



Department of the
Environment

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The Draft Local Government (Finance) Bill

Consultation Document

July 2009

PROPOSAL FOR A LOCAL GOVERNMENT (FINANCE) BILL

This consultation document seeks views on the Department's proposals for a Local Government (Finance) Bill

Comments should be sent by 31 October 2009 to:

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LOCAL GOVERNMENT (FINANCE) BILL

PURPOSE OF THE CONSULTATION DOCUMENT

1. The Department of the Environment is seeking views from consultees on its proposals for a Local Government (Finance) Bill (the Bill). A draft of the Bill is set out at Annex A.

AIMS OF THE LOCAL GOVERNMENT (FINANCE) BILL

2. The main aim of the Bill is to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland.
3. The Bill will modernise the legislative framework for local government finance by introducing provisions:
 - to remove the requirements for district councils to gain departmental approval for borrowings and the application of their funds or any proceeds from the sale of capital assets;
 - to introduce certain new powers, including the power to invest;
 - to introduce a prudential regime for capital finance;
 - to clarify the nature of the general grant by replacing the two elements of the grant (the resources element and the de-rating element) with two separate grants – a rates support grant and a de-rating grant; and
 - to extend to all departments the general power which allows the Department of the Environment to pay grants to councils.

4. The Bill will also update the legislation on councillors' remuneration by enabling the Department to make regulations:
 - to require councils to make and publish a scheme of allowances; and
 - to establish an independent remuneration panel to advise the Minister of the Environment on councillors' allowances.

PART 1 – FINANCIAL ADMINISTRATION

Background

5. The greater part of the legislative framework concerning local government finance is in Part V of the Local Government Act (Northern Ireland) 1972 ("the 1972 Act"). Although this has been updated by subsequent legislation, provisions in relation to borrowing and council funds are mostly unchanged.
6. It has been recognised for some time that the legislation for local government finance needs to be updated to reflect modern accounting practices and to bring it in line, where appropriate, with best practice observed by local authorities in Great Britain.
7. This need was identified by the Local Government Taskforce Finance Sub-group in its final report submitted in July 2006, as one of a number of areas for future work. The sub-group suggested that consideration could be given to a system of directions from the Department, based on the Statement of Recommended Practice for Local Authorities (SORP) issued by the Chartered Institute of Public

Finance and Accountancy (CIPFA). Membership of the sub-group included elected members and officers from local government and officials from central government.

Summary

8. The new capital finance system sets out the legal framework within which a district council may manage its finances and central government may regulate that activity.
9. The innovative feature of the new system is that district councils will have greater freedom to manage their own financial affairs without having to obtain consent from the Department, and control by central government will be retained through regulations and guidance.

Details of Part 1 of the Bill

10. The main features of the new financial administrative system are set out in paragraphs 11 to 37 below.

Clauses 1 and 2 – General

11. A district council must make arrangements for the proper administration of its financial affairs, and must designate one of its officers as its chief financial officer.
12. The Department will be able to make regulations and issue guidance about the accounting practices to be followed by a district council, or

any committee of a council for which accounts are separately kept, or a joint committee of two or more councils.

13. If there is any conflict between accounting practices specified in regulations and practices specified in guidance, the practices specified in regulations take precedence.

Clauses 3 to 5 – Annual budget

14. These clauses place requirements on district councils regarding the annual budget.
15. Clause 3 re-enacts section 53 of the 1972 Act, requiring a council to approve estimates, authorise expenditure and strike rates for the following year.
16. Clause 4 requires the chief financial officer to submit a report on the robustness of the estimates to the council. The councils must have regard to that report when considering the estimates for the next financial year.
17. Clause 5 requires a council to keep its financial position under review during the financial year.

Clauses 6 and 7 – Reserves

18. There is currently no provision regarding financial reserves held by district councils in Northern Ireland. The provisions for reserves outlined in the Bill will bring Northern Ireland into line with the current

arrangements for reserves held by local authorities in England and Wales.

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

Clauses 8 to 10 – Funds

21. Under current legislation, a council must establish a district fund, and may also establish a capital fund and a renewal and repairs fund. Subject to the Department's approval, a council may also establish a consolidated loans fund for the repayment of its borrowings.
22. The Bill will rename the district fund as the general fund, and repeal the specific provisions for establishing a capital fund, a renewal and

repairs fund and a consolidated loans fund. District councils will have the power to establish such funds as they consider appropriate, without the need for approval from the Department. As is currently the case, where income arises from the investment of money held in a fund, it must be returned to the fund.

