
STATUTORY INSTRUMENTS

1992 No. 810 (N.I. 6)

NORTHERN IRELAND

The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992

Made - - - - *16th March 1992*
Coming into Operation *17th May 1992*

At the Court at Buckingham Palace, the 16th day of March 1992

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament: Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974⁽¹⁾ and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽²⁾ shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(1) 1974 c. 28
(2) 1954 c. 33 (N.I.)

(2) In this Order “the Department” means the Department of the Environment; “the principal Act” means the Local Government Act (Northern Ireland) 1972(3).

(3) Expressions used in this Order and in the principal Act have the same meaning in this Order as in that Act.

PART II COMPETITION

Interpretation

3.—(1) In this Part “works contract” means—

- (a) in the case of construction and maintenance work, a contract which is or comprises—
 - (i) an agreement under section 105 of the principal Act which provides for the carrying out of such maintenance work as is mentioned in subsection (1)(d) of that section; or
 - (ii) an agreement made under any other statutory provision which provides for the carrying out by a council of any construction or maintenance work;
- (b) in any other case, subject to paragraph (2), a contract constituting or including an agreement which provides for the carrying out of work by a council; and “functional work” means—
 - (a) work carried out by a council, other than work carried out under a works contract; and
 - (b) work which is carried out otherwise than by a council but which is dependent upon, or incidental or preparatory to, other work which, by virtue of sub-paragraph (a), is functional work in relation to that council; and work carried out as mentioned in sub-paragraph (b) shall be treated as carried out by the council.

(2) A contract is not a works contract if it constitutes or includes an agreement providing for a council to discharge the functions of a government department or another council.

(3) If and so far as the provision by a council of goods, materials, services, vehicles, plant or other equipment which is incidental to a works contract is the subject of a separate agreement, that agreement shall be treated as part of the works contract for the purposes of this Part.

Defined activities

4.—(1) Subject to the following provisions of this Article, each of the following is a defined activity for the purposes of this Part—

- (a) collection of refuse;
- (b) cleaning of buildings;
- (c) other cleaning;
- (d) catering;
- (e) maintenance of ground;
- (f) repair and maintenance of vehicles;
- (g) managing sports and leisure facilities; and
- (h) construction and maintenance work; and Schedule 1 applies for the purpose of interpreting the preceding provisions of this paragraph.

(2) The Department may by order subject to affirmative resolution provide for an activity to be a defined activity by adding a sub-paragraph to those for the time being appearing in paragraph (1).

(3) Before making an order under paragraph (2) the Department shall consult such councils, such associations or bodies representative of councils and such other associations or public bodies, as appear to the Department to be desirable.

(4) Where work would (apart from this paragraph) fall within more than one defined activity it shall be treated as falling only within such one of them as the council carrying out the work decides.

(5) Subject to paragraph 8(3) of Schedule 1, work which is carried out by a council through an employee and which would (apart from this paragraph) fall within a defined activity shall not do so if it is incidental to the greater part of the work he is employed to do and the greater part does not constitute a defined activity.

(6) If a council carries out work which (apart from this paragraph) would not fall within a defined activity, and which in the opinion of the council cannot be carried out efficiently separately from a particular defined activity, the work shall (if the council so decides) be treated as falling within that defined activity.

(7) Work which would (apart from this paragraph) fall within a defined activity shall not do so if it is calculated to avert, alleviate or eradicate the effects or potential effects of an emergency or disaster (actual or potential) involving or likely to involve danger to life or health or serious damage to or destruction of property.

(8) The Department may provide by order subject to negative resolution that any activity specified in the order, if carried out by a council or councils so specified, shall not be treated as a defined activity so long as conditions so specified are fulfilled.

Works contracts: restrictions

Works contracts: restrictions

5.—(1) If a council proposes to enter into a works contract with another person (the other party) and under the contract the council is to carry out work falling within a defined activity, the council may not enter into the contract unless—

- (a) the first or second alternative of the first condition is fulfilled, and
- (b) the second condition is fulfilled.

(2) The first alternative of the first condition is that—

- (a) the contract is made by acceptance of the council's offer to carry out the work,
- (b) the council made the offer in response to an invitation by the other party to submit such offers, and
- (c) the invitation was made to at least 3 other persons who are willing to carry out work of the kind concerned, and who are not councils or include at least 3 persons who are not councils.

(3) Regulations may vary—

- (a) the number of persons to whom an invitation must be made under paragraph (2)(c); and
- (b) the minimum number of those persons who are not to be councils.

(4) The second alternative of the first condition is that before entering into the contract the other party published, in at least 2 newspapers circulating in the locality in which the work is to be carried out and at least one publication circulating among persons who carry out work of the kind concerned, a notice inviting persons to submit offers to carry out the work.

(5) The second condition is that the other party, in entering into the contract and in doing anything else (whether or not required by this Part) in connection with the contract before entering into it, did

not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.

(6) Anything which (apart from this paragraph) would amount to a failure to fulfil the first or second alternative of the first condition, or the second condition, shall not do so unless, at the time the contract is proposed to be entered into, the council is aware of the failure.

(7) This Article applies where it is proposed to enter into the works contract on or after 1st July 1992.

Works contracts: transitional

6.—(1) Where—

- (a) a council entered into a works contract before 1st July 1992 (and whether or not before this Part comes into operation), and
- (b) had the council entered into the contract on 1st July 1992 it would have infringed Article 5, on that date the parties to the contract shall cease to have power to carry it out.

(2) Where the parties to a contract to which paragraph (1) applies do not make other provision before 1st July 1992, the Frustrated Contracts Act (Northern Ireland) 1947(4) shall apply to the contract with effect from that date.

Functional work: restrictions

Functional work: restrictions

7.—(1) A council may not carry out functional work falling within a defined activity unless each of the 6 conditions is fulfilled.

(2) The conditions mentioned in paragraph (1) are those set out in Article 8, which shall have effect subject to Article 9.

(3) This Article applies only if the work falls within such a defined activity, is of such a description, is proposed to be carried out by such council or councils, and is proposed to be carried out on or after such date (not preceding 1st July 1992), as may be specified by regulations.

(4) Regulations may provide that where a council proposes to carry out functional work which falls within a defined activity specified in the regulations (whether or not by virtue of Article 4(4) or (6)) and to which this Article would not otherwise apply, it shall (if the council so decides) be treated as work to which this Article applies.

(5) This Article applies even if the work forms part of work begun before any date specified in the regulations, but references in this Article and the following provisions of this Part to the work do not include references to any work carried out before such date.

The conditions

8.—(1) The first condition is that, before carrying out the work, the council published, in at least 2 newspapers circulating in the locality in which the work is to be carried out and at least one publication circulating among persons who carry out work of the kind concerned, a notice containing —

- (a) a brief description of the work,
- (b) a statement that during a period specified in the notice any person may inspect a detailed specification of the work free of charge at a place and time specified in the notice,

(4) 1947 c. 2 (N.I.)

- (c) a statement that during that period any person will be supplied with a copy of the detailed specification on request and on payment of such charge as is specified in the notice,
 - (d) a statement that any person who may wish to carry out the work should notify the council of that fact within a period specified in the notice, and
 - (e) a statement that the council intends to make, in accordance with the third condition, an invitation to carry out the work.
- (2) The second condition is that—
- (a) the periods, place, time and charge specified in the notice are reasonable,
 - (b) before carrying out the work, the council made a detailed specification of the work available for inspection, and copies of it available for supply, in accordance with the notice, and
 - (c) the detailed specification includes a statement of the period during which the work is to be carried out.
- (3) The third condition is that, if any person notified the council in accordance with the statement under paragraph (1)(d), the council made an invitation to carry out the work in accordance with the following rules—
- (a) the invitation was made by the council before carrying out the work, and not less than 3 nor more than 6 months after complying with the first condition;
 - (b) if more than 3 persons who are not councils notified the council, at least 3 of them were invited;
 - (c) if less than 4 persons who are not councils notified the council, each of them was invited;
 - (d) if a council or councils notified the council, such one or more (if any) of them as the council decided was invited.
- (4) Regulations may amend sub-paragraphs (b) and (c) of paragraph (3) so as to vary the number of persons who are not councils who must be invited to carry out work in particular circumstances.
- (5) The fourth condition is that before carrying out the work the council, through its direct labour organisation or a similar organisation, prepared a written bid indicating a wish to carry out the work.
- (6) The fifth condition is that the council, in reaching the decision that it should carry out the work and in doing anything else (whether or not required by this Part) in connection with the work before reaching the decision, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.
- (7) The sixth condition is that in carrying out the work the council complies with the detailed specification of it mentioned in paragraphs (1) and (2).

