

# **LOCAL GOVERNMENT (NORTHERN IRELAND) ORDER 2005**

**S.I. 2005 1968**

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## **EXPLANATORY MEMORANDUM**

### **INTRODUCTION**

1. The Local Government (Northern Ireland) Order 2005 (“the Order”) was made on 19 July 2005.
2. This Explanatory Memorandum has been prepared by the Department of the Environment (“the Department”) to assist the reader in understanding the Order. It does not form part of the Order.
3. The Order re-enacts sections 74-76, 81-82, 87-88 and 89A of the Local Government Act (NI) 1972 and makes provisions which correspond to sections 4-6, 8-13, 16, 26, 28, 49 and 49A of the Audit Commission Act 1998 (c.18), section 101 of the Local Government Act 2000 (c.22) and section 120 of the Local Government Act 2003 (c.26).

### **BACKGROUND AND POLICY OBJECTIVES**

4. The Order will make the following changes to the legal and regulatory framework pertaining to district councils in Northern Ireland:
  - extending the powers of local government auditors;
  - providing a statutory basis for councils to carry out emergency planning;
  - amending the Litter (NI) Order 1994 to allow councils to retain receipts from fixed penalties that are levied for littering and dog-fouling;
  - giving councils powers to regulate businesses carrying on cosmetic piercing and semi-permanent skin-colouring;
  - amending section 115(2) of the Local Government Act (Northern Ireland) 1972 (c.9) to allow the amounts councils can spend on special purposes to be varied, by means of subordinate legislation;
  - enabling the Department to make provision, by order, conferring on councils the power to provide indemnities to their members and officers; and
  - amending the Superannuation (Northern Ireland) Order 1972 (NI 10) to provide that regulations made under Article 9 of that Order may require the Northern Ireland Local Government Officers’ Superannuation Committee to prepare its financial statements in accordance with guidance issued by the Department of Finance and Personnel.

### **CONSULTATION**

5. Consultation on the various proposed changes was conducted as follows.

#### ***Emergency planning***

6. In June 2003, the Cabinet Office published a consultation document on a draft Civil Contingencies Bill (CCB). At the same time in NI, the Office of the First Minister and

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Deputy First Minister (OFMDFM) published a consultation document on local issues arising from the CCB proposals. In response, local government bodies highlighted that, unlike the situation in GB, NI district councils had no statutory power to prepare for, or to respond to, local emergencies.

7. Following the consultation, the Northern Ireland Office and OFMDFM issued a joint report indicating that an early opportunity would be taken by the Department of the Environment to bring forward legislation on the role of district councils in civil protection.

***Cosmetic piercing and semi-permanent skin-colouring***

8. The Local Government Act 2003 included provisions extending the powers of local authorities in England and Wales to control the practices of cosmetic piercing and semi-permanent skin-colouring. The Department proposes to give similar powers to NI councils and consulted key stakeholders between 7 April 2004 and 30 June 2004. The Department received 30 responses, mainly from health bodies (20) and district councils (8), all of which were in support of the proposal.

***Consultation Paper***

9. On 19 October 2004, a Consultation Paper, which included a copy of the draft Order, was circulated to NI district councils, NI departments and other interested parties. The Consultation Paper outlined the proposals for amending local government legislation (see paragraph 4) and requested that comments should be submitted by 10 January 2005. The Department received comments from 33 respondents who generally welcomed the proposals.
10. Subsequently, Articles 8 and 25 of the Order have been amended to provide that, instead of local government bodies paying audit fees to the Department which, in turn, would pay the fees to the Comptroller and Auditor General, they will pay the fees directly to the Comptroller and Auditor General. The Department will still be responsible for determining the fees. Also, Article 27 has been amended to take account of Freedom of Information legislation.

**MAIN ELEMENTS OF THE ORDER**

11. The Order has 34 Articles and 2 Schedules.

**COMMENTARY ON ARTICLES**

12. A commentary on the provisions follows below (comments are not given where the wording is self-explanatory):  
[Articles 1-2](#) are concerned with introductory provisions;  
[Articles 3-28](#) are concerned with audit provisions;  
[Article 29](#) is concerned with emergency planning provisions;  
[Article 30](#) is concerned with the use of fixed penalty receipts;  
[Article 31](#) is concerned with cosmetic piercing and skin-colouring businesses;  
[Article 32](#) is concerned with the alteration of the limit on expenditure by councils on special purposes;  
[Article 33](#) is concerned with the provision of indemnities; and  
[Article 34](#) is concerned with the preparation of annual statements relating to any funds maintained under the local government superannuation regulations.