23. This gives each council considerable freedom to decide which funds it should establish for any purposes authorised generally or specifically by a statutory provision.

Clauses 11 to 16 – Borrowing

24. The current legislative framework permits councils to borrow for purposes relevant to their functions, subject to the Department's approval. This level of control does not sit comfortably with a modern system of local government.
25. The present wide-ranging power for a council to borrow for purposes relevant to its functions is to be retained, but the requirement for approval from central government will be removed.
26. A council will also be able to borrow for the purposes of the prudent management of its financial affairs. This means that, for the first time, councils will be able to decide to take a loan to refinance existing debt, for example.
27. Clause 13 imposes a broad duty on councils to determine and keep under review the amount they can afford to borrow. Councils will have to comply with regulations made by the Department, and have

regard to codes of practice specified by the Department, when determining an affordable borrowing limit. The code of practice applicable to borrowing is the Prudential Code produced by CIPFA.

28. In the event of a national economic crisis, the Department (with the consent of the Department of Finance and Personnel) will be able to impose a blanket limit on *all* councils. It will also be possible for the Department to impose by direction a limit on an individual council. Limits of this nature would override the prudential limits determined by the councils themselves. These powers would only be used as a last resort.

Clauses 17 and 18 – Credit arrangements

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

Clause 19 – “Capital expenditure”

30. The new system will, as far as possible, take standard accounting practices and concepts as its starting point, which will reduce the need for special definitions in the legislation.
31. Clause 19 gives the Department power to include, or exclude, types of expenditure to be treated as capital expenditure by individual councils (by direction) or more generally (by regulations).

Clauses 20 to 22 – Capital receipts

32. In most cases, a capital receipt is a sum received by a council when disposing of an interest in a capital asset. However, regulations may specify exceptions where the whole or part of a capital receipt is not to be treated as a capital receipt.
33. Clause 21 gives the Department the power to make regulations where a disposal has been made for a consideration that is not wholly in the form of money payable to the council.
34. Clause 22 enables the Department to make regulations about the use of capital receipts, in particular the use of all or part of a capital receipt to meet capital expenditure, or to meet debts or other liabilities.

Clause 23 – Investment

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

Clauses 24 and 25 – Miscellaneous

36. Clause 24 makes provision for security for money borrowed by a council, and for the appointment of a receiver in the event of default.
37. Clause 25 requires a council, when administering its finances in relation to making arrangements under clauses 1 to 24, to have

regard to guidance issued by the Department, and guidance specified in regulations made under the powers in the preceding clauses.

PART 2 – GRANTS TO COUNCILS

Background

38. The Department currently pays a general grant to councils, consisting of a de-rating element and a resources element.
39. The power to pay grants for other purposes currently applies only to the Department of the Environment. This means that, if another department wants to make payments of grants to councils for its own purposes, those payments have to be made through the Department.
40. The current arrangement is unsatisfactory, as the Department has had to pay out grants over which it had no control in respect of policies for which it had no responsibility.
41. This situation has attracted comment from auditors in the past. The Department now intends to address this by extending a power to all departments that will enable them to pay grants in relation to their areas of responsibility.

Details of Part 2 of the Bill

Clauses 26 to 28 – de-rating grant and rates support grant

42. The separation of the general grant into two elements has caused some confusion in the past, which the Department aims to remove by replacing the two elements of the general grant with the proposed de-rating and rates support grants. The statutory formulae currently used to calculate the separate elements of the general grant will be applied subsequently, without amendment, to the calculation of the de-rating and rates support grants.
43. The Department will retain its current powers to reduce the amount payable to a council by way of the de-rating or rates support grants for a financial year. This arises only in cases where a local government auditor's report identifies that a council has failed to achieve or maintain a reasonable standard of economy, efficiency or effectiveness, or has spent excessively in relation to its financial resources or other relevant factors. As is currently the case, any reduction proposed by the Department will require approval from the Assembly before it can take effect.

Clause 29 – Other grants to councils

44. A specific recommendation was made by the Finance Sub-group in 2006¹ about creating a power in primary legislation enabling all departments to make payments of grants to local government in

¹ Local Government Taskforce Finance Sub-Group – Final Report – July 2006

relation to their functions. This has been taken forward as clause 29 of the Bill.

PART 3 – PAYMENTS TO COUNCILLORS, ETC.

Background

45. The current provisions on payments to councillors are set out in sections 12 and 13(2A) and sections 36 to 38 of the 1972 Act.