The conditions: further provisions

- 9.—(1) Regulations may provide that the second condition shall not be treated as fulfilled if the period stated by virtue of Article 8(2)(c)—
- (a) exceeds a period specified in the regulations;
 - (b) is less than another period so specified.
- (2) Regulations may provide that the third condition shall not be treated as fulfilled unless—
- (a) the contents of any invitation included prescribed matters (which may relate to the time allowed for responding, the method of responding, or otherwise), and
 - (b) if any response was made to any invitation, before carrying out the work the council complied with prescribed requirements as to responses (which may include requirements

to disregard certain responses, requirements about the keeping or opening of responses, or otherwise).

(3) The fourth condition shall not be treated as fulfilled unless the bid is prepared in accordance with the following rules—

- (a) if the council would, assuming it were an independent contractor, charge for carrying out the work, the bid must provide for an item to be credited to any account kept (or to be kept) by the council as regards the work under Article 10,
- (b) if the council would, assuming it were an independent contractor, pay for the right to carry out the work, the bid must provide for an item to be debited to any such account,
- (c) in the case of an item to be credited, the bid must state either what the council intends as its maximum amount or the method by which it intends to calculate its maximum amount,
- (d) in the case of an item to be debited, the bid must state either what the council intends as its minimum amount or the method by which it intends to calculate its minimum amount, and
- (e) a statement mentioned in sub-paragraph (c) or (d) may include provision for any intended amount or method to vary with changes in circumstances.

(4) Regulations may provide that the fourth condition shall not be treated as fulfilled unless before carrying out the work the council complied with prescribed requirements as to the bid (which may include requirements about the preparation, keeping or opening of the bid, or otherwise).

(5) Regulations may provide that the fifth condition shall not be treated as fulfilled unless—

- (a) in accordance with prescribed requirements there is prepared and certified a document which appraises and fulfils such other conditions as may be prescribed with respect to responses falling within paragraph (2) and the bid referred to in paragraph (3); and
- (b) at such time or times (prior to reaching the decision referred to in Article 8(6)) as may be prescribed, copies of that document are provided or made available in accordance with any prescribed requirements.

(6) Where any document is provided or made available in accordance with the requirements of regulations under paragraph (5), the publication thereby of any defamatory matter in the document shall be privileged unless the publication is proved to be made with malice.

Accounts, reports and information

Accounts to be kept

10.—(1) This Article applies where a council carries out, in the financial year beginning in 1992 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—

- (a) it is carried out under a works contract to which Article 5 applies, or
- (b) Article 7 applies to it.

(2) For each financial year in which the work is carried out, the council shall keep an account as regards all work which falls within that activity, is carried out by it in that year and fulfils that condition.

(3) Where any work falling within the activity is carried out under a works contract, the council shall credit to the account kept under this Article as regards the activity for the financial year in which the work is carried out such an amount as is specified in the contract, or ascertained under it, as the price for carrying out the work in that year.

(4) Where any work falling within the activity is functional work, the council shall enter, in the account kept under this Article as regards the activity for the financial year in which the work is

carried out, such item as is necessary to carry out any intention expressed by the council in relation to the work in any bid prepared under Article 8(5).

(5) The Department may specify—

- (a) items which are to be entered in accounts kept under this Article (in addition to items to be entered by virtue of paragraphs (3) and (4)), and
- (b) the method of determining the amount of any item to be entered by virtue of the specification.

(6) No item may be credited to an account kept under this Article except an item required to be credited by paragraph (3) or (4) or by virtue of a specification under paragraph (5).

Financial objectives to be met

11.—(1) This Article applies where a council carries out, in the financial year beginning in 1992 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—

- (a) it is carried out under a works contract to which Article 5 applies, or
- (b) Article 7 applies to it.

(2) The council shall secure that such financial objective as the Department may specify for the year concerned is met by—

- (a) the revenue for all work which falls within that activity, is carried out by the council in that year and fulfils that condition, or
- (b) that revenue, adjusted by making such additions or subtractions (or both) as may be required by the specification.

(3) The reference in paragraph (2) to the revenue for the work concerned is to the aggregate of the items credited to the account kept under Article 10 as regards the work.

(4) A specification under this Article may define the financial objective concerned by reference to such factors as the Department thinks fit.

Report for financial year

12.—(1) This Article applies where a council carries out, in the financial year beginning in 1992 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—

- (a) it is carried out under a works contract to which Article 5 applies, or
- (b) Article 7 applies to it.

(2) The council shall prepare a report for the financial year concerned, containing as regards all work which falls within that activity, is carried out by the council in that year and fulfils that condition—

- (a) a summary of the account kept for that year under Article 10 as regards the work,
- (b) a statement showing whether the requirement under Article 11 has been fulfilled for that year as regards the work,
- (c) a statement identifying such of the work (if any) as falls only within the activity by virtue of a decision under Article 4(4),
- (d) a statement identifying such of the work (if any) as falls within the activity by virtue of a decision under Article 4(6), and
- (e) a statement identifying such of the work (if any) as is work to which Article 7 applies by virtue of a decision under Article 7(4).

(3) The summary referred to in paragraph (2)(a) shall present fairly the financial result, during the financial year concerned, of the work having been carried out and shall be expressed in such form as the Department may specify.

(4) A report under this Article shall also contain, as regards the work, such other information (and expressed in such form) as the Department may specify.

(5) A report under this Article shall also contain such information (and expressed in such form) as the Department may specify as regards work which falls within the defined activity, was carried out by the council in the financial year preceding the financial year concerned, and fulfils the condition that—

- (a) it was carried out under a works contract to which Article 5 applies, or
- (b) Article 7 applies to it.

(6) The report may contain such other information as the council thinks fit.

(7) The report shall be prepared not later than 30th September in the financial year following that for which it is prepared, and the council concerned shall send a copy to the Department and to the local government auditor not later than 31st October in the financial year following that for which it is prepared.

(8) Where the local government auditor has been sent a copy of a report in accordance with paragraph (7), he shall consider the statement contained in the report by virtue of paragraph (2)(b), and shall give his written opinion on the statement to the council and to the Department.

Information

13.—(1) If a council, having decided to carry out functional work to which Article 7 applies, is requested by a person to supply the person with a statement falling within paragraph (2), the council shall supply such a statement to the person.

(2) A statement falling within this paragraph is a written statement showing—

- (a) the council's decision to carry out the work,
- (b) the financial provisions shown in each offer (if any) to carry out the work made in response to an invitation made under Article 8(3), and
- (c) the financial provisions of the bid prepared under Article 8(5) in relation to the work.

(3) Paragraphs (4) to (6) apply to any report required to be prepared under Article 12.

(4) Any person may, at a place and time stated by a council who has prepared a report, inspect the report free of charge.

(5) A council who has prepared a report shall supply a copy (on request) to any person who pays such charge as the council may reasonably require.

(6) A council shall publish in at least 2 newspapers circulating in the district of the council notice of—

- (a) the place and time at which any report prepared by the council may be inspected in accordance with paragraph (4),
- (b) the fact that copies of the report are available for supply in accordance with paragraph (5), and
- (c) the charge for each copy.

Sanctions

Notice for purpose of getting information

14.—(1) If it appears to the Department that in the financial year beginning in 1992 or in a subsequent financial year a council—

- (a) has entered into a contract to carry out work and has done so in contravention of Article 5,
- (b) has carried out work in circumstances where any of the 6 conditions required to be fulfilled as regards the work by Article 7 has not been fulfilled,
- (c) has carried out work in circumstances where Article 10 has not been complied with for the year concerned in relation to the defined activity within which the work falls or in relation to an account required by that Article to be kept for the year concerned as regards the activity,
- (d) has carried out work in circumstances where Article 11 has not been complied with for the year concerned in relation to the defined activity within which the work falls, or
- (e) has carried out work in circumstances where Article 12 has not been complied with for the year concerned in relation to the defined activity within which the work falls or in relation to a report required by that Article to be prepared for the year concerned as regards the activity, the Department may serve on the council a notice falling within paragraph (2).

