



2014 CHAPTER 8

PART 12

PERFORMANCE IMPROVEMENT

General duty

Improvement: general duty

84.—(1) A council must make arrangements to secure continuous improvement in the exercise of its functions.

(2) In discharging its duty under subsection (1), a council must have regard in particular to the need to improve the exercise of its functions in terms of—

- (a) strategic effectiveness;
- (b) service quality;
- (c) service availability;
- (d) fairness;
- (e) sustainability;
- (f) efficiency; and
- (g) innovation.

Improvement objectives

Improvement objectives

85.—(1) For each financial year, a council must set itself objectives for improving the exercise of its functions during that year (“improvement objectives”).

(2) A council must make arrangements to secure achievement of its improvement objectives.

(3) An improvement objective must be framed so as to improve the exercise of the function or functions to which it relates in terms of at least one of the following—

- (a) strategic effectiveness;
- (b) service quality;
- (c) service availability;
- (d) fairness;
- (e) sustainability;
- (f) efficiency; and
- (g) innovation.

Improvement: supplementary

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86.—(1) A council improves the exercise of its functions in terms of—

- (a) strategic effectiveness, if it exercises its functions in a way which is reasonably likely to lead to the achievement of, or assist in achieving, any of its strategic objectives;
- (b) service quality, if there is an improvement in the quality of services;
- (c) service availability, if there is an improvement in the availability of services;
- (d) fairness, if—
 - (i) disadvantages faced by particular groups in accessing, or taking full advantage of, services are reduced; or
 - (ii) social well-being is improved as a result of the provision of services or the way in which functions are otherwise exercised;
- (e) sustainability, if services are provided or functions are otherwise exercised in a way which contributes to the achievement of sustainable development in Northern Ireland;

- (f) efficiency, if there is an improvement in the efficiency with which resources are used in the provision of services or in the way in which functions are otherwise exercised; and
 - (g) innovation, if the way in which services are provided or functions are otherwise exercised is altered in a manner which is reasonably likely to lead to any outcome described in paragraphs (a) to (f).
- (2) For the purposes of subsection (1)(a), a council's strategic objectives are the objectives contained in its current community plan.
- (3) For the purposes of this section references to services are to—
- (a) services provided by the council in the exercise of its functions;
 - (b) services provided by any other person under arrangements made by the council in the exercise of its functions.
- (4) In subsection (2) “current community plan” has the meaning given by section 78(1).
- (5) The Department may by order—
- (a) amend or omit any paragraph of subsection (1);
 - (b) add additional paragraphs to that subsection;
 - (c) amend or omit such additional paragraphs;
 - (d) make such other amendments of this Part as appear to the Department to be necessary or expedient in connection with provision made under this subsection.

Consultation on improvement duties

87. In deciding how to discharge its duty under sections 84 and 85, a council must consult persons appearing to the council to be representative of—

- (a) persons liable to pay rates in respect of hereditaments in the district;
- (b) persons who use or are likely to use services provided by the council;
- (c) persons appearing to the council to have an interest in the district.

Appropriate arrangements under sections 84(1) and 85(2)

88.—(1) In making arrangements under section 84(1) or section 85(2) a council must take into consideration what are regarded, whether by reference to any generally recognised published code or otherwise, as appropriate arrangements for the purposes of that section (or purposes which include those purposes).

(2) But if there is any conflict in any respect between a council's duty under subsection (1) and its duty under section 111(3) to have regard to any guidance

issued under that section, a council must have regard only to its duty under section 111(3).

Performance indicators and performance standards

Performance indicators and performance standards

89.—(1) The Department may by order specify—

- (a) factors (“performance indicators”) by reference to which a council’s performance in exercising functions can be measured;
- (b) standards (“performance standards”) to be met by councils in relation to performance indicators specified under paragraph (a).

(2) Before specifying performance indicators or standards the Department must consult councils and—

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

as appear to the Department to be appropriate.

(3) In deciding whether to specify performance indicators and standards, and in deciding them, the Department must aim to promote improvement of the exercise of the functions of councils generally and in particular in terms of at least one of the following—

- (a) strategic effectiveness;
- (b) service quality;
- (c) service availability;
- (d) fairness;
- (e) sustainability;
- (f) efficiency; and
- (g) innovation.

(4) For the meanings of paragraphs (a) to (g) of subsection (3), see section 86.

(5) A council must make arrangements to exercise its functions so that any applicable performance standard specified under subsection (1)(b) is met.