Review of Councillors' Remuneration

46. In March 2005 the then Minister with responsibility for local government, Angela Smith, announced the setting up of an independent review of councillors' remuneration in Northern Ireland. The Councillors' Remuneration Working Group (CRWG), which included representatives from the National Association of Councillors, Northern Ireland Local Government Association, trade unions, business and voluntary sectors together with an independent member, reported in June 2006².

47. When conducting its review, the CRWG received views, both orally and in writing, from a number of councils and local government organisations. Subsequently, a copy of the report was sent to all councils and to each councillor for comment.

² Councillors' Remuneration Working Group – Review of Councillors' Remuneration in Northern Ireland – June 2006

48. The CRWG made recommendations for the system of councillors' remuneration both under the current 26-council model and also for the new model of local government post-Review of Public Administration.
49. Many of the recommendations of the CRWG were given effect through subordinate legislation. The Local Government (Payments to Councillors) (Amendment) Regulations (Northern Ireland) 2007 (SR 2007/168) provided for:
- the abolition of Attendance Allowance (a daily payment for carrying out approved duties) for councillors;
 - an enhanced Basic Allowance which is an annual payment in recognition of councillors' representational role;
 - an enhanced Special Responsibility Allowance (SRA); and
 - the introduction of a Dependants' Carers' Allowance which permits councils to assist councillors with child or dependant care costs incurred when performing an approved duty.
50. All of the above recommendations were introduced from 6 April 2007. The CRWG also recommended the introduction of a Co-optees' Allowance, which would permit councils to pay an allowance to co-optees to committees required by statute such as a Standards Committee. The Co-optees' Allowance will not be introduced until the new councils are operational.

51. The CRWG's recommendations which require primary legislation are as follows:

- the establishment of an independent remuneration panel for Northern Ireland to make recommendations to the Minister on councillors' allowances;
- the introduction of provisions requiring councils to make and publish a scheme of allowances;
- an enabling power to allow the Department to introduce a severance scheme for councillors who decide not to stand at the next local government elections (this proposal is being taken forward in the Local Government (Miscellaneous Provisions) Bill which was introduced in the Assembly on 22 June 2009); and
- a specific provision enabling councils to provide services and support to councillors as considered appropriate, having paid due regard to any guidance which the Department may issue on this matter (this proposal will be taken forward in the forthcoming Local Government (Reorganisation) Bill).

Details of Part 3 of the Bill

Clauses 30 to 35: Payments to councillors

52. To consolidate all of the provisions dealing with payments to councillors into one Act, the Department proposes to repeal and re-enact, with amendments, the relevant provisions of the 1972 Act.

53. The table below sets out the derivation of the clauses in the Bill. Where the Department proposes to repeal and re-enact without significant amendment, no further commentary is given. Where the existing provision is to be amended, a brief explanation of the change is given.

Clause		Section of 1972 Act	Note
30	Allowances etc for councillors	36	Sub-clauses (1) and (2) re-enact section 36. Sub-clause (3) - new provision requiring a council to make and publish a scheme of allowances
31	Allowances for chairman and vice-chairman of council	12 & 13(2A)	Re-enacts section 12 and 13(2A) without amendment
32	Expenses of official and courtesy visits, etc	37	Re-enacts section 37 without amendment
33	Expenses incurred in attending conferences and meetings	38	Re-enacts section 38 with amendments
34	Panel to advise on payments to councillors	None	New provision

Clause 30 – Allowances etc. for councillors

54. Section 36 of the 1972 Act enables the Department to make regulations about the allowances that may be paid to councillors and to determine the maximum amount that may be paid for each

allowance. This provision will be re-enacted in Clause 30 of the Bill along with an additional provision enabling the Department to make regulations requiring a council to make and publish a scheme of allowances. This reflects the CRWG's recommendation that, in the interests of transparency, councils should be required to make a scheme of allowances and to make this available to members of the public.

Clause 33 – Expenses incurred in attending conferences and meetings

55. Section 38 of the 1972 Act makes provision in respect of the payment of expenses incurred by councillors and officers in attending conferences and meetings. Section 38(1) restricts the payment of expenses to conferences 'for the purpose of discussing matters connected with the discharge of the functions of the council or the development of trade, industry or commerce in the district or otherwise affecting the district or its inhabitants.'
56. This provision has given rise to disagreements in the past about the payment of expenses of councillors attending meetings of, for example, the National Association of Councillors in Great Britain.
57. The Department proposes repealing section 38 and re-enacting it with amendments in order to remove some of the restrictions on the payment of expenses incurred by councillors in attending meetings and conferences. It would now largely be for the council to determine whether a particular conference would be covering matters that relate to the interests of the district or the inhabitants of that district.

