C apply to any publicity expressly or impliedly authorised by any statutory provision, including sections 107 to 110 and 115.

(2) Nothing in sections 115A to 115C shall be construed as applying to anything done by a council in the discharge of its duties under sections 23 to 27.”.

(2) In section 107 of the principal Act (contributions for development of trade, tourism and cultural activities)—

(a) at the beginning there shall be inserted “(1)”;

(b) at the end there shall be added—

“(2) A council may contribute under subsection (1)(a) towards the expenses of a voluntary body incurred on publicity only where the publicity is incidental to the main purpose for which the contribution is given.” .

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 1992. (See end of Document for details)

- (3) In section 108 of the principal Act (contributions to other voluntary bodies)—
 - (a) at the beginning there shall be inserted “(1)”;
 - (b) at the end there shall be added—
 - “(2) A council may contribute under subsection (1) towards the funds of a voluntary body in respect of publicity only where the publicity is incidental to the main purpose for which the contribution is given.” .
- (4) In section 110 of the principal Act (information centres) for “local government matters affecting the district” there shall be substituted “matters relating to the functions of the council”.
- (5) After section 148(3) of the principal Act (general interpretation) there shall be inserted—
 - “(4) For the purposes of this Act references to “publicity”, “publish” and “publication” are references to any communication, in whatever form, addressed to the public at large or to a section of the public.” .

The Staff Commission

42. In Schedule 3 to the principal Act (the Staff Commission) after paragraph 2 there shall be inserted—

“**2A.** The Staff Commission may make payments to its members for, or in relation to anything done in connection with, service as members of the Staff Commission and such payments shall be of an amount or rate to be determined by the Department with the approval of the Department of Finance and Personnel but not exceeding the amount or rate specified in or determined under the regulations under section 36(1).”.

Local Government Boundaries Commissioner

- 43.** In Schedule 4 to the principal Act (Local Government Boundaries Commissioner)—
 - (a) in paragraph 5(2) of Part I (appointment of assessors) for “and the Chief Survey Officer of Ordnance Survey for Northern Ireland” there shall be substituted “, the Chief Survey Officer of Ordnance Survey for Northern Ireland and the Chief Electoral Officer for Northern Ireland”;
 - (b) in paragraph 2(b) of Part II (period for receipt of representations) after “one month” there shall be inserted “, or such longer period as the Commissioner may determine, being a period not exceeding 2 months.”.

Joint Committees

44. In Schedule 7 to the principal Act (provisions applied to Joint Committees) the following entries shall be inserted at the appropriate place in numerical order—

22(2)#(4)	Duty to adopt certain procedural standing orders.
77A	Confidentiality of officers' records.
107	Contributions for development of trade, tourism, and cultural activities.
108	Contributions to other voluntary bodies.
110	Information centres.

115	Expenditure for special purposes.
115A	Prohibition of political publicity.
115B	Codes of recommended practice as regards publicity.
115C	Separate account of expenditure on publicity.
115D	Sections 115A to 115C: supplementary provisions.

Repeal of certain provisions

45. The following provisions of the principal Act shall cease to have effect—
- section 89 (laying of summary accounts before the Assembly);
 - in section 129(1) (default of council) the words “after causing a local or other inquiry to be held or an investigation to be made”.

Miscellaneous amendments of other statutory provisions

Burial grounds

46. In section 172 of the Public Health (Ireland) Act 1878^{F13} (meeting to determine whether burial ground shall be provided) the word “special” shall cease to have effect.

F13 [1978 c. 52](#)

Term of office of members of district councils and casual vacancies

47.—(1) Section 11 of the Electoral Law Act (Northern Ireland) 1962^{F14} (election and term of office of members of district councils) shall have effect subject to the following provisions of this Article.

(2) In subsection (2)(b) and (c) for “day next after” there shall be substituted “fourth day after”.

(3) For subsection (5) there shall be substituted—

“(5) A casual vacancy shall be deemed to have occurred—

- (a) if it is a vacancy to which subsection (4)(a) or (b) applies, when and so soon as the Chief Electoral Officer is satisfied that the vacancy exists; or
- (b) if it is a vacancy to which subsection (4)(c) applies, on the date of the determination;

and it shall be the duty of the clerk of a district council within 7 days of any matter concerning a casual vacancy coming to his knowledge to report it to the Chief Electoral Officer.”

F14 [1962 c. 14 \(NI\)](#)

Art. 48 rep. by 2002 NI 3

Art. 49 rep. by 2002 NI 3

Physiotherapists and chiropodists practising acupuncture

50.—(1) Article 13 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985^{F15} (acupuncture) shall have effect subject to the provisions of this Article.

(2) In paragraph (8) after “dentist” there shall be inserted “or a chartered physiotherapist or a state registered physiotherapist or a state registered chiropodist”.

(3) At the end of paragraph (8) there shall be added—

“(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.”.

F15 1985 NI 15

Supply of computer software

51.—(1) Article 20 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (use of spare capacity of computers of council) shall have effect subject to the following provisions of this Article.

(2) After paragraph (1) there shall be inserted—

“(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.” .

(3) In paragraph (2) after “services” shall be inserted “or supply the software”.

(4) In paragraph (3) at the end there shall be added “ and

“software” means instructions required by a computer to perform intended tasks.”.

Entertainments licence

52.—(1) Schedule 1 to the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (licensing of places of entertainment) shall have effect subject to the provisions of this Article.

(2) After paragraph 7 there shall be inserted—

“**7A.** An applicant for the variation of the terms, conditions or restrictions on or subject to which an entertainments licence is held shall pay such fee as the Department may determine.”.

(3) In paragraph 10(4)(a) for “Registration of Clubs Act (Northern Ireland) 1967” there shall be substituted “Registration of Clubs (Northern Ireland) Order 1987”.

Article 53—Repeals

SCHEDULES

Schedule 1 rep. by 2002 c. 4 (NI)

Schedule 2—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 1992.