

**Donegal County Council
Internal Audit Department**



**Comhairle Contae
Dhún na nGall**
Donegal County Council

IA20/6 - CHIEF EXECUTIVE ORDERS

Final Audit Report

April, 2021

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1. Executive Summary

This audit was carried out as part of the 2020 Internal Audit Work Programme. The objective of this audit was to assess Donegal County Council's usage of Chief Executive Orders (CE Orders) in adherence with the Local Government Act 2001.

The audit focused on the administration and storage of CE Orders across the organisation. Internal Audit liaised with all Directorates and a Questionnaire was compiled and forward to various sections in order to obtain an overarching view of the CE Order process within Donegal County Council. There was a limited response to this request for information; however, Internal Audit compiled the audit report based on the responses received.

The predominant issue which arose in relation to this area is storage of CE Orders and in particular a lack of storage space [redacted]. The Planning Directorate is one of the most frequent users of CE Orders and the Directorate has highlighted this issue as well as a lack of resources to file and store them in a timely and effective manner.

The draft audit was circulated to relevant staff on 9th February, 2021. Internal Audit requested that responses be returned by 23rd February, 2021. Any responses and comments received have been incorporated in the completion of this report.

Internal Audit's findings and recommendations for remedial action, where applicable, are included herein.

2. Assurance Rating

This audit has been assigned an assurance rating of:

Level 2 – Adequate

See **Appendix 2** for Classification of Audit Assurance.

On the basis of the work carried out in this audit, Internal Audit found that there is a generally adequate system of risk management, control and governance in place in relation to Chief Executive Orders. However, there are some weaknesses in the controls in place which may raise some risk concerns, particularly in the area of storage and access.

Some improvements are required to enhance the adequacy and effectiveness of the storage of CE Orders within the organisation in order to eliminate these risks.

3. Introduction/Background

The requirement for Chief Executive Orders is set out in Section 151 of the Local Government Act, 2001 (revised 2016) (**See Appendix 4**).

Local Government functions are classified as either reserved or executive:

- Reserved functions are the preserve of the elected members and are mainly policy related.
- Executive functions are those functions which are not reserved. Many of these are carried out by way of written CE Order. Elected members can obtain an overview of relevant Orders by reviewing the register of CE Orders or inspecting a copy of a particular Order.

Chief Executives can delegate certain executive functions to other officers within the organisation; these delegated functions are carried out by way of CE Orders.

4. Scope

The scope of this audit is as follows:

- Verification of compliance with the Local Government Act 2001 (as amended)
- Assurance that Chief Executive Orders are being used for the purposes outlined in Schedule 15 of the Local Government Act 2001
- Examination of policies and procedures in place to guide staff on using CE Orders appropriately
- Storage of CE Orders

It should be noted that Internal Audit had originally intended in conducting on-site visits to the various area offices to verify the procedures in place among the various Directorates in relation to CE Orders.

However, due to the current restrictions put in place under Coronavirus protocols IA did not conduct visits to the area offices in person but alternatively reviewed procedures remotely.

5. Objective & Methodology

The objective of the audit is to provide reasonable assurance on the adequacy and effectiveness of controls for the usage of Chief Executive Orders and to assess compliance with relevant legislation.

The audit was approached as follows:

- Completion of a Questionnaire by relevant staff.
- Assessment of the policy and procedures currently in place.
- Meetings with relevant staff across different Directorates.

6. Legislation

- The Local Government Act, 2001 (as amended)
- Local Government Act, 2001 - Section 151 deals with Chief Executive Orders – relevant extract attached at Appendix 4
- Local Government Reform Act 2014 – Schedule 1
- Data Protection Act, 2018
- National Retention Policy for Local Authority Records 2002 – Local Government Management Services Board
- Donegal County Council Procurement Policy & Procedures for Goods & Services

7. Findings

Many of the Executive Functions undertaken by the Chief Executive Officer are carried out by way of a written Chief Executive Order. These CE Orders are applicable to all work areas of the Local Authority.

7.1 Policies

While there is some guidance in the legislation there appears to be no specific policies in place to guide staff on using CE Orders appropriately. IA has been advised that procedures for preparing CE Orders have been handed down through staff in a verbal manner.