Clause 34 – Panel to advise on payments to councillors

58. Another recommendation by the CRWG was that an independent remuneration panel should be established to advise the Minister of the Environment on allowances for councillors. The CRWG considered that a single panel would secure a common framework of allowances and equitable treatment for all councillors in Northern Ireland. This clause enables the Department to make regulations to establish the remuneration panel. It will bring Northern Ireland into line with Scotland and Wales where a national panel³ considers allowances for councillors.
59. Clause 34 will enable the Department, by regulations, to make provision about the membership and functions of the panel.
60. It is intended that the chairman and members of the Northern Ireland remuneration panel will be appointed by the Department and that the public appointments process will be used for the competition.

³ The Scottish Local Authorities Remuneration Committee and the Independent Remuneration Panel for Wales.

PART 4 – MISCELLANEOUS POWERS TO MAKE PAYMENTS

61. In order to ensure that all provisions relating to local government finance arrangements and payments by councils are consolidated into one piece of legislation, the Department proposes to repeal and re-enact the following provisions of the 1972 Act.

Clause		Section of 1972 Act	Note
36	Payments for special purposes	115(1)	Re-enacts section 115(1) without amendment
37	Restrictions on power to make payments under section 36	115(3) to (5)	Re-enacts section 115 (3) to (5) with amendments
38	Public appeals	115(1A)	Re-enacts section 115 (1A) without amendment
39	Limit on expenditure under sections 36 and 38	115(2), (2A) and (2B)	Re-enacts section 115(2), (2A) and (2B) with amendments
40	Subscriptions to certain local government associations and voluntary bodies	111	Re-enacts section 111 without amendment

PART 5 – SUPPLEMENTARY

62. Most of the regulations made under the provisions of this Act, except for those made under Clause 27 (Rates Support Grant), will be subject to negative resolution. This means that the regulations are made by the Department and will come into operation unless the Assembly passes a motion to annul them.
63. Any regulations made under Clause 27 regarding the calculation of the rates support grant would affect the basis for payments from central government to local government. Regulations for this purpose will not come into operation unless approved by a resolution of the Assembly.
64. Before making regulations or orders or issuing guidance under the provisions of the Act, the Department will be required to consult councils and other persons and bodies representative of councils, council members and council officers.

HUMAN RIGHTS

65. The Department believes that the proposed legislation is compatible with the Human Rights Act 1998.

EQUALITY

66. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the proposed legislation will not lead to discriminatory or negative differential impact on any of the section 75 groups. A copy of the screening form can be viewed on the Department's website <http://www.doeni.gov.uk/index/information> .

REGULATORY IMPACT ASSESSMENT

67. The Department has not conducted a regulatory impact assessment as the proposed legislation does not give rise to any associated costs or savings on business, charities, social economy enterprises or the voluntary sector.

RURAL PROOFING

68. The Department has assessed the proposed measures and considers that there would be no differential impact in rural areas or on rural communities.

FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

69. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read Annex B on the confidentiality of consultations. It gives guidance on the legal position about any information given by you in response to this consultation.

ALTERNATIVE FORMAT

70. This document is available in alternative formats. Please contact us to discuss your requirements.

CONSULTATION

71. Comments should be sent by 31 October 2009 to Julie Broadway at the address below or by e-mail to julie.broadway@doeni.gov.uk .

72. If you have any queries in relation to the proposals, you should contact:

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73. This consultation document is being circulated to persons and bodies listed in Annex C and is also available to view at:

http://www.doeni.gov.uk/index/local_government/local_government_consultations.htm

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Local Government (Finance) Bill

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A

B I L L

TO

Make provision for the financial affairs of district councils; to make provision for grants to district councils and for payments to councillors and other payments by district councils.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

FINANCIAL ADMINISTRATION

General

Duty to make arrangements

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

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

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

Accounting practices

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

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

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

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

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

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

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

Annual budget

Annual budget

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

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

(a) shall consider the estimates for the next financial year;

(b) may revise the estimates in such manner as the council thinks fit;

(c) shall approve the estimates, subject to any revision under paragraph (b);

(d) shall authorise the expenditure included in the estimates; and

(e) shall fix for the next financial year the amount estimated to be required to be raised by means of rates made by the council.

