



## 2011 CHAPTER 10

### PART 1

#### FINANCIAL ADMINISTRATION

##### *General*

##### **Duty to make arrangements**

1.—(1) A council shall make arrangements for the proper administration of its financial affairs.

(2) A council shall designate an officer of the council as its chief financial officer.

(3) Arrangements made by a council under subsection (1) shall be carried out under the supervision of its chief financial officer.

##### **Accounting practices**

2.—(1) Regulations may make provision about the accounting practices to be followed by a council, in particular with respect to the charging of expenditure to the general fund.

(2) The Department may issue guidance about the accounting practices to be followed by a council, in particular with respect to the charging of expenditure to the general fund.

(3) In any statutory provision, any reference to proper practices, in relation to accounts of a council, is to those accounting practices—

- (a) which the council is required to follow by virtue of any statutory provision,
- or

(b) which, whether by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts of councils, either generally or of the description concerned.

(4) In the event of conflict between practices falling within paragraph (a) of subsection (3) and practices falling within paragraph (b) of that subsection, only those falling within paragraph (a) are to be regarded as proper practices.

(5) In this section “council” includes any local government body within the meaning of Part 2 of the [Local Government \(Northern Ireland\) Order 2005 \(NI 18\)](#).

### *Annual budget*

#### **Annual budget**

**3.—**(1) In each financial year a council shall cause to be submitted to it estimates of the income and expenditure of the council during the next financial year.

(2) A council, before the prescribed date in each year—

- (a) shall consider the estimates for the next financial year;
- (b) may revise the estimates in such manner as the council thinks fit;
- (c) shall approve the estimates, subject to any revision under paragraph (b);
- (d) shall authorise the expenditure included in the estimates; and
- (e) shall fix for the next financial year the amount estimated to be required to be raised by means of rates made by the council.

(3) No expenditure shall be incurred by or on behalf of a council unless—

- (a) previously authorised in accordance with the estimates approved by the council; or
- (b) otherwise previously authorised by the council; or
- (c) if not so authorised, necessarily incurred in circumstances of emergency;

but any expenditure under paragraph (c) shall, as soon as reasonably practicable, be reported to the council with a view to being approved by the council.

(4) A council may make standing orders for the purpose of giving effect to this section so long as they are not inconsistent with any statutory provision.

#### **Report by chief financial officer on estimates**

**4.—**(1) The chief financial officer of a council shall submit to the council a report on the robustness of the estimates.

(2) A council shall have regard to that report when considering the estimates under section 3(2)(a).

(3) In this section “the estimates” means the estimates submitted to the council under section 3(1).

### **In-year review**

5. During each financial year a council shall keep its financial position under review.

## *Reserves*

### **Reserves - general**

6.—(1) Regulations may make provision requiring a council to maintain financial reserves in accordance with the regulations.

(2) The chief financial officer of a council shall submit to the council a report on the adequacy of any proposed financial reserves for a financial year.

(3) A council shall have regard to that report when considering the estimates for that year under section 3(2)(a).

### **Controlled reserves**

7.—(1) In this section “controlled reserve” means a financial reserve of a description prescribed under section 6(1) for the purposes of this section.

(2) In the case of a controlled reserve, it shall not be regarded as appropriate for the balance of the reserve at the end of any financial year to be less than the minimum amount determined in accordance with regulations under section 6(1).

(3) If in any financial year it appears to the chief financial officer of a council that a controlled reserve is or is likely to be inadequate, the chief financial officer shall report to the council on—

- (a) the reasons for that situation; and
- (b) the action, if any, which the chief financial officer considers it would be appropriate to take to prevent such a situation arising in relation to the corresponding reserve for the next financial year.

(4) For the purposes of subsection (3), a controlled reserve is inadequate if the balance of the reserve at the end of a financial year is less than the minimum amount determined in accordance with regulations under section 6(1).

(5) A council shall have regard to any report under this section when considering the estimates for the next financial year under section 3(2)(a).

## *Funds*

### **The general fund**

8. Subject to section 9, all income of a council shall be carried to a fund to be called “the general fund”, and all expenditure falling to be discharged by the council shall be discharged out of that fund.

### **Power to establish other funds**

9.—(1) A council may, in addition to any other fund established under this Part, establish such funds as it considers appropriate.

(2) Any income arising from the investing of the money in any fund established under this section, or otherwise from the application of the fund, shall be carried to the fund.

### **Limitation on application of funds**

10.—(1) A council shall not directly or indirectly apply any money under its control for any purpose not authorised specifically or generally by a statutory provision.