Improvement planning and information

Collection of information relating to performance

90.—(1) A council must make arrangements for—

- (a) the collection of information which will allow it to assess whether it has met during a financial year those improvement objectives set under section 85(1) which are applicable to that year;
- (b) the collection of information which will allow it to—
 - (i) measure its performance during a financial year by reference to those performance indicators specified under section 89(1)(a) which are applicable to the council for that year;
 - (ii) assess whether it has met during a financial year those performance standards specified under section 89(1)(b) which are applicable to the council for that year;
- (c) the collection of information which will allow it to—
 - (i) measure its performance during a financial year by reference to those self-imposed performance indicators which are applicable to that year;
 - (ii) assess whether it has met during a financial year those self-imposed performance standards which are applicable to that year.
- (2) For the purposes of this section and sections 91 and 92—
 - (a) a self-imposed performance indicator is a factor by reference to which a council has decided to measure its performance in exercising its functions; and
 - (b) a self-imposed performance standard is a standard which a council has decided to meet in relation to a self-imposed performance indicator.

Use of performance information

91.—(1) A council must use the information it collects under section 90 to compare its performance in exercising the functions to which the information relates with—

- (a) its performance in exercising those or similar functions during previous financial years; and
 - (b) so far as is reasonably practicable, the performance of other councils in exercising those or similar functions during the financial year to which the information relates and during previous financial years.
- (2) A council must—
- (a) use the information it collects under section 90 to assess whether it could improve its performance in exercising its functions; and
 - (b) in the light of that assessment, decide what steps it will take with a view to improving its performance in exercising its functions.
- (3) In discharging its duty under this section and section 90 a council must have regard to any guidance issued by the Department.

Improvement planning and publication of improvement information

92.—(1) A council must make arrangements in accordance with this section for the publication of the information described below.

(2) The council must make arrangements for the publication of—

- (a) the council's assessment of its performance during a financial year—
 - (i) in discharging its duty under section 84;
 - (ii) in meeting the improvement objectives it has set itself under section 85 which are applicable to that year;
 - (iii) by reference to performance indicators specified under section 89(1)
 - (a) and self-imposed performance indicators which are applicable to that year;
 - (iv) in meeting performance standards specified under section 89(1)(b) and self-imposed performance standards which are applicable to that year;
- (b) the council's assessment of its performance in exercising its functions during a financial year as compared with—
 - (i) its performance in previous financial years; and
 - (ii) so far as is reasonably practicable, the performance during that and previous financial years of other councils;
- (c) details of the information collected under section 90 in respect of a financial year and what the council has done to discharge its duties under section 91 in relation to that year.

(3) Those arrangements must be framed so that the information is published before—

- (a) 30th September in the financial year following that to which the information relates; or
- (b) such other date as the Department may specify by order.

(4) The council must make arrangements for the publication of a description of the council's plans for discharging its duties under sections 84(1), 85(2) and 89(5) in a financial year together with, if the council thinks fit, its plans for subsequent years (an "improvement plan").

(5) Those arrangements must be framed so that the information is published—

- (a) as soon as is reasonably practicable after the start of the financial year to which the plan must relate; or
- (b) as soon as is reasonably practicable after such other date as the Department may specify by order.

(6) Without prejudice to the generality of section 111, guidance issued under that section may address—

- (a) the manner in which assessments of performance are to be carried out;
- (b) the making of an improvement plan including the procedure to be followed.

Improvement audits and assessments

Improvement information and planning

93. In respect of each financial year, the local government auditor must carry out an audit for the purpose of determining—

- (a) whether a council has during that year discharged its duties under section 92; and
- (b) the extent to which the council has during that year acted in accordance with any guidance issued by the Department about the council's duties under that section.

Improvement assessments

94.—(1) In respect of each financial year, the local government auditor must carry out an assessment for the purpose of determining whether a council is likely during that year to comply with the requirements of this Part.

(2) In conjunction with an assessment under subsection (1), the local government auditor may carry out an assessment for the purpose of determining whether the council is likely to comply with the requirements of this Part in subsequent financial years.

Audit and assessment reports

95.—(1) Each financial year, the Department, after consultation with the local government auditor, must determine which councils are to be councils in respect of which subsection (2) applies in that financial year.

