



2014 CHAPTER 8

PART 9

CONDUCT OF COUNCILLORS

Code of conduct

Code of conduct

53.—(1) The Department may issue a code of conduct as regards the conduct which is expected of councillors (to be known as the Northern Ireland Local Government Code of Conduct for Councillors).

(2) The code of conduct must specify principles which are to govern the conduct of councillors.

(3) The principles may be—

- (a) principles which are to apply to a person at all times;
- (b) principles which are to apply to a person otherwise than at all times.

(4) The code of conduct may include—

- (a) provisions which are to apply to a person at all times;
- (b) provisions which are to apply to a person otherwise than at all times.

(5) The Department must not issue a code of conduct under subsection (1) unless a draft of the code of conduct has been laid before, and approved by resolution of, the Assembly.

(6) The Department may revise or withdraw the code of conduct.

(7) The Department must not issue a revised code of conduct under subsection (6) unless a draft of the revised code of conduct has been laid before, and approved by resolution of, the Assembly.

(8) The Department must not exercise its powers under subsection (1) or (6) unless it has consulted the local government auditor, the Commissioner, councils, and—

- (a) such associations or bodies representative of councils;
- (b) such associations or bodies representative of councillors;
- (c) such associations or bodies representative of officers of councils; and
- (d) such other bodies or persons,

as appear to the Department to be appropriate.

(9) If—

- (a) the Assembly by resolution approves a draft code of conduct under subsection (5) or (7); and
- (b) the draft does not state when the code of conduct is to come into force,

the Department must add a statement specifying when the code of conduct comes into force.

Guidance

Guidance

54. The Commissioner may—

- (a) issue guidance on matters relating to the conduct of councillors; and
- (b) arrange for the guidance to be made public.

Investigations

Investigations

55.—(1) The Commissioner may investigate—

- (a) cases in which a written allegation is made to the Commissioner by any person that a councillor (or former councillor) has failed, or may have failed, to comply with the code of conduct; and
- (b) other cases in which the Commissioner considers that a councillor (or former councillor) has failed, or may have failed, to comply with the code of conduct and which have come to the Commissioner's attention as a result of an investigation under paragraph (a).

(2) Instead of, or in addition to, conducting an investigation under this section, the Commissioner may take such action as appears to the Commissioner to be desirable to deal with any particular case falling within subsection (1).

(3) If the Commissioner considers that a written allegation under subsection (1)(a) should not be investigated, the Commissioner must take reasonable steps to give written notification to the person who made the allegation of the decision and the reasons for the decision.

(4) The purpose of an investigation under this section is to determine which of the findings mentioned in subsection (5) is appropriate.

(5) Those findings are—

- (a) that there is no evidence of any failure to comply with the code of conduct;
- (b) that no action needs to be taken in respect of the matters which are the subject of the investigation;
- (c) that the Commissioner should make an adjudication on the matters which are the subject of the investigation.

(6) The Commissioner may cease an investigation under this section at any stage before its completion.

Investigations: further provisions

56.—(1) The procedure for conducting an investigation under section 55 is to be such as the Commissioner considers appropriate in the circumstances of the case.

(2) Without prejudice to subsection (1), the Commissioner must give any person who is the subject of an investigation under section 55 an opportunity to comment on any allegation that the person has failed, or may have failed, to comply with the code of conduct.

(3) The Commissioner may pay to persons who attend or furnish information for the purposes of an investigation under section 55—

- (a) such sums in respect of the expenses properly incurred by them; and
- (b) such allowances by way of compensation for the loss of their time,

as may be determined by the Commissioner.

(4) The carrying out of an investigation under section 55 is not to affect—

- (a) any action taken by the council concerned; or
- (b) any power or duty of the council concerned to take further action with respect to any matters which are the subject of the investigation.

(5) Where a person is no longer a councillor of the council concerned but is a councillor of another council, any reference in subsection (4) to the council concerned is to be treated as including a reference to that other council.

Reports, etc.

Reports, etc.