(2) The notice is one which—

- (a) informs the council that it appears to the Department that in a financial year identified in the notice the council has acted as mentioned in one of the sub-paragraphs (so identified) of paragraph (1),
- (b) identifies the work concerned and states why it so appears, and
- (c) contains the requirement mentioned in paragraph (3).

(3) The requirement is that the council submit to the Department within such time as is specified in the notice a response which—

- (a) states that the council has not acted as mentioned in the sub-paragraph concerned of paragraph (1) and justifies the statement, or
- (b) states that the council has acted as so mentioned and gives reasons why the Department should not give a direction under Article 15.

(4) Where work is specified under Article 7(3) as a proportion of particular work, the reference in paragraph (2)(b) to work is to the work of which the proportion forms a part.

(5) The Department may serve on a council different notices under this Article identifying the same financial year and the same work, whether such notices identify the same sub-paragraph or different sub-paragraphs of paragraph (1).

Directions in respect of work carried out in contravention of this Part

15.—(1) Paragraph (2) applies where—

- (a) the Department has served a notice on a council under Article 14,
- (b) the time specified in the notice has expired (whether or not the Department has received a written response to the notice), and
- (c) it still appears to the Department that the council has acted as mentioned in the paragraph concerned of Article 14.

(2) Without prejudice to Article 25, the Department may direct that with effect from such date as is specified in the direction the council—

- (a) shall not carry out any work falling within the appropriate activity,
 - (b) shall not carry out such work falling within that activity as is identified in the direction,
 - (c) may only carry out work falling within that activity if such conditions as are specified in the direction are fulfilled, or
 - (d) as regards such work falling within that activity as is identified in the direction, may only carry it out if such conditions as are specified in the direction are fulfilled.
- (3) Where the Department has given a direction under paragraph (2) or this paragraph (the previous direction) the Department may give a direction (a new direction) that with effect from such date as is specified in the new direction—
- (a) any prohibition applying by virtue of the previous direction (whether the prohibition applies outright or if conditions are not fulfilled) shall cease to apply,
 - (b) any outright prohibition applying by virtue of the previous direction is replaced by a prohibition applying (as regards the same work) if conditions specified in the new direction are not fulfilled, or
 - (c) any prohibition applying as regards work by virtue of the previous direction (whether the prohibition applies outright or if conditions are not fulfilled) is replaced by a prohibition which applies only to such of that work as is identified in the new direction but which is otherwise in the same terms as the prohibition in the previous direction.
- (4) If the Department directs under this Article that a council shall not carry out work, or may only carry out work if certain conditions are fulfilled, the direction shall have effect notwithstanding any statutory provision under which the council is required or authorised to do the work or (as the case may be) to do it without the need for the conditions to be fulfilled.
- (5) In this Article “the appropriate activity” means the defined activity within which the work identified in the notice concerned falls.

Miscellaneous

Regulations, specifications and directions

- 16.**—(1) Regulations under this Part shall be subject to negative resolution.
- (2) The power to specify under Article 10, 11 or 12, and the power to give a direction under Article 15, shall be exercised in writing.
- (3) An order under Article 4(2) or (8), any regulations, specification or direction mentioned in paragraph (2) may include such supplementary, incidental, consequential or transitional provisions as appear to the Department to be necessary or expedient; and without prejudice to the generality of the foregoing—
- (a) an order under Article 4(2) may include provision amending or adapting any provision of this Part for the purpose of interpreting any sub-paragraph added by the order or for purposes of commencement or otherwise, and
 - (b) a direction under Article 15 may include provision with respect to work in progress or outstanding contractual commitments.

Supplementary

- 17.**—(1) No provision of this Part relating to accounts shall prejudice any provision of Part V of the principal Act.
- (2) Nothing in Articles 14 and 15 shall prejudice any remedy available to a person (apart from those Articles) in respect of a failure to observe a provision of this Part.

PART III

PUBLIC SUPPLY OR WORKS CONTRACTS

Interpretation

18. In this Part—

“approved list” means such a list as is mentioned in Article 19(3)(a);

“associated body”, in relation to a contractor, means any company which (within the meaning of the Companies (Northern Ireland) Order 1986⁽⁵⁾), is the contractor’s holding company or subsidiary or is a subsidiary of the contractor’s holding company;

“business” includes any trade or profession;

“business activities” and “business interests”, in relation to a contractor or other person, mean respectively any activities comprised in, or any investments employed in or attributable to, the carrying on of his business and “activity” includes receiving the benefit of the performance of any contract;

“contractor”, except in relation to a subsisting contract, means a “potential contractor”, that is to say—

- (a) in relation to functions as respects an approved list, any person who is or seeks to be included in the list; and
- (b) in relation to functions as respects a proposed public supply or works contract, any person who is or seeks to be included in the group of persons from whom tenders are invited or who seeks to submit a tender for or enter into the proposed contract, as the case may be;

“employers' association” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1976⁽⁶⁾;

“exclusion” includes removal;

“Government policy” falls within “irrelevant fields” for the purposes of Article 19 if it concerns matters of defence or foreign or Commonwealth policy and “involve”, as regards business activities and any such field of policy, includes the supply of goods or materials or services to, or the execution of works for, any authority or person having functions or carrying on business in that field and, as regards business interests and any such field of policy, includes investment in any authority or person whose business activities are so involved;

“industrial dispute” has the same meaning as trade dispute in the Industrial Relations (Northern Ireland) Order 1976 and “involve”, as regards business activities and an industrial dispute, includes the supply of goods, materials or services to or by, or the execution of works for or by, any party to the dispute, any other person affected by the dispute, or any authority concerned with the enforcement of law and order in relation to the dispute;

“political, industrial or sectarian affiliations or interests” means actual or potential membership of, or actual or potential support for, respectively, any political party, any employers' association or trade union or any society, fraternity or other association;

“suppliers or customers” and “sub-contractors” includes prospective suppliers or customers and sub-contractors; and “supplier”, in relation to a contractor, includes any person who, in the course of business, supplies him with services or facilities of any description for the purposes of his business;

(5) 1986 NI 6
(6) 1976 NI 16

“trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1976(7).

District council contracts: exclusion of non-commercial considerations

19.—(1) Subject to Articles 20 and 21(1), every council shall, in exercising, in relation to its public supply or works contracts, any proposed or any subsisting such contract, as the case may be, any function regulated by this Article, exercise that function without reference to matters which are non-commercial matters for the purposes of this Article.

(2) The contracts which are public supply or works contracts for the purposes of this Article are contracts for the supply of goods or materials, for the supply of services or for the execution of works; but this Article does not apply in relation to contracts entered into before the coming into operation of this Article.

(3) The functions regulated by this Article are—

- (a) the inclusion of persons in or the exclusion of persons from—
 - (i) any list of persons approved for the purposes of public supply or works contracts with the council, or
 - (ii) any list of persons from whom tenders for such contracts may be invited;
- (b) in relation to a proposed public supply or works contract with the council—
 - (i) the inclusion of persons in or the exclusion of persons from the group of persons from whom tenders are invited,
 - (ii) the accepting or not accepting the submission of tenders for the contract,
 - (iii) the selecting of the person with whom to enter into the contract, or
 - (iv) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract; and
- (c) in relation to a subsisting public supply or works contract with the council—
 - (i) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract, or
 - (ii) the termination of the contract.

(4) The following matters are non-commercial matters as regards the public supply or works contracts of a council, any proposed or any subsisting such contract, as the case may be, that is to say—

- (a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces;
- (b) whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;
- (c) any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;
- (d) the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons;
- (e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;

- (f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;
 - (g) financial support or lack of financial support by contractors for any institution to or from which the council gives or withholds support.
- (5) The matters specified in paragraph (4) include matters which have occurred in the past as well as matters which subsist when the function in question falls to be exercised.
- (6) Where any matter referable to a contractor would, as a matter specified in paragraph (4), be a non-commercial matter in relation to him, the corresponding matter referable to—
- (a) a supplier or customer of the contractor;
 - (b) a sub-contractor of the contractor or his supplier or customer;
 - (c) an associated body of the contractor or his supplier or customer; or
 - (d) a sub-contractor of an associated body of the contractor or his supplier or customer; is also, in relation to the contractor, a non-commercial matter for the purposes of this Article.