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

(a) previously authorised in accordance with the estimates approved by the council; or

(b) otherwise previously authorised by the council; or

(c) if not so authorised, necessarily incurred in circumstances of emergency;

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

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

Report by chief financial officer on estimates

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

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

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

In-year review

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

Reserves

Reserves - general

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

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

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

Controlled reserves

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

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

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

(a) the reasons for that situation; and

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

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

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

Funds

The general fund

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

Power to establish other funds

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

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

Limitation on application of funds

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

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

Borrowing

Power to borrow

11. A council may borrow money—

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

Control of borrowing

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

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

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

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

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

Duty to determine affordable borrowing limit

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

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

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

(a) make provision about—

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

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

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

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

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

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

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

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

Imposition of borrowing limits

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

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

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

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

(a) the circumstances in which a council is to be regarded as having headroom for the purposes of subsection (3), and

(b) the amount of headroom which it has for those purposes.

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

(a) in relation to the transferor, as if the limit in relation to which the headroom exists were reduced by that amount, and

(b) in relation to the transferee, as if the corresponding limit to which it is subject were increased by that amount.

Temporary borrowing

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

(a) is due to the council in the period to which the limit relates, but

(b) has not yet been received by it.

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

Protection of lenders

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

Credit arrangements

“Credit arrangements”

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

(a) it enters into a transaction which gives rise to a liability on its part, and

(b) the liability is a qualifying liability.

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

(a) it falls in accordance with proper practices to be treated for the purposes of the council’s accounts as giving rise to such a liability, or

(b) it falls in accordance with regulations to be treated as falling within paragraph (a).

(3) The reference in subsection (1)(b) to a qualifying liability is to any liability other than—

(a) a liability to repay money,

- (b) a liability in respect of which the date for performance is less than 12 months after the date on which the transaction giving rise to the liability is entered into, and
- (c) a prescribed liability.

Control of credit arrangements

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

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

(2) In applying those limits for the purposes of subsection (1)—

- (a) entry into a credit arrangement shall be treated as the borrowing of an amount of money equal to the cost of the arrangement, and
- (b) variation of a credit arrangement shall be treated as the borrowing of an amount of money equal to the cost of the variation.

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

Capital expenditure

“Capital expenditure”

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

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

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

Capital receipts

“Capital receipt”

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

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

(3) Regulations may —

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

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

Non-money receipts

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

- (a) a council makes a disposal of the kind mentioned in subsection (1) of that section and the consideration for the disposal does not consist wholly of money payable to the council, or
- (b) a council receives otherwise than in the form of money anything which, if received in that form, would be a capital receipt under that section.

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

- (a) make provision for a council to be treated as receiving a sum of such an amount as may be determined under the regulations;
- (b) make provision about when the deemed receipt is to be treated as taking place.

Use of capital receipts

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

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

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

Investment

Power to invest

23. A council may invest—

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

Miscellaneous

Security for money borrowed etc.

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

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

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

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

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

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

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

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

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

Guidance

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

(a) to such guidance as the Department may issue, and

(b) to such other guidance as regulations may specify for the purposes of this section.

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

PART 2

GRANTS TO COUNCILS

De-rating grant

26.—(1) The Department shall for each financial year make a de-rating grant to councils.

(2) The amount of a de-rating grant shall be an amount equal to the difference between—

- (a) the amount of the product of the district rate for that year (within the meaning of the Rates (Northern Ireland) Order 1977 (NI 28)); and
- (b) the amount which, but for the provisions of Articles 31B and 42 of, and paragraph 4 of Schedule 7 to, that Order, would have been the amount of that product.

(3) Subsection (2) is subject to section 28 (reductions in grants).

(4) Payments in respect of de-rating grant shall be made to a council at such times as the Department may determine.

Rates support grant

27.—(1) The Department shall for each financial year make a grant under this section to councils (unless in any particular case the amount of the grant would be nil).

(2) In this section “the rates support grant” means the grant made under this section for any financial year.

(3) The amount of the rates support grant payable to a council for any financial year shall be determined in accordance with regulations.

(4) Subsection (3) is subject to section 28 (reductions in grants).

(5) Regulations under this section may in particular make provision—

- (a) for the amount of the rates support grant to be calculated by reference to a formula;
- (b) for determining the manner in which and time at which that calculation is to be made;
- (c) for determining the person by or to whom any information required for the purpose of that calculation is to be given and the time at which and form in which it is to be given.

(6) The formula may be such that the amount payable is nil.

(7) For the purposes of this section “formula” includes methods, principles and rules of any description.

