

*These notes refer to the Local Government Finance Act (Northern Ireland) 2011 (c.10) which received Royal Assent on 16 March 2011*

# Local Government Finance Act (Northern Ireland) 2011

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Local Government Finance Act (Northern Ireland) 2011 which received Royal Assent on 16 March 2011. They have been prepared by the Department of the Environment in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Act modernises the legislative framework relating to local government finance and councillors' remuneration in Northern Ireland, which had been set out mostly in Part V of the Local Government Act (Northern Ireland) 1972 ("the 1972 Act"). Although Part V of the 1972 Act had been updated by subsequent legislation, provisions in relation to borrowing and council funds remained mostly unchanged. Through engagement with key stakeholders, it was identified that the legislation for local government finance needed to be updated to reflect modern accounting practices. This was confirmed by the Local Government Taskforce Finance Sub-group, which issued its report in July 2006. Membership of that sub-group included elected members and officers from local government and officials from central government. This Act replaces Part V of the 1972 Act.
4. The Act introduces a new capital finance system and sets out the legislative framework within which a district council may manage its finances and central government may regulate that activity.
5. The Act allows district councils greater freedom to manage their own financial affairs without having to obtain consent from the Department. Control by central government will be exercised, where necessary, through subordinate legislation and guidance.

6. Articles 3 to 6 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002 (“the 2002 Order”) make provision for the payment to district councils of a general grant, consisting of a resources element and a derating element. The separation of the general grant into two elements has caused some confusion in the past. The Department aims to remove this confusion by replacing the general grant with two new grants – the de-rating and rates support grants – that will be calculated using the same statutory formulae used to calculate the separate elements of the general grant.
7. The Act extends the general power to pay grants to district councils, which previously applied only to the Department of the Environment, to all departments to enable them to pay grants in relation to their areas of responsibility.
8. The Act updates and consolidates the provisions of the 1972 Act which deal with payments to councillors, taking account of the recommendations of the Councillors’ Remuneration Working Group (“the CRWG”), following its review of councillors’ remuneration in Northern Ireland. Membership of the CRWG included representatives from the National Association of Councillors, the Northern Ireland Local Government Association, trade unions, the business and voluntary sectors, together with an independent member. After considering views received from a number of district councils and local government representatives, the CRWG made recommendations, in June 2006, for the system of councillors’ remuneration both under the current 26 district councils and also for the new councils following the re-organisation of local government.
9. The CRWG’s recommendations included the introduction of a requirement for councils to make and publish schemes of the allowances they intend to pay to their councillors, and provision for the establishment of an independent remuneration panel to advise the Department on payments by councils to councillors. The Act makes provision for schemes of allowances and the establishment of the panel.
10. In order to ensure that all provisions relating to local government finance arrangements and payments by councils are consolidated into one piece of legislation, the Act repeals and re-enacts the provisions of the 1972 Act relating to expenditure for special purposes.

## **CONSULTATION**

11. The Department carried out a formal consultation exercise with interested parties on its proposals to modernise the current legislative framework relating to local government finance and councillors’ remuneration in Northern Ireland over a 4 month period from July 2009 to October 2009.
12. Overall, the majority of the 28 respondents were supportive of the Department’s proposals.

## **OVERVIEW**

13. The Act has 48 sections and comprises 5 Parts together with 2 Schedules. Part 1 contains 25 sections concerning financial administration; Part 2 contains 5 sections concerning grants to councils; Part 3 contains 6 sections on payments to councillors; Part 4 contains 5 sections on the miscellaneous powers for councils to make payments; and Part 5 contains 7 sections covering supplementary matters.

## **COMMENTARY ON SECTIONS**

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

### ***Sections 3 to 5 – Annual budget***

These sections place requirements on district councils regarding the annual budget.

Section 3 re-enacts section 53 of the 1972 Act, requiring a council to approve estimates, authorise expenditure and fix the amount to be raised by rates for the following year.