Fair employment matters

20.—(1) A council which takes any action to comply with section 41 of the Fair Employment (Northern Ireland) Act 1989⁽⁸⁾ (restriction on execution of works, etc., by unqualified persons) does not exercise any function regulated by Article 19 by reference to a non-commercial matter.

(2) Subject to paragraph (3), nothing in Article 19 shall preclude a council from—

- (a) asking questions or seeking undertakings of any person relating to whether any person is or is not an unqualified person for the purposes of section 41 of that Act of 1989 and considering the responses to them, or
- (b) including in a draft contract or draft tender for a contract terms or provisions requiring that the person or persons who are to carry out work under the draft contract or draft tender are to be considered not to be unqualified for the purposes of that section 41 and considering the responses to them, if, as the case may be, consideration of the information, the giving of the undertaking or the inclusion of the terms or provision is reasonably necessary to secure compliance with that section 41.

(3) Paragraph (2) does not apply to the function of terminating a subsisting contract and, in relation to functions as respects approved lists or proposed contracts, does not authorise questions in other than written form.

(4) Where it is permissible under paragraph (2) to ask a question it is also permissible to make, if it is in writing, a request for—

- (a) evidence in support of an answer to the question; or
- (b) information as to whether any person is or is not unqualified for the purpose of section 41 of that Act of 1989.

(5) In this Article “unqualified” has the same meaning as in sections 38 and 39 of the Fair Employment (Northern Ireland) Act 1989⁽⁹⁾.

Provisions supplementary to or consequential on Article 19

21.—(1) The Department, for the purposes of Article 19, may by order—

⁽⁸⁾ 1989 c. 32
⁽⁹⁾ 1989 c. 32

- (a) specify as a non-commercial matter any other matter which appears to the Department to be irrelevant to the commercial purposes of public supply or works contracts of any description;
 - (b) specify the criteria to be applied by a council in drawing up an approved list;
 - (c) specify questions relating to non-commercial matters which may be included in questionnaires circulated by councils to potential contractors in such cases as may be specified in the order.
- (2) The power conferred by paragraph (1) includes power to apply Article 19(5) and (6) to any matter specified in the order and to amend any definition in Article 18 of an expression used in any sub-paragraph of Article 19(4) without making any other provision.
- (3) An order under paragraph (1) may include such consequential and transitional provisions as appear to the Department to be necessary or expedient.
- (4) No order under paragraph (1) shall be made unless a draft of it has been laid before and approved by a resolution of the Assembly.
- (5) Article 19 applies to a council where, in exercising functions regulated by that Article, the council is, as well as where it is not, acting on behalf of a government department.
- (6) The duty imposed by Article 19(1) does not create a criminal offence but—
- (a) in proceedings for judicial review, the persons who have a sufficient interest in the matter shall include any potential contractor or, in the case of a contract which has been made, former potential contractor (or, in any case, any body representing contractors), as such; and
 - (b) a failure to comply with it is actionable by any person who, in consequence, suffers loss or damage.
- (7) In any action under Article 19(1) by a person who has submitted a tender for a proposed public supply or works contract arising out of the exercise of functions in relation to the proposed contract the damages shall be limited to damages in respect of expenditure reasonably incurred by him for the purpose of submitting the tender.
- (8) Nothing in paragraph (1) or Article 19 implies that the exercise of any function regulated by that Article may not be impugned, in proceedings for judicial review, on the ground that it was exercised by reference to other matters than those which are non-commercial matters for the purposes of that Article.

Duty of councils to give reasons for certain decisions within Article 19

22.—(1) Where a council exercises a function regulated by Article 19 by making, in relation to any person, a decision to which this Article applies, the council shall forthwith notify that person of the decision and, if that person so requests in writing within 15 days from the date of the notice, furnish him with a written statement of the reasons for the decision within 15 days from the date of the request.

- (2) This Article applies to the following decisions in relation to any person, namely—
 - (a) in relation to an approved list, a decision to exclude him from the list,
 - (b) in relation to a proposed public supply or works contract—
 - (i) where he has asked to be invited to tender for the contract, a decision not to invite him to tender,
 - (ii) a decision not to accept the submission by him of a tender for the contract,
 - (iii) where he has submitted a tender for the contract, a decision not to enter into the contract with him, or

- (iv) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract, or
- (c) in relation to a subsisting public supply or works contract with him—
 - (i) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract, or
 - (ii) a decision to terminate the contract.
- (3) The Department may by order subject to negative resolution amend paragraph (1) so as to substitute for any period specified in that paragraph such other period as the Department thinks fit.

Transitional duty of councils as regards existing lists

23.—(1) Subject to paragraph (3), a council which, at the coming into operation of this Article, maintains an approved list shall—

- (a) consider whether persons have been included in or excluded from the list by reference to non-commercial matters, and
- (b) if it appears to the council that that is the case, compile the list afresh in accordance with paragraphs (4) to (6).
- (2) Persons shall be treated by a council as having been excluded from a list by reference to non-commercial matters if, in relation to the list, the council has—
 - (a) notified potential contractors of its intention to have regard to non-commercial matters, or
 - (b) issued statements of policy framed by reference to non-commercial matters.
- (3) Inclusion or exclusion by a council from its list by reference to a non-commercial matter does not give rise to the duty to compile the list afresh under paragraph (1) if that matter relates only to the question as to whether or not any person is unqualified for the purpose of section 41 of the Fair Employment (Northern Ireland) Act 1989⁽¹⁰⁾ and the council's action was reasonably necessary to secure compliance with that section.
- (4) The duty of a council to compile afresh an approved list shall be discharged as follows—
 - (a) the council shall publish notice of its intention to compile the list afresh and (by the notice) invite persons to apply, within a specified period, to be included in the list; and
 - (b) at the end of that period the council shall proceed to compile the list afresh from among the applicants in accordance with the duty imposed by Article 19.
- (5) Publication by a council of the notice required by paragraph (4) shall be effected by causing the notice to be published—
 - (a) in at least 2 newspapers circulating in the district of the council; and
 - (b) in at least one newspaper or journal circulating among such persons as undertake contracts of the description to which the list relates.
- (6) The period specified in the notice under paragraph (4) as the period within which applications are to be made shall not be shorter than the period of 28 days from the date of publication of the notice.
- (7) The duty imposed by this Article shall be discharged by a council as soon as is reasonably practicable after this Article comes into operation and in any event within the expiration of 3 months from the day on which this Article comes into operation.
- (8) This Article does not create a criminal offence but sub-paragraph

(10) 1989 c. 32

- (a) of Article 21(6) applies for the purposes of the duty imposed by this Article as it applies for the purposes of the duty imposed by Article 19(1).

Exclusion of charges for inclusion in approved list

24.—(1) A council which maintains an approved list shall not require a person to pay any sum as a condition of his inclusion or continued inclusion in the list or of his being considered for such inclusion.

(2) Paragraph (1) does not create an offence but a contravention of it is actionable by the person seeking to be included or retained in the list.

PART IV MISCELLANEOUS

Directions to councils

25.—(1) The Department may give directions of a general or specific nature to councils as to the manner in which the councils are to discharge their functions under Parts II and III, and councils shall act in accordance with those directions.

(2) Any directions given to councils by the Department under this Article may be varied or revoked by subsequent directions so given.

Emergency financial assistance to councils

26.—(1) In any case where—

- (a) an emergency or disaster occurs involving destruction of or danger to life or property, and
- (b) as a result, one or more councils incur expenditure on, or in connection with, the taking of immediate action (whether by the carrying out of works or otherwise) to safeguard life or property, or to prevent suffering or severe inconvenience, in its district or among its inhabitants, the Department may establish a scheme under this Article for the giving of financial assistance to those councils in respect of that expenditure.

(2) Financial assistance given pursuant to a scheme under this Article shall take the form of grants paid by the Department with the consent of the Department of Finance and Personnel and, subject to that, the terms and conditions of a scheme shall be such as the Department considers appropriate to the circumstances of the particular emergency or disaster concerned.