(8) Regulations under this section may contain—

- (a) any supplementary, incidental or consequential provision,
- (b) any transitional or saving provision,
- (c) any provision for a person to exercise a discretion in dealing with any matter,

which the Department considers appropriate.

(9) Regulations shall not be made under this section unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(10) Payments in respect of the rates support grant shall be made to a council at such times as the Department may determine.

Reductions in grants under section 26 or 27

28.—(1) Subsection (2) applies where the Department is satisfied, from information contained in a relevant report relating to a council, that as regards any financial year—

- (a) the council has failed to achieve or maintain a reasonable standard of economy, efficiency and effectiveness in the discharge of its functions, or
- (b) the expenditure of the council has been excessive having regard to the council's financial resources and other circumstances relevant to the council.

(2) Where this subsection applies, the Department shall prepare and lay before the Assembly—

- (a) a draft order providing that, in such financial year as is specified in the order (or in each of such financial years as are so specified), the amount of any grants payable to the council under section 26 or 27 shall be reduced by such amount as is so specified (or is so specified in relation to that year); and
- (b) a document setting out—
 - (i) the reasons for making any reduction specified in the order; and
 - (ii) such details of the relevant report as the Department thinks appropriate.

(3) If the draft order laid before the Assembly under subsection (2)(a) is approved by resolution of the Assembly, the Department shall make the order in the same terms as the draft.

(4) If that draft order is not so approved, the Department may prepare and lay before the Assembly a new draft order and document complying with subsection (2) and subsection (3) and this subsection apply in relation to that draft order as they apply in relation to the original draft order.

(5) In subsections (1) and (2) “relevant report” means a report made by a local government auditor under Part 2 of the Local Government (Northern Ireland) Order 2005 (NI 18).

(6) The Department may—

- (a) defray any expenditure incurred in any financial year in the provision of services for a council by a body specified in regulations; and

(b) deduct from the amount of any grant payable under section 26 or 27 to the council for that year such amount (not exceeding the total of the expenditure so defrayed) as the Department considers appropriate.

(7) Before exercising its powers under subsection (6) the Department shall consult councils and—

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

as appear to the Department to be appropriate.

Other grants to councils

29.—(1) The Department or any other Northern Ireland department may, in respect of a financial year, make grants to councils for such purposes and of such amounts and subject to such conditions as that department may determine.

(2) Grants shall not be made under this section without the consent of the Department of Finance and Personnel.

PART 3

PAYMENTS TO COUNCILLORS, ETC.

Allowances etc. for councillors

30.—(1) Regulations may provide for the payment by councils of such allowances or other payments as may be prescribed to councillors for, or in relation to anything done in connection with, service as councillors.

(2) Payments by a council under the regulations shall be of such amounts or at such rates as may be determined by the council, but shall not exceed such amounts or rates as may be determined by the Department.

(3) Regulations may require each council to make a scheme setting out the amounts or rates of the allowances or other payments determined by the council.

(4) Regulations under subsection (3) may require councils—

- (a) to make a scheme by a prescribed date;
- (b) to publish a scheme in a prescribed manner.

(5) Payments by a council under the regulations shall be made subject to and in accordance with—

- (a) its scheme; and
- (b) regulations under this section; and
- (c) any guidance issued by the Department.

(6) In this section any reference to a council includes a reference to a joint committee and any reference to the district of a council includes a reference to

the districts of all the councils which have concurred in appointing the joint committee.

(7) In this section “joint committee” has the same meaning as in the Local Government Act (Northern Ireland) 1972 (c. 9).

Allowances for chairman and vice-chairman of council

31.—(1) A council may pay an allowance to the chairman of the council.

(2) A council may pay an allowance to any vice-chairman of the council.

(3) An allowance under subsection (1) or (2) shall be of such amount as the council considers to be reasonable to meet the expenses of the office of chairman or vice-chairman as the case may be.

(4) An allowance under subsection (1) or (2) is in addition to any other allowance or other payment payable under this Part.

Expenses of official and courtesy visits, etc.

32.—(1) Subject to subsection (2), a council may—

(a) make payments towards expenditure reasonably incurred by councillors in making official or courtesy visits, whether inside or outside the United Kingdom, on behalf of the council;

(b) defray any expenses reasonably incurred in the reception and entertainment by way of official courtesy of distinguished persons residing in or visiting the district of the council or persons representative of or connected with local government or other public services whether inside or outside the United Kingdom, and in the supply of information to any such persons.

