
STATUTORY INSTRUMENTS

1985 No. 1208

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

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.

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(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.”.

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.

^{F1}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

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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 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.

F1 prosp. rep. by [2005 NI 18](#)

Regulations as to accounts and audit

^{F2}**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,” .

F2 prosp. rep. by [2005 NI 18](#)

Studies for improving economy, etc. of services of councils

F3**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.”.

F3 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—

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“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.”.

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—

“(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

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