(3) Without prejudice to the generality of paragraph (2), a scheme under this Article may—

- (a) make the payment of grants conditional upon the making of claims of a description specified in the scheme;
- (b) make provision with respect to the expenditure qualifying for grant and the rates and amounts of grants; and
- (c) make provision in certain specified circumstances for the repayment of any grant, in whole or in part.

Promotion of safety in the home

27.—(1) A council may promote safety in the home by publishing or making arrangements for otherwise giving information or advice relating to the prevention of accidents in the home.

(2) A council may contribute to the funds of any voluntary body whose activities consist of or include the promotion of safety in the home.

Promotion of economic development

28.—(1) Subject to the provisions of this Article, a council may make payments for the purpose of taking such steps, as the council considers appropriate, for promoting the economic development of its district.

(2) The total payments made under this Article by a council in any one financial year shall not exceed the product of a rate of 2p. in the pound on the rateable value of the district.

(3) A council shall not make any payment under this Article without the consent in writing of the Department.

(4) The Department may, by order, substitute for the amount of 2p. specified in paragraph (2) such other amount, whether higher or lower, as is specified in the order.

PART V

AMENDMENT AND REPEAL OF PROVISIONS RELATING TO DISTRICT COUNCILS

Miscellaneous amendments of the principal Act

Northern Ireland code of local government conduct

29.—(1) After section 7 of the principal Act there shall be inserted

“Northern Ireland code of local government conduct.

7A.—(1) The Department, for the guidance of members of councils, may issue a code of recommended practice as regards the conduct of members of councils to be known as the Northern Ireland code of local government conduct.

(2) The Department may revise or withdraw a code issued under this section.

(3) The Department, before issuing, revising or withdrawing a code, shall consult such councils, such associations or bodies representative of councils and such other associations or public bodies as appear to the Department to be desirable.

(4) A code shall not be issued or revised unless a draft of it has been laid before and approved by a resolution of the Assembly.

(5) The form of declaration of acceptance of office under section 7 and Part I of Schedule 1 shall include an undertaking by the declarant to be guided by the Northern Ireland code of local government conduct in the performance of his functions.

(6) In this section “member”, in relation to a council, includes any person who, whether or not a member of the council, is a member of a committee or sub-committee of the council or of any joint committee of two or more councils.”.

(2) In Part I of Schedule 1 to the principal Act (declaration of councillor) at the end of the declaration there shall be added—

“I affirm that I have read and will be guided by the Northern Ireland code of local government conduct in the performance of my functions as a councillor.”.

Declaration of vacancy in office

30. In section 10(a) of the principal Act (declaration of vacancy in office in certain cases) after “conviction” there shall be inserted “or of a determination by the High Court that he has acted in breach of the terms of a declaration against terrorism as defined in section 7 of the Elected Authorities (Northern Ireland) Act 1989(11),”.

Election of chairman or vice-chairman

31.—(1) In section 11 of the principal Act (chairman)—

- (a) subsection (2) shall be omitted;
- (b) in subsection (3) at the beginning there shall be inserted “Subject to paragraph 3(4) of Schedule 2,”.

(2) After section 12 of the principal Act there shall be inserted

“Election of chairman.

12A.—(1) The election of the chairman shall be the first business transacted at the annual meeting of the council.

(2) If, apart from section 11(4) or 13(1), the person presiding at the meeting would have ceased to be a member of the council, he shall not be entitled to vote in the election except in accordance with paragraph (3).

(3) In the case of an equality of votes the person presiding at the meeting shall give a casting vote in addition to any other vote he may have.”.

(3) In section 13(1) of the principal Act (vice-chairman) after “council and” there shall be inserted “, subject to paragraph 3(4) of Schedule 2,”.

(4) In paragraph 3 of Schedule 2 to the principal Act (meetings and proceedings of councils) after sub-paragraph (3) there shall be inserted—

“(4) Nothing in this paragraph shall authorise any councillor to preside at so much of any meeting of the council during which the business of the election of a chairman or of a vice-chairman is transacted where that councillor is a candidate for election to the office of chairman or, as the case may be, of vice-chairman.”.

Voting rights of members of committees, sub-committees and joint committees

32. After section 19 of the principal Act there shall be inserted

“Voting rights of members of committees, sub-committees and joint committees.

19A.—(1) A person who—

- (a) is a member of a committee appointed under section 18(1) by a council and is not a member of that council; or
- (b) is a member of a joint committee appointed under section 19(1) by 2 or more councils and is not a member of any of those councils; or
- (c) is a member of a sub-committee appointed under section 18(4) or 19(4) by such a committee as is mentioned in paragraph (a) or (b) and is not a member of the council, or one of the councils, which appointed that committee, shall for all

purposes be treated as a non-voting member of that committee, joint committee or, as the case may be, sub-committee.

(2) Where a person is treated by virtue of this section as a non-voting member of any committee, joint committee or sub-committee, he shall not be entitled to vote at any meeting of the committee, joint committee or sub-committee on any question which falls to be decided at that meeting.

(3) In this section any reference to voting includes a reference to making use of a casting vote.”.

Procedural standing orders

33.—(1) In section 22 of the principal Act (meetings and proceedings)—

(a) at the beginning there shall be inserted—

“(1) Subject to the following provisions of this section,”;

(b) at the end there shall be added—

“(2) Regulations may require councils, subject to such variations as may be authorised by the regulations—

(a) to incorporate such provision as may be prescribed by the regulations in standing orders for regulating their proceedings and business; and

(b) to make or refrain from making such other modifications of any such standing orders as may be so prescribed.

(3) Without prejudice to the generality of subsection (2), regulations under that subsection may require such standing orders as are mentioned in that subsection to contain provision which, notwithstanding any statutory provision or the decision of any council or committee or sub-committee of a council, authorises persons who are members of such a council, committee or sub-committee—

(a) to requisition meetings of the council or of any of its committees or sub-committees;

(b) to require a decision of a committee or sub-committee of the council to be referred to and reviewed by the council itself or by a committee of the council;

(c) to require that a vote with respect to a matter falling to be decided by the council or by any of its committees or sub-committees is to be taken in a particular manner.

(4) Regulations under subsection (2) may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Department considers appropriate.”.

(2) In paragraph 12(1) of Schedule 2 to the principal Act (meetings and proceedings of councils and committees) after “orders” in the second place where it occurs there shall be inserted “and to section 22(2) to (4)”.

Consultation with district councils

34. In section 40(3)(i) of the principal Act (appointment of the Staff Commission after consultation with councils) after “such” in the first place where it occurs there shall be inserted “councils and”.

Appointment and management of officers

35.—(1) In section 40 of the principal Act (the Staff Commission)—

- (a) in subsection (3)(b) for “twelve” there shall be substituted “fourteen”;
 - (b) after subsection (4)(b) there shall be inserted—
 - “(bb) monitoring the fair employment practices of councils and their compliance with statutory requirements in relation to fair employment;”;
 - (c) after subsection (4)(c) there shall be inserted—
 - “(cc) establishing and issuing a code of recommended practice as regards the conduct of officers of councils;”.
- (2) In section 41 of the principal Act (appointment and qualification of officers)—
- (a) after subsection (3) there shall be inserted—
 - “(3A) Without prejudice to any code of procedure established by the Staff Commission, a council shall not appoint any officer unless the vacancy in the office is advertised in such manner as may be prescribed.”;
 - (b) in subsection (8)—
 - (i) after paragraph (a) there shall be inserted—
 - “(aa) may make provision with respect to the co-ordination of the provision of the service provided by the officers of that class so employed within the districts of the council by which the officers are employed and the other council or councils”;
 - (ii) at the end of paragraph (b) for “and” there shall be substituted—
 - “(bb) may provide that the other council or councils shall not appoint officers of that class; and”;
 - (iii) the words from “and where such an order” onwards shall be omitted;
 - (c) after subsection (8) there shall be inserted—
 - “(8A) If the Department is satisfied that it is expedient that officers of any class should not be employed by one of the councils on behalf of both or all of them, the Department may make an order—
 - (a) transferring officers of that class from the council by which they are employed to such other council or councils as is specified in or determined under the order;
 - (b) making provision for the protection of the interests of every officer so transferred;
 - (c) providing for the expenses incurred in connection with the transfer of the employment of the officers to be defrayed by the councils in such proportion as they may agree upon or, in case of disagreement, as may be determined by the Department; and
 - (d) making such incidental and supplemental provision as the Department thinks fit.
 - (8B) In subsection (8)(aa) “co-ordination” includes—
 - (a) advising the council by which the officers are employed and the other council or councils on the establishment of the service provided by the officers of that class, including the number of officers to be employed and the qualifications of such officers;
 - (b) making provision for training of such officers;

- (c) issuing advisory circulars and guidelines with respect to statutory provisions or standards of inspection or advising on such circulars and guidelines issued by the Department or district councils;
- (d) recording and reporting statistical data and on the enforcement of statutory provisions;
- (e) reporting annually to the Department and to the council by which the officers are employed and the other council or councils;
- (f) for the purpose of reaching agreement as mentioned in subsection (8)(b), making recommendations with respect to the apportionment of the expenses of the council by which the officers are employed in connection with the service provided by officers of that class; and
- (g) such other functions or activities as the Department may provide in the order under subsection (8).”.