57.—(1) Where the Commissioner determines in relation to any case that a finding under section 55(5)(a) or (b) is appropriate, the Commissioner—

- (a) may produce a report on the outcome of the investigation;
- (b) may—
 - (i) provide a summary of any such report to any newspapers circulating in the district of the council concerned; and
 - (ii) take other steps to publicise the summary;
- (c) must send a copy of any such report to the clerk of the council concerned and to the councillor; and
- (d) where the Commissioner does not produce any such report, must inform the clerk of the council concerned and the councillor of the outcome of the investigation.

(2) Where the Commissioner determines in relation to any case that a finding under section 55(5)(c) is appropriate, the Commissioner must—

- (a) produce a report on the outcome of the investigation;
- (b) send a copy of the report to the clerk of the council concerned; and
- (c) send a copy of the report to the councillor.

(3) Where a person is no longer a councillor of the council concerned but is a councillor of another council the references in subsections (1)(b), (c) and (d) and (2)(b) to the council concerned are to be treated as including references to that other council.

(4) A report under this section may cover more than one investigation under section 55 in relation to any councillors (or former councillors) of the same council.

(5) The Commissioner must take reasonable steps to inform any person who made any allegation which gave rise to the investigation, of the outcome of the investigation.

(6) In subsections (1) and (2) “councillor” means the councillor (or former councillor) who is the subject of the investigation.

Interim reports

58.—(1) Where the Commissioner considers it necessary in the public interest, the Commissioner may, before the completion of an investigation under section 55, produce an interim report on that investigation.

(2) An interim report under this section may cover more than one investigation under section 55 in relation to any councillors (or former councillors) of the same council.

(3) A copy of any report under this section must be given—

- (a) to any person who is the subject of the report; and
- (b) to the clerk of the council concerned.

(4) Where a person is no longer a councillor of the council concerned but is a councillor of another council the reference in subsection (3)(b) to the council concerned is to be treated as including a reference to that other council.

Decisions and recommendations

Decision following report

59.—(1) The Commissioner may make an adjudication on any matter by deciding whether or not any person to which that matter relates has failed to comply with the code of conduct.

(2) Where the Commissioner decides that a person has not failed to comply with the code of conduct, the Commissioner must give notice to that effect to the clerk of the council concerned.

(3) Where the Commissioner decides that a person has failed to comply with the code of conduct, the Commissioner must decide whether no action should be taken or whether the nature of the failure is such that the Commissioner should—

- (a) censure the person;
- (b) suspend or partially suspend the person from being a councillor; or
- (c) disqualify the person for being, or becoming (whether by election or otherwise), a councillor.

(4) Where the Commissioner makes such a decision as is mentioned in subsection (3)(a), the Commissioner must censure the person in such terms as the Commissioner thinks appropriate.

(5) Where the Commissioner makes such a decision as is mentioned in subsection (3)(b), the Commissioner must suspend or partially suspend the person from being a councillor for such period as the Commissioner thinks appropriate but not exceeding one year or, if shorter, the remainder of the person's term of office.

(6) Where the Commissioner makes such a decision as is mentioned in subsection (3)(c), the Commissioner must disqualify the person for being, or becoming (whether by election or otherwise), a councillor for such period as the Commissioner thinks appropriate but not exceeding five years.

(7) Where the Commissioner decides that a person has failed to comply with the code of conduct but should not be censured, suspended or disqualified as mentioned in subsection (3), the Commissioner must give notice to the clerk of the council concerned—

- (a) stating that the person has failed to comply with the code of conduct;
- (b) specifying the details of that failure; and
- (c) stating that the Commissioner has decided not to censure, suspend or disqualify the person.

(8) Where the Commissioner suspends or partially suspends a person under subsection (5), the Commissioner must give notice to the clerk of the council concerned—

- (a) stating that the person has failed to comply with the code of conduct;
- (b) specifying the details of that failure; and
- (c) stating that the person is suspended or partially suspended for the period, and in the way, which the Commissioner has decided.