(2) Each financial year, the local government auditor must issue a report or reports in respect of each council to which this subsection applies in that financial year—

- (a) certifying that the local government auditor has carried out an audit under section 93 in respect of the previous financial year;
- (b) stating whether as a result of the audit the local government auditor believes—
 - (i) that the council has discharged its duties under section 92; and
 - (ii) that the council has acted in accordance with any guidance issued by the Department about the council's duties under that section;

- (c) certifying that the local government auditor has carried out an assessment under section 94 in respect of the financial year;
 - (d) stating whether as a result of the assessment the local government auditor believes that the council is likely to comply with the requirements of this Part during the financial year;
 - (e) if the local government auditor thinks it appropriate in the light of an audit or assessment, recommending action that the council should take in order to comply with the requirements of this Part or act in accordance with guidance issued by the Department about the council's duties under section 92 (whether in respect of that or a subsequent financial year);
 - (f) if the local government auditor thinks it appropriate in the light of an audit or assessment, recommending that the Department should give a direction under section 100 and, if so, the type of direction;
 - (g) stating whether, in the light of an audit or assessment, the local government auditor is minded to carry out a special inspection under section 98.
- (3) The local government auditor must send a copy of any report issued under this section to the council concerned and the Department.
- (4) Copies of a report must be sent in accordance with subsection (3)—
- (a) by 30th November in the financial year during which the audit was carried out or to which the assessment relates; or
 - (b) by such other date as the Department may specify by order.
- (5) But the Department may by direction set a date for the sending of a report in relation to a specified council which differs from the date which would otherwise apply under subsection (4) if—
- (a) the local government auditor has requested that the Department give such a direction; and
 - (b) in the opinion of the Department, the circumstances are exceptional.
- (6) In subsection (5) “specified” means specified in a direction under that subsection.

Response to section 95 reports

96.—(1) The following subsections apply where any report received by a council under section 95(3)—

- (a) contains a recommendation under section 95(2)(e) or (f); or
 - (b) states under section 95(2)(g) that the local government auditor is minded to carry out a special inspection.
- (2) The council must prepare a statement of—
- (a) any action which it proposes to take as a result of the report; and

- (b) its proposed timetable for taking that action.
- (3) A statement required by subsection (2) must be prepared—
 - (a) before the end of the period of 6 weeks starting with the day on which the council receives the report; or
 - (b) if the report specifies a shorter period starting with that day, before the end of that period.
- (4) The council must incorporate the statement in its improvement plan for the next financial year.
- (5) If the report recommends that the Department give a direction under section 100, the council must send a copy of the statement to the Department—
 - (a) before the end of the period of 6 weeks starting with the day on which the council receives the report; or
 - (b) if the report specifies a shorter period starting with that day, before the end of that period.

Annual improvement reports

97.—(1) In relation to each council, the local government auditor must produce a report (an “annual improvement report”) for each financial year which summarises or reproduces the reports described in subsection (2), unless no such reports have been issued in respect of that council during that financial year.

- (2) The reports are—
 - (a) each report issued in respect of the council during that financial year under section 95;
 - (b) any report of a special inspection of the council issued under section 99 during that financial year.
- (3) The local government auditor—
 - (a) must publish each council’s annual improvement report;
 - (b) must consider, in the light of a council’s annual improvement report, whether to—
 - (i) make a recommendation to the Department to give a direction to the council under section 100;
 - (ii) exercise any of the local government auditor’s functions in relation to the council;
 - (c) must make any such recommendation as is mentioned in paragraph (b)(i) as the local government auditor considers ought to be made.

Special inspections

Special inspections

98.—(1) The local government auditor may carry out an inspection of a council's compliance with the requirements of this Part if the local government auditor is of the opinion that the council may fail to comply with the requirements of this Part.

(2) But the local government auditor must, before deciding whether to carry out an inspection—

- (a) consult the Department; and
- (b) in a case where the local government auditor has stated in a report under section 95(2)(g) that the local government auditor is minded to carry out a special inspection, consider any statement made by the council in response in accordance with section 96(2).

(3) An inspection under subsection (1) may relate to some or all of a council's functions.

(4) The Department may direct the local government auditor to carry out an inspection of compliance with the requirements of this Part by a council and the local government auditor must comply with the direction.

(5) A direction under subsection (4) may relate to some or all of a council's functions.

(6) Before giving a direction under subsection (4), the Department must consult the local government auditor.

(7) The local government auditor must notify a council if—

- (a) the local government auditor decides to carry out an inspection of the council under subsection (1); or
- (b) the Department has directed the local government auditor to carry out an inspection of the council under subsection (4).

(8) The notification must specify the functions to which the inspection relates.

(9) In carrying out an inspection, and, in the case of an inspection under subsection (1), deciding whether to do so, the local government auditor must have regard to any guidance issued by the Department.

(10) For the purposes of this Part, an inspection under this section is referred to as a special inspection.