Public inspection of accounts and documents and right of challenge

36.—(1) After section 77 of the principal Act there shall be inserted—

“Confidentiality of officers' records.

77A.—(1) Nothing in section 77(4)(b) (public inspection of statements, books and documents) shall entitle any person to inspect so much of any statement, book or document as contains personal information about an officer of the council.

(2) Information shall be regarded as personal information about an officer of the council if it relates specifically to a particular individual and is available to that council for reasons connected with the fact—

- (a) that the individual holds or has held any office or employment under that council; or
- (b) that payments or other benefits in respect of any office or employment under any other person are or have been made or provided to that individual by that council.

(3) References in this section to a payment made or benefit provided to an individual in respect of any office or employment include references to a payment made or benefit provided to him in respect of his ceasing to hold office or employment.

(4) This section shall have effect only in relation to the inspection of a statement, book or document relating to periods beginning on or after 1st April 1992.”.

(2) In section 79(1) of the principal Act (right of objection) after “relates” there shall be inserted “or a person liable for rates, payable in respect of any hereditament situated in that district which is used wholly or mainly for the purposes of a business whether or not carried on for profit.”.

(3) In section 121 of the principal Act (inspection of documents)—

- (a) in subsection (3) for “and any such elector” there shall be substituted “or by any person liable for rates payable in respect of any hereditament situated in the district which is used wholly or mainly for the purposes of a business whether or not carried on for profit, and any such elector or person.”;
- (b) in subsection (4) the words “except where otherwise expressly provided” shall be omitted.

Auditor's report

37. In section 80(2) of the principal Act (auditor's report) after “he shall” there shall be inserted—

- “(a) forthwith send copies of the report to all of the members of the council;

- (b) forthwith make copies of the report available for inspection by members of the public at such time and such place as may be specified in a notice to be published in at least one newspaper circulating in the district of the council; and
- (c)".

Power of auditor to issue prohibition order

38.—(1) After section 82 of the principal Act there shall be inserted—

“Power of auditor to issue prohibition order.

82A.—(1) The local government auditor may issue an order under this section (a “prohibition order”) if he has reason to believe that the council or any officer of the council—

- (a) is about to make or has made a decision which involves or would involve the council incurring expenditure which is unlawful; or
 - (b) is about to take or has taken a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency; or
 - (c) is about to enter an item of account, the entry of which is unlawful; and for the purposes of this section and section 82B, the actions of a committee or sub-committee of the council or of any other person (not being an officer) authorised to act on behalf of the council shall be treated as the actions of the council itself.
- (2) A prohibition order is one—
- (a) which is addressed to the council or officer concerned;
 - (b) which specifies the paragraph of subsection (1) which is relevant and the decision, course of action or item of account to which the order relates;
 - (c) which specifies the date on which (subject to subsection (5)) the order is to take effect, being a date not earlier than the date of service of a copy of the order in accordance with paragraph
 - (a) or, as the case may be, paragraphs (a) and (b) of subsection (4); and
 - (d) which requires the council or officer concerned to desist from making or implementing the decision, taking or continuing to take the course of action or, as the case may be, entering the item of account in question.
- (3) Where 2 or more local government auditors are appointed in relation to the accounts of any council, a prohibition order may be issued by the auditors acting jointly or by such one of them as they may determine; and, in relation to such an order, any reference in subsections (4) and (5) to the auditor is a reference to the auditor or auditors by whom the order is issued.
- (4) A copy of a prohibition order—
- (a) shall be served on the council to which, or to an officer of which, it is addressed; and
 - (b) in the case of an order addressed to an officer, shall also be served on him; and
 - (c) may be served on such other person or persons as appears to the local government auditor to be appropriate.
- (5) A prohibition order shall not have effect unless, not later than the expiration of 7 days from the date of service referred to in subsection (2)(c), the local government auditor serves on the council concerned and on any officer on whom a copy of the order was served under subsection (4)(b), a statement of the auditor’s reasons for the belief referred to in subsection (1).
- (6) A prohibition order may at any time be revoked (but not varied) by the local government auditor.

Effect of and appeals against prohibition orders.

82B.—(1) So long as a prohibition order has effect, the council concerned or any officer of that council shall not make or implement the decision, take or continue to take the course of action or, as the case may be, enter the item of account to which the order relates.

(2) A prohibition order—

(a) takes effect, subject to section 82A(5), on the date specified in the order in accordance with subsection (2)(c) of that section; and

(b) continues to have effect, subject to any order or decision of the High Court on an appeal under subsection (3), until revoked under section 82A(6).

(3) Not later than 28 days from the service under section 82A(5) of a statement of reasons relating to a prohibition order, the council concerned (but not any officer of that council) may appeal against the order to the High Court in accordance with rules of court.

(4) On an appeal against a prohibition order under subsection (3), the High Court may make such order as it thinks fit for the payment by the council concerned of expenses incurred by a local government auditor in connection with the appeal.

(5) Any expenses reasonably incurred by a local government auditor in or in connection with the issue of a prohibition order shall be recoverable by him from the council concerned.

(6) In this section “the council concerned”, in relation to a prohibition order, means the council to which, or to an officer of which, the order is addressed.

Supplementary provisions as to prohibition orders.

82C.—(1) In any case where—

(a) before a prohibition order is issued, a council enters into a contract to dispose of or acquire an estate in land, and

(b) before the disposal or acquisition is completed, a prohibition order takes effect as a result of which it is unlawful for the council to complete the disposal or acquisition, the existence of the prohibition order shall not prejudice any remedy in damages which may be available to any person by reason of the council’s failure to complete the contract.

(2) No action shall lie against a local government auditor in respect of any loss or damage alleged to have been caused by reason of the issue of a prohibition order which was issued in good faith; but nothing in this subsection affects the right of a court to award costs against a local government auditor on an appeal under section 82B(3).

Power of auditor to apply for judicial review.

82D.—(1) Subject to section 18(2)(a) of the Judicature (Northern Ireland) Act 1978(12) (no application for judicial review without leave) the local government auditor may make an application for judicial review with respect to—

(a) any decision of a council, or

(b) any failure by a council to act, which (in either case) it is reasonable to believe would have an effect on the accounts of that council.

(2) The existence of the powers conferred on a local government auditor under sections 82A to 82C and this section shall not be regarded as a ground for refusing an application falling within subsection (1) (or an application for leave to make such an application).

(3) On an application for judicial review made as mentioned in subsection (1), the High Court may make such order as it thinks fit for the payment by the council to whose decision the application relates of expenses incurred by the local government auditor in connection with the application.”.

(2) In section 148(1) of the principal Act (general interpretation) after the definition of “prescribed” there shall be inserted—

““prohibition order” means an order issued under section 82A;”.

Enforcement of bye-laws by constables

39. In section 93(1) of the principal Act (enforcement of bye-laws) after “behalf” there shall be inserted “or a constable”.

Expenditure for special purposes

40. In section 115 of the principal Act (expenditure for special purposes)—

(a) in subsection (1)—

(i) after “interests” there shall be inserted “of, and will bring direct benefit to”;

(ii) in paragraph (a) “of” shall be omitted;

(iii) in paragraph (b) “of” shall be omitted in the first and second place where it occurs;

(iv) in paragraph (c) “of” shall be omitted in the first and third place where it occurs;

(b) in subsection (3)—

(i) after “section” there shall be inserted “(a)”;

(ii) at the end there shall be inserted

“or

(b) unless the direct benefit accruing to its district or any part of its district or to the inhabitants of its district or any part of its district will be commensurate with the payments to be made.”;

(c) after subsection (3) there shall be added—

“(4) In any case where—

(a) by virtue of paragraph (a) of subsection (3) a council is prohibited from making any payment for a particular purpose; and

(b) the power or duty of the council to make any payment for that purpose is in any respect limited or conditional (whether by being restricted to a particular group of persons or in any other way), the prohibition in that paragraph shall extend to all payments to which that power or duty would apply if it were not subject to any limitation or condition.