(2) A council shall not directly or indirectly apply any money derived from trust funds for any purpose not authorised by the specific trusts affecting those funds.

## *Borrowing*

### **Power to borrow**

11. A council may borrow money—

- (a) for any purpose relevant to its functions under any statutory provision; or
- (b) for the purposes of the prudent management of its financial affairs.

### **Control of borrowing**

12.—(1) A council may not borrow money if doing so would result in a breach of—

- (a) the limit determined by it under section 13, or
- (b) any limit applicable to it under section 14.

(2) The Department may, in relation to specific borrowing by a particular council, by direction disapply subsection (1)(b), so far as relating to any limit applicable under section 14(1).

(3) A council may not, without the consent of the Department of Finance and Personnel, borrow otherwise than in sterling.

(4) This section applies to borrowing under any power available to a council under any statutory provision.

#### **Duty to determine affordable borrowing limit**

**13.**—(1) A council shall determine and keep under review how much money it can afford to borrow.

(2) Regulations may make provision about the performance of the duty under subsection (1).

(3) Regulations under subsection (2) may, in particular—

(a) make provision about—

(i) when a determination under subsection (1) is to be made,

(ii) how such a determination is to be made, and

(iii) the period for which such a determination is to be made;

(b) make provision about the monitoring of an amount determined under subsection (1);

(c) make provision about factors to which regard may be had in making a determination under subsection (1) or in monitoring an amount determined under that subsection.

(4) Regulations under subsection (2) may include provision requiring a council making a determination under subsection (1) to have regard to one or more specified codes of practice, whether issued by the Department or otherwise.

(5) A council's function under subsection (1) shall be discharged only by the council.

(6) The power under subsection (4) is not to be read as limited to the specification of an existing document.

#### **Imposition of borrowing limits**

**14.**—(1) Regulations made with the consent of the Department of Finance and Personnel may for national economic reasons set limits in relation to the borrowing of money by councils.

(2) The Department may by direction set limits in relation to the borrowing of money by a particular council for the purpose of ensuring that the council does not borrow more than it can afford.

(3) A council subject to a limit set under subsection (1) may transfer any headroom it has in relation to the limit to another council subject to a corresponding limit.

(4) Regulations made with the consent of the Department of Finance and Personnel may make provision about the exercise of the right under subsection (3) and may, in particular, make provision about—

- (a) the circumstances in which a council is to be regarded as having headroom for the purposes of subsection (3), and
- (b) the amount of headroom which it has for those purposes.

(5) Where an amount is transferred under subsection (3), this Part shall have effect—

- (a) in relation to the transferor, as if the limit in relation to which the headroom exists were reduced by that amount, and
- (b) in relation to the transferee, as if the corresponding limit to which it is subject were increased by that amount.

### **Temporary borrowing**

**15.—**(1) Subject to subsection (2), any limit for the time being determined by a council under section 13, or applicable to it under section 14, shall be treated for the purposes of this Part as increased by the amount of any payment which—

- (a) is due to the council in the period to which the limit relates, but
- (b) has not yet been received by it.

(2) In the case of a limit determined under section 13, or set under section 14(2), subsection (1) shall not apply to any payment whose delayed receipt was taken into account in arriving at the limit.

### **Protection of lenders**

**16.** A person lending money to a council shall not be bound to enquire whether the council has power to borrow the money and shall not be prejudiced by the absence of any such power.

### *Credit arrangements*

#### **“Credit arrangements”**

**17.—**(1) For the purposes of this Part, a council shall be taken to have entered into a credit arrangement where—

- (a) it enters into a transaction which gives rise to a liability on its part, and
- (b) the liability is a qualifying liability.

(2) A transaction entered into by a council is to be taken for the purposes of subsection (1) as giving rise to a liability on the part of the council if—

- (a) it falls in accordance with proper practices to be treated for the purposes of the council's accounts as giving rise to such a liability, or
  - (b) it falls in accordance with regulations to be treated as falling within paragraph (a).
- (3) The reference in subsection (1)(b) to a qualifying liability is to any liability other than—
- (a) a liability to repay money,
  - (b) a liability in respect of which the date for performance is less than 12 months after the date on which the transaction giving rise to the liability is entered into, and
  - (c) a prescribed liability.