(9) Where the Commissioner disqualifies a person under subsection (6), the Commissioner must give notice to the clerk of the council concerned—

- (a) stating that the person has failed to comply with the code of conduct;
- (b) specifying the details of that failure; and
- (c) stating that the person is disqualified for being, or becoming (whether by election or otherwise), a councillor for the period which the Commissioner has decided.

(10) A copy of any notice under this section—

- (a) must be given to any person who is the subject of the decision to which the notice relates; and
- (b) must be published in one or more newspapers circulating in the district of the council concerned.

(11) Where the person concerned is no longer a councillor of the council concerned but is a councillor of another council—

- (a) a copy of any notice under this section to the clerk of the council concerned must also be given to the clerk of that other council; and
- (b) the reference in subsection (10)(b) to the council concerned is to be treated as including a reference to that other council.

(12) The Commissioner must take reasonable steps to inform any person who made any allegation which gave rise to the adjudication of the Commissioner's decision under this section.

(13) A person who is censured, suspended or disqualified by the Commissioner as mentioned in subsection (3) may appeal to the High Court if the High Court gives the person leave to do so.

(14) An appeal under subsection (13) may be made on one or more of the following grounds—

- (a) that the Commissioner's decision was based on an error of law;
- (b) that there has been procedural impropriety in the conduct of the investigation under section 58;
- (c) that the Commissioner has acted unreasonably in the exercise of the Commissioner's discretion;
- (d) that the Commissioner's decision was not supported by the facts found to be proved by the Commissioner;
- (e) that the sanction imposed was excessive.

Decisions on interim reports

60.—(1) Where the prima facie evidence is such that it appears to the Commissioner—

- (a) that the person who is the subject of an interim report has failed to comply with the code of conduct;
- (b) that the nature of that failure is such as to be likely to lead to disqualification under section 59(3)(c); and
- (c) that it is in the public interest to suspend or partially suspend that person immediately,

the Commissioner may give notice to the clerk of the council concerned that that person is suspended or partially suspended from being a councillor for such period and in such way as may be specified in the notice.

(2) The period specified in a notice under subsection (1) must not exceed six months or (if shorter) the remainder of the person's term of office.

(3) The effect of a notice under subsection (1) is to suspend or partially suspend the person concerned as mentioned in that subsection.

(4) A decision of the Commissioner under this section does not prevent the Commissioner from continuing with the investigation under section 55 which gave rise to the interim report concerned and producing a report under section 57, or a further interim report under section 58, in respect of any matters which are the subject of the investigation.

(5) The suspension or partial suspension of any person under this section must not extend beyond the day on which a notice under section 59 is given to the clerk of the council concerned with respect to that person.

(6) A copy of any notice under this section must be given to any person who is the subject of the notice.

(7) Where a person is no longer a councillor of the council concerned but is a councillor of another council—

- (a) the notice under subsection (1) must be given to the clerk of that other council and a copy of that notice must be given to the clerk of the council concerned;
- (b) the reference in subsection (5) to the clerk of the council concerned is to be construed in accordance with section 59.

(8) The Commissioner must take reasonable steps to inform any person who made any allegation which gave rise to the investigation under section 55 of the Commissioner's decision under this section.

(9) A person who is suspended (or partially suspended) by the Commissioner by notice as mentioned in subsection (1) may appeal to the High Court if the High Court gives the person leave to do so.

(10) An appeal under subsection (9) may be made—

- (a) against the suspension (or partial suspension);
- (b) against the length of the suspension (or partial suspension).

Recommendations

61.—(1) The Commissioner, having adjudicated on any matter, may make recommendations to a council about any matters relating to—

- (a) the exercise of the council's functions; or
- (b) the failure to observe the code of conduct.

(2) The Commissioner—

- (a) must send a copy of any recommendations under subsection (1) to the Department; and
- (b) may send a copy of those recommendations to any other public body.

(3) A council to which recommendations are made under subsection (1) must—

- (a) consider the recommendations; and
- (b) within such period beginning with the day on which the recommendations are received as the Commissioner may specify, prepare a report for the Department giving details of what action the council has taken or is proposing to take as a result of the recommendations.