Some Directorates (e.g. Housing) have a suite of process maps available that refer to the requirements for CE Orders (e.g. Housing Loans, Grants, Tenant Purchase, Procurement etc), which set out the correct format for these orders.

In addition, the DCC Procurement Policy & Procedures for Goods & Services refers to CE Order value, i.e. all transactions/Purchase Orders having a value greater than €12,700 and all appointment of Consultants must be by way of CE Order:

"Section 151 of the Local Government Act, 2001 sets out the requirements for the Chief Executive in carrying out the executive functions by signed order and Schedule 15 specifies functions for which a Chief Executive Order (CEO) must be signed [...] Staff should be guided by the above sections of the Local Government Act and be aware that all transactions/Purchase Orders having a value greater than €12,700 and all appointment of Consultants must be by way of CEO".

7.2 Management/Administration of CE Orders

The current practice is that each Directorate has overall responsibility for CE Orders created within their division in terms of layout, content and sign off. Collating and Binding are the responsibility of the Council Secretariat.

7.2.1 Planning Section

When the Planning Section was recentralized to Lifford HQ, the CE Orders from the six area offices were sent to Lifford. The sorting of these Orders was very time consuming as the register of orders submitted from each area had to be checked individually against the hard copy orders submitted. In some instances, areas kept the original orders on the relevant file. Internal Audit understands that this work is still ongoing due to current workloads.

7.2.2 Water & Environment

Most of the spend in water services is through the Irish Water Oracle system. A minimal amount of expenditure is now on the Agresso system e.g. home phone costs for Waterworks Inspectors.

Any purchase over €10,000 is carried out through Irish Water. In the atypical event of large expenditure being processed through Agresso, the CE Order process is complied with in a similar fashion to other Directorates.

7.2.3 Signing

Section 154 of the Local Government Act, 2001 deals with the delegation of duties by the Chief Executive:

"Part 2: A chief executive for a local authority may by order delegate such of his or her functions as he or she thinks proper to an employee of any local authority for which he or she is chief executive and such person shall perform such duties as are appropriate to the functions so delegated and shall for that purpose and subject to this section act in place of the chief executive".

The responsibility for signing Chief Executive Orders has been assigned to various officers by way of a Delegation of Functions Order.

There is currently no Register of staff authorised to sign CE Orders in place.

Examples of how these Orders are prepared and signed among different Directorate include:

- Corporate Services/Housing: Recommendation prepared and signed by Senior Staff Officer/Staff Officer, CE Order is signed by the Area Manager. Depending on the level of expenditure it may be escalated to a more senior member of staff for signing.
- Roads: Recommendation is signed by Administrative Officer and CE Order signed by Director of Service.

Since decentralisation, the responsibility for individual CE Orders was assigned to Electoral areas/Municipal Districts by way of Delegation of Functions Order.

In general, it appears that in most instances, the Staff Officer and Senior Staff Officer can complete/submit recommendations but the actual CE Order is signed by the Area Manager or more senior official, where required.

7.2.4 Numbering

There is a centrally controlled CE Order Number Generation application which is a web based system that generates the numbers for staff.

The system was designed and developed by Donegal County Council's I.S. Section in 2005. This system is basically a register of all CE Orders generated. The system does not permit the staff member to print an order. It requests that the Order be attached, but same cannot be accessed/made available after the number is generated. It should be noted that if an error is made in generating the CE Order No. it cannot be rectified and therefore the Order No. is rendered obsolete.

CE Orders are numbered by each Directorate respectively. Corporate Services, for example, records all orders with a CH reference and the system allocates the next available order number. Designated staff in each Directorate have access to the system and are responsible for generating the order number.

7.2.5 Register of CE Orders

Section 3 of the Local Government Act, 2001 (as amended) states that:

"Every chief executive shall keep, in respect of each local authority for which he or she is chief executive, a register in which is entered a copy of every order made by him or her in accordance with this section for such local authority".

The CE Order Numbering system can produce a Register which is available for inspection at Council Meetings, if required.