***Article 7 - Auditors' right to documents and information***

13. This Article gives a local government auditor the right of access to every document relating to a local government body under audit, thereby enabling the auditor to obtain documents that are in the possession of a third party. The Article also provides that an auditor may require persons to provide an explanation or, if necessary, to appear before

him to explain or provide documents which the auditor considers necessary for audit purposes.

***Article 9 - Immediate and other reports in the public interest***

14. This Article permits an auditor to make a report, on grounds that it would be in the public interest, about any matter that comes to his notice during an audit so that the matter can be considered by the local government body concerned or brought to the attention of the public.

***Article 12 - Consideration of reports or recommendations***

15. This Article requires a local government body to consider a report made to it under Article 9 (and any recommendation which the auditor might make) at a meeting to be held within one month of the report or recommendation having been sent. At that meeting, the body must decide what, if any, action to take in response to the report or recommendation. The Article also enables the auditor to extend the time for a body to comply with these duties.

***Article 13 - Publicity for meeting under Article 12***

16. This Article requires that, before holding a meeting as required by Article 12, a local government body must publish details of the meeting, at least 7 days prior to the meeting, in at least 2 newspapers. The Article also requires that, following the meeting, the body must publish a notice containing a summary of its decisions, which has been approved by the auditor, in at least 2 newspapers.

***Article 23 - Provision for the audit of accounts of officers***

17. This Article enables an auditor to audit the accounts of any officer of a local government body who has received money or other property on behalf of, or for which he ought to account to, that body.

***Article 26 - Studies for improving economy, efficiency and effectiveness***

18. This Article enables the Department or the chief local government auditor to initiate studies, carried out by auditors, with a view to making recommendations for improving economy, efficiency and effectiveness in the provision of services by local government bodies.

***Article 29 - Powers of district councils in relation to emergencies***

19. This Article gives district councils powers to make emergency planning arrangements with other bodies or persons to prevent or to mitigate the effects of any emergencies that might occur in their areas and to implement those arrangements should any emergencies occur.

***Article 30 - Use of fixed penalty receipts***

20. This Article amends Article 6 of the Litter (NI) Order 1994 enabling councils to retain receipts from fixed penalty notices issued for littering and dog-fouling. Currently these receipts are paid to the Department. The Article enables councils to use the receipts to carry out their enforcement functions under the 1994 Order and any other functions that the Department might specify in regulations.

***Article 31 and Schedule 2 - Regulation of cosmetic piercing and skin-colouring businesses***

21. This Article extends the provisions in the Local Government (Miscellaneous Provisions) Order 1985 relating to ear-piercing and tattooing to cosmetic piercing (i.e. body-piercing, including ear-piercing) and semi-permanent skin-colouring (i.e. semi-

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permanent make-up and temporary tattooing). This will allow councils to regulate these practices by way of registration and the making and enforcing of bye-laws relating to the cleanliness and hygiene of the premises and employees.

22. [Schedule 2](#) provides transitional provisions which will exempt businesses, already registered with councils for ear-piercing, from re-applying until such time as they wish to provide another form of body piercing.

***Article 32 - Alteration of limit on expenditure under [section 115](#) of the principal Act***

23. This Article amends section 115 of the Local Government (Northern Ireland) Act 1972 (c.9) to permit the Department to make regulations varying the specified limit which councils can spend on special purposes for the general benefit of their areas and inhabitants. Currently any variation of such amounts can only be done by means of primary legislation.

***Article 33 - Indemnification of members and officers of councils***

24. This Article enables the Department to make orders for, or in connection with, conferring power on councils to provide indemnities to some or all of their members and officers.

***Article 34 - Annual statements under local government superannuation regulations***

25. This Article amends Article 9 of the Superannuation (Northern Ireland) Order 1972 (NI 10) to provide that regulations made under Article 9 may require any financial statement relating to any fund maintained under the regulations to be prepared in accordance with guidance issued by the Department of Finance and Personnel.

**COMMENCEMENT**

26. The substantive provisions of the Order will be brought into operation on a day or days to be appointed by commencement order.