(4) A council's function of considering a report under subsection (3) may be discharged only by the council (and accordingly, is not to be a function to which section 7 applies).

(5) If the Department is not satisfied with the action the council has taken or proposes to take in relation to the recommendations, the Department may require the council to publish a statement giving details of the recommendations made by the Commissioner and of the council's reasons for not fully implementing the recommendations.

Disclosure and registration of councillors' interests, etc.

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62.—(1) The clerk of each council must establish and maintain a register of interests of its councillors.

(2) Any participation by a councillor in any business which is prohibited by the code of conduct is not a failure to comply with the code of conduct if the councillor has acted in compliance with sections 28 to 31 of the Local Government Act (Northern Ireland) 1972.

(3) A council must ensure that copies of the register maintained under this section are available at an office of the council for inspection by members of the public at all reasonable hours.

(4) As soon as practicable after the establishment of a register under this section, the council must—

- (a) publish in one or more newspapers circulating in its district a notice which—
 - (i) states that copies of the register are available at an office of the council for inspection by members of the public at all reasonable hours; and
 - (ii) specifies the address of that office; and
- (b) inform the Commissioner and the Department that copies of the register are so available.

Miscellaneous

Extension of 1996 Order

63.—(1) The following provisions of the 1996 Order have effect as if references to that Order included references to this Part—

- Article 6 (staff and expenses);
- Article 12(3) (investigations to be conducted in private);
- Article 13 (evidence);
- Article 14 (obstruction and contempt) except paragraph (3);
- Article 19 (reports to the Assembly);

Article 20 (privilege for certain publications);

Article 21 (disclosure of information by the Commissioner); and

Article 21A (disclosure of information to the Information Commissioner).

(2) Article 12(5) of the 1996 Order (power to obtain information and make inquiries) applies in relation to an investigation under section 55 as it applies in relation to an investigation under that Order.

(3) Article 21 of the 1996 Order (disclosure of information obtained by the Commissioner) applies as if references to Article 16 or 17 of that Order were omitted.

Expenditure of Commissioner under this Act

64.—(1) Before the commencement of each financial year the Commissioner must prepare an estimate of the amount of the expenses of the Commissioner under this Act.

(2) The Department must apportion the amount estimated in accordance with subsection (1) between all the councils in Northern Ireland in such manner as the Department, after consultation in accordance with subsection (3), considers appropriate.

(3) The Department must consult—

(a) councils; and

(b) such associations or bodies representative of councils as appear to the Department to be appropriate,

about the manner in which the amount mentioned in subsection (2) is to be apportioned.

(4) The Department may deduct from any grant payable under section 27A of the Local Government Finance Act (Northern Ireland) 2011 to a council for a financial year the amount apportioned to it under subsection (2).

Interpretation

65.—(1) In this Part—

“the 1996 Order” means the Commissioner for Complaints (Northern Ireland) Order 1996;

“code of conduct” means the code of conduct under section 53;

“the Commissioner” has the same meaning as in the 1996 Order;

“councillor” includes a person treated as a non-voting member by section 17 or falling within section 28(4).

(2) Any reference in this Part to a councillor being partially suspended from being a councillor includes a reference to a person being prevented

from exercising particular functions or having particular responsibilities as a councillor.

(3) Where a councillor is suspended otherwise than partially the councillor is also suspended from being a member of any committee, joint committee, or sub-committee of the council.

(4) A councillor who is disqualified under this Part from being a councillor is also disqualified from being a member of any committee, joint committee, or sub-committee of the council.

(5) Where a councillor who is suspended otherwise than partially or is disqualified under this Part is also a member of any other public body (whether as an external representative of the council or otherwise), the councillor is also suspended or disqualified from being a member of that body and any committee or sub-committee of that body.

(6) Any reference in this Part to a councillor being partially suspended from being a councillor includes a reference to the councillor being partially suspended from being a member of any other public body of which the councillor is a member (whether as an external representative of the council or otherwise) and the reference in subsection (2) to particular functions or particular responsibilities as a councillor includes particular functions or particular responsibilities as a member of that body.