(5) A council may make a payment under subsection (1) on publicity only by way of assistance to a public body or a voluntary body where the publicity is incidental to the main purpose for which the assistance is given.”.

Prohibition of political publicity

41.—(1) After section 115 of the principal Act there shall be inserted—

“Publicity Prohibition of political publicity.

115A.—(1) A council shall not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.

(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters—

- (a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;
- (b) where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.

(3) A council shall not give financial or other assistance to a person for the publication of material which the council is prohibited by this section from publishing itself.

Codes of recommended practice as regards publicity.

115B.—(1) The Department may issue one or more codes of recommended practice as regards the content, style, distribution and cost of council publicity, and such other related matters as it thinks appropriate, and councils shall have regard to the provisions of any such code in coming to any decision on publicity.

(2) The Department may revise or withdraw a code issued under this section.

(3) The Department shall before issuing, revising or withdrawing a code consult such councils, such associations or bodies representative of councils and such other associations or public bodies, as appear to the Department to be desirable.

(4) A code shall not be issued or revised unless a draft of it has been laid before and approved by a resolution of the Assembly.

Separate account of expenditure on publicity.

115C.—(1) A council shall keep a separate account of its expenditure on publicity.

(2) Any person interested may at any reasonable time and without payment inspect the account and make copies of it or any part of it.

(3) A person having custody of the account who intentionally obstructs a person in the exercise of the rights conferred by subsection (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) The Department may by order provide that subsection (1) does not apply to publicity or expenditure of a prescribed description.

(5) Before making an order under subsection (4) the Department shall consult such councils, such associations or bodies representative of councils and such other associations or public bodies as appear to the Department to be desirable.

Sections 115A to 115C: supplementary provisions.

115D.—(1) Sections 115A to 115C apply to any publicity expressly or impliedly authorised by any statutory provision, including sections 107 to 110 and 115.

(2) Nothing in sections 115A to 115C shall be construed as applying to anything done by a council in the discharge of its duties under sections 23 to 27.”

(2) In section 107 of the principal Act (contributions for development of trade, tourism and cultural activities)—

- (a) at the beginning there shall be inserted “(1)”;
- (b) at the end there shall be added—

“(2) A council may contribute under subsection (1)(a) towards the expenses of a voluntary body incurred on publicity only where the publicity is incidental to the main purpose for which the contribution is given.”.

(3) In section 108 of the principal Act (contributions to other voluntary bodies)—

- (a) at the beginning there shall be inserted “(1)”;
- (b) at the end there shall be added—

“(2) A council may contribute under subsection (1) towards the funds of a voluntary body in respect of publicity only where the publicity is incidental to the main purpose for which the contribution is given.”.

(4) In section 110 of the principal Act (information centres) for “local government matters affecting the district” there shall be substituted “matters relating to the functions of the council”.

(5) After section 148(3) of the principal Act (general interpretation) there shall be inserted—

“(4) For the purposes of this Act references to “publicity”, “publish” and “publication” are references to any communication, in whatever form, addressed to the public at large or to a section of the public.”.

The Staff Commission

42. In Schedule 3 to the principal Act (the Staff Commission) after paragraph 2 there shall be inserted—

“**2A.** The Staff Commission may make payments to its members for, or in relation to anything done in connection with, service as members of the Staff Commission and such payments shall be of an amount or rate to be determined by the Department with the approval of the Department of Finance and Personnel but not exceeding the amount or rate specified in or determined under the regulations under section 36(1).”.

Local Government Boundaries Commissioner

43. In Schedule 4 to the principal Act (Local Government Boundaries Commissioner)—

- (a) in paragraph 5(2) of Part I (appointment of assessors) for “and the Chief Survey Officer of Ordnance Survey for Northern Ireland” there shall be substituted “, the Chief Survey Officer of Ordnance Survey for Northern Ireland and the Chief Electoral Officer for Northern Ireland”;
- (b) in paragraph 2(b) of Part II (period for receipt of representations) after “one month” there shall be inserted “, or such longer period as the Commissioner may determine, being a period not exceeding 2 months,”.

Joint Committees

44. In Schedule 7 to the principal Act (provisions applied to Joint Committees) the following entries shall be inserted at the appropriate place in numerical order—

“22(2)-(4)	Duty to adopt certain procedural standing orders.
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77A	Confidentiality of officers' records.
107	Contributions for development of trade, tourism, and cultural activities.
108	Contributions to other voluntary bodies.
110	Information centres.
115	Expenditure for special purposes.
115A	Prohibition of political publicity.
115B	Codes of recommended practice as regards publicity.
115C	Separate account of expenditure on publicity.
115D	Sections 115A to 115C: supplementary provisions.”.

Repeal of certain provisions

- 45.** The following provisions of the principal Act shall cease to have effect—
section 89 (laying of summary accounts before the Assembly);
in section 129(1) (default of council) the words “after causing a local or other inquiry to be held or an investigation to be made”.

Miscellaneous amendments of other statutory provisions

Burial grounds

- 46.** In section 172 of the Public Health (Ireland) Act 1878(**13**) (meeting to determine whether burial ground shall be provided) the word “special” shall cease to have effect.

Term of office of members of district councils and casual vacancies

- 47.**—(1) Section 11 of the Electoral Law Act (Northern Ireland) 1962 (**14**) (election and term of office of members of district councils) shall have effect subject to the following provisions of this Article.

(2) In subsection (2)(b) and (c) for “day next after” there shall be substituted “fourth day after”.

(3) For subsection (5) there shall be substituted—

“(5) A casual vacancy shall be deemed to have occurred—

- (a) if it is a vacancy to which subsection (4)(a) or (b) applies, when and so soon as the Chief Electoral Officer is satisfied that the vacancy exists; or
- (b) if it is a vacancy to which subsection (4)(c) applies, on the date of the determination;

and it shall be the duty of the clerk of a district council within 7 days of any matter concerning a casual vacancy coming to his knowledge to report it to the Chief Electoral Officer.”.

(13) 1978 c. 52

(14) 1962 c. 14 (N.I.)

Consultation with other associations

48. At the end of Article 4 of the Local Government &c. (Northern Ireland) Order 1972(**15**) there shall be added—

“(5) Before exercising its powers under paragraph (3) the Department may consult any other association or any public body with whom consultation appears to the Department to be desirable.”.

Grants for specific purposes

49. After Article 5 of the Local Government &c. (Northern Ireland) Order 1972(**16**) there shall be inserted—

“Grants for specific purposes

5A.—(1) Without prejudice to the amount of any General Grant payable to district councils under this Order, the Department may, with the approval of the Department of Finance and Personnel, make grants to district councils for such purposes as may be specified by the Department.

(2) Any grant made to a district council under this Article shall be in respect of a financial year and shall be subject to such conditions as the Department may determine.”.

Physiotherapists and chiropodists practising acupuncture

50.—(1) Article 13 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985(**17**) (acupuncture) shall have effect subject to the provisions of this Article.

(2) In paragraph (8) after “dentist” there shall be inserted “or a chartered physiotherapist or a state registered physiotherapist or a state registered chiropodist”.

(3) At the end of paragraph (8) there shall be added—

“(9) In this Article—

“chartered physiotherapist” means a member of the Chartered Society of Physiotherapy;

“state registered physiotherapist” means a person registered as a physiotherapist under section 2 of the Professions Supplementary to Medicine Act 1960;

“state registered chiropodist” means a person registered as a chiropodist under section 2 of that Act of 1960.”.

Supply of computer software

51.—(1) Article 20 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (use of spare capacity of computers of council) shall have effect subject to the following provisions of this Article.

(2) After paragraph (1) there shall be inserted—

“(1A) If a council has developed software for the purpose mentioned in paragraph (1) the council may enter into agreements with other persons for the supply by the council of the software.”.