(2) Payments made by a council under subsection (1)(a) towards expenditure incurred by a councillor for any purpose corresponding to a purpose for which payments may be made under section 30 shall be at such rates as may be determined by the council, but shall not exceed the rates determined by the Department under section 30 for payments for the corresponding purpose.

Expenses incurred in attending conferences and meetings

33.—(1) Subject to subsection (3), a council may make payments towards expenditure reasonably incurred by a councillor in respect of attendance authorised by the council at any conference or meeting, whether inside or outside the United Kingdom, convened by any person or body (other than a person or body convening it in the course of a trade or business or a body whose objects are wholly or partly political) for the purpose of discussing matters which, in the opinion of the council, relate to—

(a) the interests of the district or any part of it; or

(b) the interests of the inhabitants of the district or any part of it.

(2) Payments made under subsection (1) may include any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting.

(3) Payments made by a council under subsection (1) towards expenditure incurred by a councillor for any purpose corresponding to a purpose for which payments may be made under section 30 shall be at such rates as may be determined by the council but shall not exceed the rates determined by the Department under section 30 for payments for the corresponding purpose.

Panel to advise on payments to councillors

34.—(1) Regulations may establish a panel to advise the Department on payments by councils to councillors.

(2) Regulations under this section may make provision relating to the membership and functions of the panel.

(3) Regulations under this section may in particular include provision—

- (a) requiring the panel to comply with directions given by the Department (including directions requiring the panel to provide the Department with advice or information in relation to such matters as the Department may direct);
- (b) requiring the Department to make available to the panel such premises, staff and services as the panel may reasonably require; and
- (c) requiring the Department to pay to members of the panel such allowances as the Department may determine.

Interpretation

35. In this Part “councillor” includes a member of a committee or sub-committee of a council, whether that person is a member of the council or not, and in section 33(1) includes an officer of a council.

PART 4

MISCELLANEOUS POWERS TO MAKE PAYMENTS

Payments for special purposes

Payments for special purposes

36. Subject to sections 37 and 39, a council may make payments for any purpose which in its opinion are in the interests of, and will bring direct benefit to—

- (a) the council;
- (b) its district or any part of its district;
- (c) the inhabitants of its district or any part of its district.

Restrictions on power to make payments under section 36

37.—(1) A council shall not make any payment under section 36 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.

(2) A council shall not make any payment under section 36 for a purpose for which the council is, either unconditionally or subject to any limitation or to the satisfaction of any condition, authorised or required under any other statutory provision to make any payment.

(3) In any case where—

(a) by virtue of subsection (2) 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 subsection shall extend to all payments to which that power or duty would apply if it were not subject to any limitation or condition.

(4) A council may make a payment under section 36 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.

(5) In subsection (4) “publicity” means any communication, in whatever form, addressed to the public at large or to a section of the public.

(6) Subsection (1) does not apply to a payment under paragraph (a) of section 36.

Public appeals

Public appeals

38. Subject to section 39, a council may make payments to any fund which is raised in connection with a particular event directly affecting persons resident in the United Kingdom on behalf of whom a public appeal for contributions has been made—

(a) by the chairman of a council; or

(b) by a committee of which the chairman of a council is a member; or

(c) by such a person or body as is referred to in section 137(3)(c) of the Local Government Act 1972 (c. 70); or

(d) by such a person or body as is referred to in section 83(3)(c) of the Local Government (Scotland) Act 1973 (c. 65).

Limit on expenditure under sections 36 and 38

Limit on expenditure under sections 36 and 38

39.—(1) The total payments made under sections 36 and 38 (taken together) by a council in any one financial year shall not exceed the aggregate of—

- (a) the produce of a rate of 0.0596p in the pound on the rateable value of all hereditaments in a NAV list in the district; and
- (b) the product of a rate of 0.00082p in the pound on the rateable capital value of all hereditaments in a capital value list in the district.

(2) The Department may by order substitute a different amount for any amount specified in subsection (1).

(3) An order shall not be made under subsection (2) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) For the purposes of this section—

“capital value” means capital value for the purposes of the Rates (Northern Ireland) Order 1977 (NI 28) and shall be construed in accordance with Article 39 of that Order;

“NAV list” has the meaning given by Article 40(1)(a) of the Rates (Northern Ireland) Order 1977.

Subscriptions

Subscriptions to certain local government associations and voluntary bodies

40. A council may pay reasonable subscriptions, whether annually or otherwise, to the funds of—

- (a) associations of councils or officers or members of councils formed for the purpose of consultation upon and discussion of matters relating to the common interests of councils or matters relating to local government;
- (b) voluntary bodies established for scientific, technical or professional purposes the objects of which are ancillary to any of the functions of the council.

