

Appendix 2

Belfast City Council response to the Department of the Environment for Northern Ireland consultation on the draft Local Government (Indemnities for Members and Officers) Order (NI) 2010.

Question 1: Do you agree that Council should be able to indemnify all or such of their members or officers as they determine for liabilities incurred when they are acting by virtue of their membership of, or employment by, their councils and for the purpose of their councils?

The Council agrees that the power to indemnify specific individuals should be at the discretion of each council and should apply to circumstances in which members or officers act by virtue of their membership of, or employment by, their councils and for the purposes of their councils.

Question 2: Do you agree with the above circumstances or are there other circumstances in which councils would want to provide indemnities and which should be covered by the 2010 Order?

The Council is content with the power set out in the draft legislation which provides that an indemnity may be provided in relation to any action of, or failure to act by, the member or officer in question, which:

- (a) is authorised by the council ; or
- (b) 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-
 - (i) at the request of, or with the approval of the council, or
 - (ii) for the purposes of the council

Question 3: Are the restrictions on councils' power to provide indemnities proposed above appropriate?

The Council is content with the suggested provisions.

Question 4: Do you agree that the Department is right to:
-limit indemnities from council reserves to situations where individuals have acted honestly and in good faith?
– permit councils to insure against the risk that indemnities might be called upon?
– prohibit councils from providing indemnities, either directly or through insurance, for the cost of starting proceedings for defamation?

The Council agrees that indemnities should not be provided where the action by or the failure to act by a member or officer constitutes a criminal offence or is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer. It is agreed that an indemnity should be provided in relation to the defence of any action for defamation against that member or officer .

Question 5: Are there other express prohibitions that should be attached to the power to give indemnities?

The Council is content that the limitations set out in the draft Order are appropriate.

Question 6: The Department seeks views on this approach to indemnifying members or officers who provide guarantees, opinion letters or letters of comfort to third parties or become liable through activities that are subsequently found to be ultra vires?

The Council agrees that councils should be able to provide indemnities to members and officers to cover cases in which individuals are subject to proceedings in relation to matters authorised by their councils but which are later found to be ultra vires if:

- (a) the individual indemnified, at the point at which he or she acted, believed that the action he or she was taking was within the law or, where the actions consist of providing an opinion letter of comfort, that the contents of that letter were true: and
- (b) that those beliefs were honestly and reasonably held.

Question 7: Are there any other issues that need to be covered in 2010 Order?

The Council believes that the draft Order provides sufficient clarification of the position regarding the granting of indemnities to members and officers in local authorities in Northern Ireland.