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STATUTORY INSTRUMENTS

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**1992 No. 810**

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

**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(1).”.

*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

“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—
      - “(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.**—(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.”.

(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.

*Auditor's report*

**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)”.

*Power of auditor to issue prohibition order*

**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—

- (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(2) (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;”.

*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.”.

(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.”.

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*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”.