A register of CE Orders is held [REDACTED] this assists with the tracking of Orders so that they can be collated and subsequently bound. The system can also print a list of all orders on request and this is used for Council Meetings etc.

In some instances, an electronic register is maintained and the signed original CE Orders are stored [REDACTED]

7.2.6 Binding

Chief Executive (Manager's) Orders are described in the National Policy for the Retention of Local Authority Records as one of the "Vital Records" of the Local Authority. The policy states that they must be in a bound format on archival quality paper. The Council Secretariat retain and collate orders which are stored in [REDACTED]. When each service has returned all orders they are batched in order. Arrangements are then made through the Reprographics Section to have the batches of orders collected by [REDACTED] this company has been binding all CE/Planning Orders for the past number of years.

Each area office submits the original CE Orders to the County Secretariat at year end for binding purposes. In some instances (e.g. Planning), the area office makes contact with the Reprographics Department which arranges the process for that office.

At present, 2018 CE Orders are currently with the binding company. 2019 Orders are currently in the process of being collated.

7.2.7 Storage

The National Retention Policy states that most Chief Executive Orders must be retained for 30 years with the exception of orders relating to employees which should be archived for closure after 50 years.

All HQ orders are stored in [REDACTED] Area Offices hold and store the original CE Orders in either [REDACTED] (if available). There are other instances where original signed orders are retained in Lever Arch files in the area office.

7.2.8 Storage of Planning CE Orders

As highlighted previously under point 7.2.1 of this report, Planning CE Orders are bound and returned to Lifford HQ from the area offices and are then stored in Bannigans stores.

The storage of CE Orders had been raised with Management on a number of occasions due to a lack of storage space in the [REDACTED] Previously, all Orders were managed by the County Secretary's office.

However, in 1995 when the volume of planning applications began to increase, it was decided that planning would have its own numbering system.

Due to a lack of storage space in [REDACTED] a safe was transferred from the [REDACTED] where CE Orders were stored. After this safe was filled and no other alternative was provided, it was determined that shelving at the rear of one of [REDACTED] would be used for storage of CE Orders. These orders are still stored at this location.

7.2.9 Register of Cancelled/Rescinded CE Orders

It is noted that there is no register of cancelled/rescinded orders currently in place. However, when an order is rescinded this is referenced on the replacement CE Order.

7.2.10 Inspection of Register by Elected Members

County Councillors are permitted to inspect CE Orders at Municipal District meetings under Section 4 of the Local Government Act, 2001 (as amended) which states:

"At every meeting of a local authority, there shall be available for inspection by the elected council so much of the register referred to in subsection (3) as contains any orders made by the chief executive since the last previous meeting of the local authority".

The CE Numbering system can produce a register of CE Orders if required; this register is available for inspection by the elected members on request, however, it is not presented as part of the agenda at Municipal District meetings.

7.3 Data Protection

Personal information contained in CE Orders falls under Donegal County Council's Data Protection Policy under the Data Protection Act 2018. According to the policy, personal information must be:

- Obtained lawfully, fairly and in a transparent manner.
- Obtained for only specified, identified and legitimate purposes.
- Processed only for the purposes for which it has been obtained.
- Adequate, relevant and limited to what is necessary for purpose for which it was obtained.
- Personal data collected and processed must be accurate and (where necessary) kept up to-date.
- Kept only for as long as is necessary for the purposes for which it was obtained.
- Processed in a manner that ensures the appropriate security of the personal data including protection against unauthorised or unlawful processing.

8. Conclusions & Recommendations

8.1 Policies and Procedures

Conclusion

There is a lack of specific policies and procedures in place in order to guide DCC staff in the preparation and administration of Chief Executive Orders. Anecdotal evidence from staff suggests that guidance is provided verbally to staff in relation to CE Orders.

Internal Audit also found evidence of a lack of documentation to support CE Orders in some instances as well as the practice of Orders being put in place after the function has been carried out by staff.

Recommendation

It is recommended that a Corporate Policy be issued centrally in order to provide guidance on the appropriate use of CE Orders. This will improve the consistency of the preparation and administration of Orders across the organisation and will ensure that proper procedures are adhered to.