(11) In this section a reference to a council's functions includes a reference to arrangements made to facilitate or support the exercise of its functions.

Reports of special inspections

99.—(1) Where the local government auditor has carried out a special inspection the local government auditor must issue a report.

(2) A report—

- (a) must mention any matter in respect of which the local government auditor believes as a result of the inspection that the council is failing or may fail to comply with the requirements of this Part; and
- (b) may, if it mentions a matter under paragraph (a), recommend that the Department give a direction under section 100.

(3) The local government auditor—

- (a) must send a copy of a report to the council concerned and the Department;
- (b) if a report makes a recommendation under subsection (2)(b), must as soon as reasonably practicable arrange for the recommendation to be published; and
- (c) may publish a report and any information in respect of a report.

(4) If a report states that the local government auditor believes as a result of an inspection that a council is failing to comply with the requirements of this Part, the next improvement plan prepared by the council must record—

- (a) that fact; and
- (b) any action taken, or to be taken, by the council as a result of the report.

Powers of direction, etc.

Powers of direction, etc.

100.—(1) This section applies in relation to a council if the Department is satisfied that the council is failing, or is likely to fail, to comply with any of the requirements of this Part.

(2) Where this section applies in relation to a council, the Department may direct it to do all or any of the following—

- (a) prepare or amend an improvement plan or to follow specified procedures in relation to such a plan;
- (b) carry out a review of its exercise of specified functions;
- (c) enter into specified arrangements with another council;
- (d) set specified improvement objectives for itself under section 85.

(3) Where this section applies in relation to a council any Northern Ireland department may direct the council to take any action which that department considers necessary or expedient to secure the council's compliance with the requirements of this Part.

(4) Where this section applies in relation to a council any Northern Ireland department may direct—

- (a) that a specified function of the council must be exercised by that department for a period specified in the direction or for so long as that department considers appropriate; and
- (b) that the council must comply with any instructions of that department in relation to the exercise of that function and must provide such assistance as that department may require for the purpose of exercising the function.

(5) Any Northern Ireland department may by regulations make provision which—

- (a) relates to a statutory provision which confers a function on that department in respect of a function of a council; and
- (b) that department considers necessary or expedient for the purposes of cases in which it makes a direction under subsection (4)(a).

(6) Regulations under subsection (5) may, in relation to the cases mentioned in subsection (4)(b)—

- (a) disapply or modify a statutory provision of the kind mentioned in subsection (5)(a);
- (b) have an effect similar to the effect of a statutory provision of that kind.

(7) Subject to subsection (9), a Northern Ireland department must, before giving a direction under this section, give the council concerned an opportunity to make representations about—

- (a) the report (if any) as a result of which the direction is proposed; and
- (b) the direction proposed.

(8) Subject to subsection (9), a Northern Ireland department must, before giving a direction under this section following a recommendation in a report under section 95(2)(f), have regard to any statement under section 96(2) which the council concerned sends the Department before the expiry of the period of one month beginning with the day on which the council received the report.

(9) A Northern Ireland department may give a direction without complying with subsection (7) or (8) if it considers the direction sufficiently urgent.

(10) Where a department gives a direction without complying with subsection (7) or (8) it shall inform—

- (a) the council concerned; and
- (b) such persons appearing to that department to represent councils as it considers appropriate,

of the direction and of the reason why it was given without complying with subsection (7) or (8).

Supplementary

Power to modify statutory provisions and confer new powers

101.—(1) If the Department thinks that a statutory provision prevents or obstructs compliance by councils with their duty under section 84, the Department may by order make provision modifying or excluding the application of the provision in relation to councils.

(2) The Department may by order make provision conferring on councils any power which the Department considers necessary or expedient to permit or facilitate compliance with the duty under section 84.

(3) In exercising a power conferred under subsection (2) a council must have regard to any guidance issued by the Department.

(4) An order under this section may—

- (a) impose conditions on the exercise of any power conferred by the order (including conditions about consultation or approval);
- (b) amend a statutory provision;
- (c) include supplementary, incidental, consequential and transitional provisions.

Application of certain local government audit provisions

102. —In Part 2 of the Local Government (Northern Ireland) Order 2005 (local government audit)—

- (a) in Article 5 (code of audit practice) and Article 7 (auditor's right to documents and information), references to that Part include references to this Part;
- (b) in Article 7(7), references to the audit of the accounts of any body include references to an audit under section 93, an assessment under section 94 and a special inspection in respect of a council; and
- (c) in Article 8 (audit fees), the reference to every body whose accounts are audited includes a reference to every council which is subject to such an audit, assessment or inspection.