Section 4 requires the chief financial officer to submit a report on the robustness of the estimates to the council and requires a council to have regard to the chief financial officer's report when considering the estimates for the next financial year.

### ***Sections 6 and 7 – Reserves***

These sections make provision about a district council's financial reserves. The Department has the power to make regulations concerning reserves, and a council's chief financial officer will be required to report to the council on the adequacy of its financial reserves when the council is considering the estimates for the next financial year.

Where a minimum level of reserves is specified in regulations, each council will have to ensure that its budget makes allowance for reserves at least equal to the minimum. This would not prevent a council from using its reserves during the year, even if as a result they fell below the minimum. However, if it appeared that this was likely to happen, the chief financial officer would be required to report to the council, at the time the following year's budget and rates were being considered, to explain the reasons and any action considered necessary to prevent a recurrence of the shortfall.

### ***Sections 8 to 10 – Funds***

Before this Act, district councils were required to establish a district fund, and could also establish a capital fund and a renewal and repairs fund. Subject to the Department's approval, a council could also establish a consolidated loans fund for the repayment of its borrowings.

The Act renames the district fund as the general fund, and repeals the specific provisions for establishing a capital fund, a renewal and repairs fund and a consolidated loans fund. The Act provides district councils with the power to establish such funds as they consider appropriate, without the need for approval from the Department. As was previously the case, where income arises from the investment of money held in a fund, it must be returned to that fund.

### ***Sections 11 to 16 – Borrowing***

Under Part V of the 1972 Act, district councils were allowed to borrow for purposes relevant to their functions, subject to the Department's approval.

The Act retains the power for a council to borrow for purposes relevant to its functions, but removes the requirement for approval by the Department.

The Act introduces a new power for a council to borrow for the purposes of the prudent management of its financial affairs. This means that, for the first time, councils will be able to decide to take a loan to refinance existing debt, for example.

Section 13 imposes a broad duty on councils to determine and keep under review the amount they can afford to borrow. Councils will have to comply with regulations made by the Department, and have regard to codes of practice specified in regulations, when determining an affordable borrowing limit.

Under section 14, in the event of a national economic crisis, the Department (with the consent of the Department of Finance and Personnel) may make regulations that will impose a blanket limit on borrowing by all councils. The Department may also, by direction, impose a limit on an individual council. Limits of this nature will override the prudential limits determined by the councils themselves. These powers will only be used as a last resort.

### ***Sections 17 and 18 – Credit arrangements***

These sections require a council to treat credit arrangements in the same way as borrowing and to take them into account when determining its affordable borrowing limit, or complying with limits imposed by the Department for national economic reasons.

### ***Section 19 – “Capital expenditure”***

Wherever possible, the new system of financial administration takes standard accounting practices and concepts as its starting point, which reduces the need for special definitions in the legislation.

Section 19 gives the Department power to include, or exclude, types of expenditure to be treated as capital expenditure by individual councils (by direction) or more generally (by regulations).

### ***Sections 20 to 22 – Capital receipts***

The Act removes the general requirement for councils to use any capital money derived from the sale of an asset to repay any borrowing for the acquisition of that asset, or to obtain approval from the Department for other uses of capital receipts.

The treatment and use of capital receipts will now be specified in regulations.

### ***Section 23 – Investment***

This section introduces a broad power of investment, permitting a council to invest for any purpose relevant to its statutory functions, or for the prudent management of its finances.

### ***Sections 24 and 25 – Miscellaneous***

Section 24 makes provision for security for money borrowed by a council, and for the appointment of a receiver in the event of default.

Section 25 requires councils to have regard to any guidance either issued specifically by the Department or specified in regulations.

### ***Sections 26 to 28 – de-rating grant and rates support grant***

Section 26 sets out the statutory formula for determining the amount of de-rating grant payable to councils.

Section 27 provides for the amount of rates support grant to be calculated in accordance with a formula prescribed in regulations subject to approval by a resolution of the Assembly. Provision has been made to ensure that once the amount of the rates support grant payable to a council for any financial year has been determined, it shall not be reduced during that financial year.