PART 5

SUPPLEMENTARY

General interpretation

41. In this Act—

“association” includes any body of persons, corporate or unincorporated;

“chief financial officer” means the officer designated under section 1(2);

“council” means a district council, and in relation to any district means the council for that district;

“the Department” means the Department of the Environment;

“direction” means direction in writing; and “direct” shall be construed accordingly;

“district”, in relation to any council, means the district for which that council acts;

“the general fund” means the fund mentioned in section 8;

“proper practices” shall be construed in accordance with section 2(3) and (4);

“public body” means a body (other than a council) established by or under a statutory provision;

“regulations” means regulations made by the Department;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

“voluntary body” means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or individual members.

Regulations

42. Regulations made under any provision of this Act, except section 27, shall be subject to negative resolution.

Consultation on regulations, orders and guidance

43. Before making any regulations or orders under this Act or issuing any guidance under this Act, the Department shall consult councils and—

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

as appear to the Department to be appropriate.

Repeals

44. The repeals set out in the Schedule shall have effect.

Commencement

45.—(1) The following provisions of this Act shall come into operation on Royal Assent—

- section 34;
- section 35;
- section 41;
- section 42;

section 43;
this section; and
section 46.

(2) The other provisions of this Act shall come into operation on such day or days as the Department may by order appoint.

Short title

46. This Act may be cited as the Local Government Finance Act (Northern Ireland) 2009.

SCHEDULE

Section 44.

REPEALS

Short Title	Extent of repeal
The Local Government Act (Northern Ireland) 1972 (c. 9).	Sections 12 and 13(2A). Sections 36 to 38. Sections 53 to 73. Section 111. Section 115. In section 142(c), the words “or the chief financial officer of a council”. In section 143, the words “(other than regulations under section 115(2A))”. In section 148(1) the definition of “chief financial officer”. In Schedule 7, the entry relating to section 36.
The Financial Provisions (Northern Ireland) Order 1978 (NI 11).	Article 9.
The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (NI 15).	Article 24. Article 27.
The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995 (NI 5).	Article 5.
The Trustee Act (Northern Ireland) 2001 (c. 14).	In Schedule 2, paragraph 22.
The Local Government (Miscellaneous	Articles 3 to 7.

Short Title	Extent of repeal
Provisions) (Northern Ireland) Order 2002 (NI 3). The Local Government (Northern Ireland) Order 2005 (NI 18).	Article 28(7). Article 32.

Annex B

The Freedom of Information Act 2000 – Confidentiality of Consultations

1. The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk>).

Annex C

List of Consultees

All Northern Ireland District Councils

arc 21

Association of Local Government Finance Officers

Association of Public Service Excellence

Belfast Solicitors Association

British Chamber of Commerce

Chief Local Government Auditor

Civil Law Reform Division

Clerk of the Petty Sessions

Community Relations Council

Confederation of British Industry

District Judge – Magistrates Court

Equality Commission for Northern Ireland

Equality Forum NI

Executive Council of the Inn of Court of Northern Ireland

Federation of Small Businesses

Food Standards Agency Northern Ireland

General Consumer Council for Northern Ireland

Help the Aged NI

HM Council of County Court Judges

HM Revenue and Customs

Human Rights Commission

Inland Revenue

Law Centre (Northern Ireland)

Law Society of Northern Ireland

Local Government Staff Commission

MEPs

Ministry of Defence

MLAs

MPs

National Association of Councillors

NIC/ICTU

North Western Region Waste Management Group

Northern Ireland Assembly/ Committee for the Environment

Northern Ireland Association of Citizens Advice Bureaux

Northern Ireland Chamber of Commerce and Industry

Northern Ireland Chamber of Trade

Northern Ireland Council for Ethnic Minorities

Northern Ireland Council for Voluntary Action

Northern Ireland Court Service

Northern Ireland Judicial Appointments Commission

Northern Ireland Law Commission

Northern Ireland Local Government Association
Northern Ireland Ombudsman
Northern Ireland Political Parties
Northern Ireland Residents Magistrates' Association
Participation and the Practice of Rights Project
QUB – Institute of Professional Legal Studies
QUB – School of Law
Secretary – Catholic Bishops of Northern Ireland
Society of Local Authority Chief Executives
SWaMP2008
UU – School of Law

In addition, an Executive Summary has been issued to all Section 75 groups currently included on the Department's consultation list.

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