(3) In paragraph (2) after “services” shall be inserted “or supply the software”.

(15) 1972 NI 22

(16) 1972 NI 22

(17) 1985 NI 15

- (4) In paragraph (3) at the end there shall be added “and
“software” means instructions required by a computer to perform intended tasks.”.

Entertainments licence

52.—(1) Schedule 1 to the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (licensing of places of entertainment) shall have effect subject to the provisions of this Article.

- (2) After paragraph 7 there shall be inserted—

“**7A.** An applicant for the variation of the terms, conditions or restrictions on or subject to which an entertainments licence is held shall pay such fee as the Department may determine.”.

(3) In paragraph 10(4)(a) for “Registration of Clubs Act (Northern Ireland) 1967” there shall be substituted “Registration of Clubs (Northern Ireland) Order 1987”.

Repeals

Repeals

53. The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in the third column of that Schedule.

G. I. de Deney
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 4.

COMPETITION

Collection of refuse

- 1.—(1) The following (and only the following) fall within Article 4(1)(a)—
- (a) the collection of household waste;
 - (b) the collection of commercial waste.

(2) In this paragraph “household waste” means anything (other than sewage) which is for the time being household waste for the purposes of Article 14 of the Pollution Control and Local Government (Northern Ireland) Order 1978⁽¹⁸⁾; “commercial waste” means anything (other than sewage) which is for the time being commercial waste for those purposes; “sewage” has the same meaning as in Article 2 of the Water and Sewerage Services (Northern Ireland) Order 1973⁽¹⁹⁾.

Cleaning of buildings

- 2.—(1) Subject to sub-paragraph (2), the cleaning of the windows of any building (whether inside or outside) and the cleaning of the interior of any building fall within Article 4(1)(b).
- (2) The following do not fall within Article 4(1)(b)—
- (a) the cleaning of the exterior (which here excludes windows) of any building;
 - (b) the cleaning of the administrative headquarters of any district council.

Other cleaning

- 3.—(1) The following (and only the following) fall within Article 4(1)(c)—
- (a) the removal of litter from any land;
 - (b) the emptying of litter bins;
 - (c) the cleaning (by sweeping or otherwise) of any street;
 - (d) the cleaning of street name plates.
- (2) In this paragraph—
- “litter” includes leaves but not derelict vehicles, derelict vessels or scrap metal;
 - “litter bin” means a receptacle provided in a street for refuse or litter;
 - “street” has the same meaning as in the Public Health (Ireland) Act 1878⁽²⁰⁾.

Catering

4. The following (and only the following) fall within Article 4(1)(d)—
- (a) providing ingredients for, and preparing and serving, meals;

(18) 1978 NI 19
(19) 1973 NI 2
(20) 1878 c. 52

- (b) providing refreshments.

Maintenance of ground

5.—(1) Subject to sub-paragraph (2), the following (and only the following) fall within Article 4(1)(e)—

- (a) cutting and tending grass (including re-turfing and re-seeding but not initial turfing or seeding);
- (b) planting and tending trees, hedges, shrubs, flowers and other plants (but excluding landscaping any area);
- (c) controlling weeds.

(2) An activity does not fall within Article 4(1)(e) if its primary purpose is research or securing the survival of any kind of plant.

Repair and maintenance of vehicles

6.—(1) Subject to sub-paragraph (2), the repair and the maintenance of any motor vehicle or trailer fall within Article 4(1)(f).

(2) The repair of damage caused by an accident does not fall within Article 4(1)(f).

(3) In this paragraph

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads or otherwise on land;

“trailer” means a vehicle intended or adapted to be drawn by a motor vehicle.

Managing sports and leisure facilities

7.—(1) Subject to sub-paragraph (2), managing any of the following facilities, including any of those facilities provided in sports centres or leisure centres or on other premises where facilities not mentioned in this sub-paragraph are also provided, falls within Article 4(1)(g)—

- (a) swimming pools, skating rinks, gymnasia;
- (b) tennis courts, squash courts, badminton courts, pitches for team games, athletics grounds;
- (c) tracks and centres for bicycles (whether motorised or not), golf courses, putting greens, bowling greens, bowling centres, bowling alleys;
- (d) riding centres, courses for horse racing, artificial ski slopes, centres for flying, ballooning or parachuting and centres for boating or water sports on inland or coastal waters.

(2) Managing any of the facilities described in sub-paragraph (1) provided on premises not predominantly used for sport or physical recreation shall not fall within Article 4(1)(g).

(3) For the purposes of this paragraph, without prejudice to the generality of the term, “managing” includes arranging—

- (a) for instruction in the sport or other physical recreational activity provided;
- (b) for supervision of the sport or activity;
- (c) catering;
- (d) the hiring out of equipment for use at the facility;
- (e) the marketing and promotion of the facility;
- (f) the taking of bookings;
- (g) the collection of, and accounting for, fees and charges;

Status: This is the original version (as it was originally made).

- (h) the physical security of the premises;
 - (i) the cleaning and proper maintenance of the facility other than the external parts of buildings; and also includes assuming responsibility for heating, lighting and other service charges in relation to the facility. Construction and maintenance work

8.—(1) Subject to sub-paragraph (2), building or engineering work involved in the construction, improvement, maintenance or repair of buildings and other structures or in the laying out, construction, improvement, maintenance or repair of land falls within Article 4(1)(h).

(2) The following do not fall within Article 4(1)(h)—

- (a) work relating to parks, gardens, playing fields, open spaces or allotments, except to the extent that the work relates to a building or structure;
- (b) the routine maintenance of a specific building or structure or of specific buildings or structures by a person employed wholly or mainly for that purpose;
- (c) work undertaken by a council authorised by any statutory provision to carry on a dock or harbour undertaking if that work is undertaken for the purposes of or in connection with that undertaking.

(3) For the purpose of sub-paragraph (2)(b) a person shall be treated as employed mainly for the purpose referred to in that sub-paragraph if he is employed for that purpose and also to do security work or cleaning work in relation to the building or buildings or structure or structures concerned.

SCHEDULE 2

Article 53.

REPEALS

Chapter or Number	Short Title	Extent of repeal
1878 c. 52.	The Public Health (Ireland) Act 1878.	In section 172, the word “special”.
1972 c. 9 (N.I.)	The Local Government Act (Northern Ireland) 1972.	Section 11(2) In section 41(8) the words from “and where such an order” onwards. Section 89. In section 115(1) in paragraph (a) the word “of”; in paragraph (b) the word “of” in the first and second place where it occurs and in paragraph (c) the word “of” in the first and third place where it occurs. In section 121(4) the words “except where otherwise expressly provided”.

Chapter or Number	Short Title	Extent of repeal
1985 NI 15.	The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.	In section 129(1) the words “after causing a local or other inquiry to be held or an investigation to be made”. Article 40(4).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes new provision with respect to the way district councils exercise certain of their activities, confers new powers in relation to district councils and makes miscellaneous amendments to the law relating to local government.

Part II of this Order and Schedule 1 secure that district councils undertake certain activities only if they can do so competitively. Part III regulates certain functions of district councils in connection with public supply or works contracts. Part IV enables the Department of the Environment to establish a scheme to give financial assistance to district councils in respect of expenditure incurred in cases of emergencies or disasters and confers a power on district councils to promote safety in the home and the economic development of their districts.

Part V makes miscellaneous amendments to the Local Government Act (Northern Ireland) 1972 and to other statutory provisions relating to district councils. The principal amendments concern—

- (a) the issue of a code of local government conduct for members and officers of district councils (Articles 29 and 35);
- (b) the restriction on members of committees, who are not councillors, from voting on matters before the committee (Article 32);
- (c) the adoption of procedural standing orders (Article 33);
- (d) the transfer of officers exercising functions on behalf of 2 or more councils back to individual councils (Article 35);
- (e) the inspection by councillors, local electors and other ratepayers of accounts and other documents, other than documents relating to records of officers (Articles 36 and 37);
- (f) the power of the local government auditor to issue a prohibition notice to prevent an unlawful expenditure or loss or deficiency (Article 38);
- (g) the enforcement of bye-laws by constables (Article 39);
- (h) the prohibition of political publicity (Article 41); and
- (i) the practice of acupuncture by physiotherapists and chiropodists (Article 50).