Under section 28, the Department retains its powers to reduce the amount payable to a council by way of the de-rating or rates support grants for a financial year in certain circumstances. This arises only in cases where a local government auditor's report identifies that a council has failed to achieve or maintain a reasonable standard of economy, efficiency or effectiveness, or has spent excessively in relation to its financial resources or other relevant factors. The requirement for approval from the Assembly before any reduction proposed by the Department can take effect has been retained.

### ***Section 29 – Other grants to councils***

Article 7 of the 2002 Order provides the Department with a general power to pay other grants to district councils. This applies to any grant associated with a function of a council other than the general grant.

This section replaces Article 7 and extends the general power to pay other grants to councils to all departments.

### ***Sections 31 to 36 - Payments to councillors***

To consolidate all of the provisions dealing with payments to councillors into one Act, the Act re-enacts, with amendments, the relevant provisions of the 1972 Act.

Section 31 re-enacts section 36 of the 1972 Act, enabling the Department to make regulations about the allowances that may be paid to councillors and to determine the maximum amount that may be paid for each allowance. The Department may also make regulations requiring a council to make and publish a scheme of the allowances it intends to pay to its councillors and to make this available to members of the public.

Section 34 replaces section 38 of the 1972 Act by making provision in respect of the payment of expenses incurred by councillors and officers in attending conferences and meetings. Under the 1972 Act, payment of expenses for conferences was restricted to conferences for the purpose of discussing matters connected with the discharge of the functions of the council or the development of trade, industry or commerce in the district or otherwise affecting the district or its inhabitants. This restriction gave rise to disagreements in the past about the payment of expenses of councillors attending certain meetings or conferences in Great Britain.

Section 34 removes this restriction, so that it will now be a matter for a council to determine whether a particular conference deals with matters that relate to the interests of the district or the inhabitants of that district.

Section 35 confers a power on the Department to make regulations to establish an independent remuneration panel to advise the Department on the framework of allowances which should be payable to councillors and to make provision about the membership and functions of the panel. It is intended that the chairperson and members of the Northern Ireland remuneration panel will be appointed by the Department and that the public appointments process will be used for the competition.

### ***Sections 37 to 41 – Miscellaneous powers to make payments***

These sections re-enact sections 111 and 115 of the 1972 Act.

Section 41 contains a new provision to clarify that a council may pay an officer's membership fees of one professional body if it is considered necessary for, or beneficial to, carrying out the duties of the officer's job.

## **HANSARD REPORTS**

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

<i>STAGE</i>	<i>DATE</i>
Introduction of the Act to the Committee for the Environment	3 December 2009

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<b>STAGE</b>	<b>DATE</b>
Introduction to the Assembly	19 April 2010
Second Stage debate	27 April 2010
Committee Stage – Departmental briefing	10 June 2010
Committee Stage – evidence from the Northern Ireland Local Government Association (NILGA) and the Association of Local Government Finance Officers (ALGFO)	16 September 2010
Committee Stage- evidence from Derry City Council and the Transition Committee for the Derry and Strabane District Councils	23 September 2010
Committee Stage- evidence from the Chartered Institute of Public Finance and Accountancy (CIPFA)	23 September 2010
Committee Stage – informal consideration of sections 1 to 10	14 October 2010
Committee Stage – informal consideration of sections 11 to 48 and Schedules 1 and 2	21 October 2010
<b>STAGE</b>	<b>DATE</b>
Committee Stage – formal consideration of sections 1 to 48 and Schedules 1 and 2	25 November 2010
Committee Stage – finalisation of the Committee’s report	2 December 2010
Committee’s report on the Act – Report number NIA 03/10/11R – ordered to be published	2 December 2010
Consideration Stage	25 January 2011
Further Consideration Stage	7 February 2011
Final Stage	15 February 2011
Royal Assent	16 March 2011