### **Control of credit arrangements**

**18.—**(1) A council may not enter into, or vary, a credit arrangement if doing so would result in a breach of—

- (a) the limit determined by it under section 13, or
  - (b) any limit applicable to it under section 14.
- (2) In applying those limits for the purposes of subsection (1)—
- (a) entry into a credit arrangement shall be treated as the borrowing of an amount of money equal to the cost of the arrangement, and
  - (b) variation of a credit arrangement shall be treated as the borrowing of an amount of money equal to the cost of the variation.

(3) Regulations may make provision about the calculation for the purposes of subsection (2) of the cost of a credit arrangement or a variation and, in particular, about the treatment of options.

### *Capital expenditure*

#### **“Capital expenditure”**

**19.—**(1) Subject to subsections (2) and (3), references in this Part to capital expenditure, in relation to a council, are to expenditure of the council which falls to be capitalised in accordance with proper practices.

(2) Regulations may provide that expenditure of councils shall be treated for the purposes of this Part as being, or as not being, capital expenditure.

(3) The Department may by direction provide that expenditure of a particular council shall be treated for the purposes of this Part as being, or as not being, capital expenditure.

### *Capital receipts*

#### **“Capital receipt”**

**20.**—(1) Subject to subsection (3), references in this Part to a capital receipt, in relation to a council, are to a sum received by the council in respect of the disposal by it of an interest in a capital asset.

(2) An asset is a capital asset for the purposes of subsection (1) if, at the time of the disposal, expenditure on the acquisition of the asset would be capital expenditure.

(3) Regulations may—

(a) make provision for the whole of a sum received by a council in respect of the disposal by it of an interest in a capital asset, or such part of such a sum as may be determined under the regulations, to be treated as not being a capital receipt for the purposes of this Part;

(b) make provision for the whole of a sum received by a council otherwise than in respect of the disposal by it of an interest in a capital asset, or such part of such a sum as may be determined under the regulations, to be treated as being a capital receipt for the purposes of this Part.

(4) Where a sum becomes payable to a council before it is actually received by the council, it shall be treated for the purposes of this section as received by the council when it becomes payable to the council.

#### **Non-money receipts**

**21.**—(1) Regulations may apply section 20 to cases where—

(a) a council makes a disposal of the kind mentioned in subsection (1) of that section and the consideration for the disposal does not consist wholly of money payable to the council, or

(b) a council receives otherwise than in the form of money anything which, if received in that form, would be a capital receipt under that section.

(2) Regulations under subsection (1) may, in particular—

(a) make provision for a council to be treated as receiving a sum of such an amount as may be determined under the regulations;

(b) make provision about when the deemed receipt is to be treated as taking place.

#### **Use of capital receipts**

**22.**—(1) Regulations may make provision about the use of capital receipts by a council.



(2) Regulations under subsection (1) may, in particular, make provision requiring an amount equal to the whole or any part of a capital receipt to be used only to meet—

- (a) capital expenditure, or
- (b) debts or other liabilities.

### *Investment*

#### **Power to invest**

**23.** A council may invest—

- (a) for any purpose relevant to its functions under any statutory provision, or
- (b) for the purposes of the prudent management of its financial affairs.

### *Miscellaneous*

#### **Security for money borrowed, etc.**

**24.—**(1) Except as provided by subsection (3), a council may not mortgage or charge any of its property as security for money which it has borrowed or which it otherwise owes.

(2) Security given in breach of subsection (1) shall be unenforceable.

(3) All money borrowed by a council (whether before or after the commencement of this section), together with any interest on the money borrowed, shall be charged indifferently on all the revenues of the council.

(4) All securities created by a council shall rank equally without any priority.

(5) The High Court may appoint a receiver on application by a person entitled to principal or interest due in respect of any borrowing by a council if the amount due remains unpaid for a period of two months after demand in writing.

(6) The High Court may appoint a receiver under subsection (5) on such terms, and confer such powers, as it thinks fit.

(7) The High Court may confer on a receiver appointed under subsection (5) any powers of the council or its officers of collecting, receiving and recovering the revenues of the council and of making rates.

(8) No application under subsection (5) may be made unless the sum due in respect of the borrowing concerned amounts to not less than £10,000.

(9) The Department may by order substitute a different sum for the one for the time being specified in subsection (8).

(10) An order shall not be made under subsection (9) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

**Guidance**

**25.—(1)** In carrying out its functions under this Part, a council shall have regard—

- (a) to such guidance as the Department may issue, and
- (b) to such other guidance as regulations may specify for the purposes of this section.

(2) The power under subsection (1)(b) is not to be read as limited to the specification of existing guidance.