



Belfast City Council

Report to	Strategic Policy & Resources Committee
Subject:	Local Government (Indemnities for Members and Officers) Order (NI) 2012
Date:	25 January 2013
Reporting Officer:	Ciaran Quigley, Assistant Chief Executive (Ext 6038)
Contact Officer:	Stephen McCrory, Democratic Services Manager (Ext 6314) Colin Campbell, Divisional Solicitor (Ext 6055)

1	Relevant Background Information
1.1	On 27 November, 2012 the Local Government (Indemnities for Members and Officers) Order (NI) 2012 (the Order) came into effect (copy attached at Appendix 1).
1.2	The Order provides for the circumstances in which a council may provide indemnities to any of its Members or officers including the provision to secure insurance in connection therewith.

2	Key Issues
2.1	Under the Regulations a council now has power to indemnify its Members and officers when they are carrying out any functions on behalf of the council, or at the request or approval of the council. The power to indemnify extends to circumstances where Members and officers are serving on outside bodies to which they have been appointed by the council.
2.2	The indemnity does not extend to cover those acts by a Member or officers which would constitute criminal acts or any other intentional wrongdoing, fraud or recklessness.
2.3	The power to provide an indemnity also extends to circumstances where a Member or officer is acting outside the powers of the council, or outside the powers of that Member or officer, but where they are acting in good faith. The indemnity also covers cases in which a Member or officer has made a statement (whether by the issue of a document or otherwise) which turns out to be incorrect and which subsequently leads to a claim being taken against that Member or officer.

2.4	<p>Article 7 of the Order provides that the terms of any indemnity require to be agreed by the council. Accordingly, the Committee is recommended to request the Council to adopt the following policy on the indemnity of Members and officers.</p>
2.5	<p><i>Pursuant to the provisions of the Local Government (Indemnities for Members and Officers) Order (NI) 2012 (the Order), Belfast City Council agrees to provide indemnity to its Members and officers on the following terms:-</i></p> <ol style="list-style-type: none"> 1. <i>The indemnity will extend to any action of, or failure to act by, the Member or officer in question, which –</i> <ol style="list-style-type: none"> a) <i>is authorised by the Council; or</i> b) <i>forms part of, or arises from, any functions conferred upon that Member or officer, as a consequence of any function being exercised by that Member or officer (whether or not when exercising that function it is done so in the capacity as a Member or officer of the Council) –</i> <ol style="list-style-type: none"> (i) <i>at the request of, or with the approval of the Council, or</i> (ii) <i>for the purpose of the Council.</i> 2. <i>The indemnity can be in the nature of financial support or support in kind, and shall be provided in relation to any personal financial liability arising in the circumstances set out herein.</i> 3. <i>The indemnity does not extend to any action by, or failure to act by, any Member or officer, which -</i> <ol style="list-style-type: none"> a) <i>constitutes a criminal offence, or</i> b) <i>is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that Member or officer.</i> 4. <i>The indemnity will extend, subject to the provisions of the Order, -</i> <ol style="list-style-type: none"> a) <i>to the defence of any criminal proceedings brought against the Member or officer, and</i> b) <i>any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.</i> 5. <i>Notwithstanding any limitations on the powers of a council, the council may provide an indemnity to the extent that the Member or officer in question –</i> <ol style="list-style-type: none"> a) <i>believed that the action, or failure to act, in question was within the powers of the council; or</i> b) <i>where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the council, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true,</i> <p><i>and it was reasonable for that Member or officer to hold that belief at the time when the Member or officer acted or failed to act.</i></p>

	<p>6. <i>An indemnity shall be provided in relation to an act or omission which is subsequently found to be beyond the powers of the Member or officer in question but only to the extent that the Member or officer reasonably believed that the act or omission in question was within the powers of the Member or officer at the time at which the Member or officer acted.</i></p> <p>7. <i>Only those Members or officers that are in post at the time the indemnities are granted shall be eligible, but the indemnity shall continue to cover them in respect of any actions taken while they were a Member or officer once they have ceased to be a Member or officer.</i></p> <p>8. <i>The indemnity shall be available to Members or officers against the costs of defending libel or slander actions that are taken against them and that relate to their Council functions, but shall not be available where a Member or officer wishes to pursue a claim for defamation against another person.</i></p> <p>9. <i>The indemnity may be withdrawn by the Council where the Member or officer engages in conduct that may weaken the legal position of the Council, such as admitting liability or attempting to negotiate any claim.</i></p> <p>10. <i>The provision of the indemnity shall be without prejudice to any disciplinary action that the Council may take against the Member or officer.</i></p> <p>11. <i>Where the Council has made a financial contribution to a Member or an officer under an indemnity, and that Member or officer subsequently recovers some or all of the expenses that were met through the indemnity, either through legal proceedings or otherwise, the Member or officer shall be obliged to refund such monies to the Council.</i></p> <p>12. <i>The indemnity shall not apply in situations where the liabilities of the Member or officer are adequately covered by any insurance or indemnity provided by any other Organisation.</i></p> <p>2.6 The Department of the Environment has advised that councils should try to ensure that there is not duplication of cover where a Member or officer serves on an outside body and that the council indemnity should not extend where the outside body itself holds sufficient indemnity cover. In order to assess the level of cover held by outside bodies, it is intended that a questionnaire will be issued. This questionnaire will also seek information as to the aims and objectives of the outside organisation and the role which it considers that members or officers play on the body. This information will be useful in progressing part 2 of the Council's declarations of Interest Policy which will cover declarations arising out of membership of an outside body.</p>
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3	Resource Implications
3.1	The Council already has an Officers' Indemnity Policy that allows it to provide indemnities to Members and officers (subject to a £5.000 excess), so it is unlikely that there will be any resource implications, although this will have to be confirmed by the Council's Insurance Broker.

4	Equality and Good Relations Implications
4.1	None.

5	Recommendations
5.1	<p>It is recommended that the Committee:</p> <ol style="list-style-type: none"> 1. request the Council to adopt the policy on the indemnity of Members and officers, as set out in paragraph 2.5 of the report; and 2. agree that a questionnaire is issued to all outside bodies upon which Members or officers sit seeking information on the indemnity cover which the organisation holds and also as to the aims and objectives of the organisation and the role which it considers that Members or officers play on the body.

6	Decision Tracking
<p>Stephen McCrory February 2013</p>	

7	Documents Attached
<p>Appendix 1 - Local Government (Indemnities for Members and Officers) Order (NI) 2012</p>	