8.2 Register of CE Orders

Conclusion

Although there is an electronic record of CE Orders available to County Councillors on request, the register is not currently made available at County Council meetings.

Recommendation

It is recommended that the CE Order register should be made available for inspection by the elected council at every meeting in accordance with Section 151 (4) of the Local Government Act, 2001.

8.3 Numbering

Conclusion

While the current web-based app provides an accessible register of generated CE Orders, the system lacks functionality in some areas (e.g. cancelling incorrect order numbers) and is not user-friendly in some aspects. The system is also over 15 years old and requires updating.

Recommendation

It is recommended that the current CE Order system be reviewed by I.S. and updated as necessary in order for users to have a more up to date, user friendly system to enable them to generate and maintain CE Order numbers in an effective and efficient manner.

8.4 Storage

Conclusion

Although most CE Orders are stored securely [redacted] or locked cabinets, IA was informed that there are some instances where original signed orders are retained in Lever Arch files in area offices. This is in contradiction to DCC storage policies and may also contravene GDPR rules in relation to the security of personal information that is retained.

Recommendation

It is recommended that all CE Orders be retained in a secure manner and that the practice of retaining some Orders in lever arch files be discontinued.

8.5 Storage of Planning CEOs

Conclusion

There is a lack of storage space in [redacted] which is inhibiting the proper storage of Planning CE Orders. The Section reported that there was a lack of staff resources within the Directorate which has had the end result of Orders not being filed in a timely manner.

Recommendation

It is recommended that the Planning Directorate undertake a review of the current filing processes in relation to CE Orders, the storage space currently available, potential alternative storage space and the availability of staff should all be considered under this review.

Acknowledgement

I would like to acknowledge the assistance and co-operation of staff from the Housing & Corporate Services Directorate and other administrative staff across the different Directorates in the course of this Audit.

Sean Canning

**Sean Canning,
A/INTERNAL AUDITOR.**

Appendix 1 – Circulation List

09/03/2021

Final Report sent to:

Copied to:

09/02/2021

Draft Report sent to:

Copied to:

Appendix 2 – Audit Classification

Level	Definition
1. Substantial	<p>Evaluation Opinion:</p> <ul style="list-style-type: none"> - There is a robust system of risk management, control and governance - The systems in place should ensure that objectives are fully achieved - The control processes tested are being applied consistently
2. Adequate	<p>Evaluation Opinion:</p> <ul style="list-style-type: none"> - There is a generally adequate system of risk management, control and governance - The systems in place should ensure that essential objectives are fully achieved - The control processes tested are, in general, being applied consistently - However, there are some weaknesses in control that are placing some objectives at risk. There is a risk that some objectives may not be fully achieved - Some improvements are required to enhance the adequacy and/or effectiveness of risk management, control and governance
3. Limited	<p>Evaluation Opinion:</p> <ul style="list-style-type: none"> - There is a weak system of risk management, control and governance - There is considerable risk that objectives will not be achieved - The control processes that exist are not being applied consistently - There are some significant weaknesses in control in a number of areas - Prompt action is required to improve the adequacy and effectiveness of risk management, control and governance
4. Unsatisfactory	<p>Evaluation Opinion:</p> <ul style="list-style-type: none"> - There is an inadequate system of risk management, control and governance - The system has failed or there is a real and substantial risk that the system will fail to meet its objectives - Systems/processes are open to significant error or abuse - Urgent action is required to improve the adequacy and effectiveness of risk management, control and governance
5. No Assurance	<p>Evaluation Opinion:</p> <ul style="list-style-type: none"> - Internal Audit has been unable to form an opinion on the system of risk management, control and governance - Internal Audit has been unable to access or has been prevented from accessing essential information required to form an opinion - Internal Audit has not received the cooperation of staff/management

Appendix 3 – IA20/6 – CE Orders - Summary Recommendations

	<i>Material Issues Identified</i>	<i>Actions Undertaken or to be undertaken</i>	<i>Timeline</i>	<i>Responsible Director & Service</i>
1	<p><u>10.1 Policies and Procedures</u></p> <p>A Corporate Policy be issued centrally in order to provide guidance on the appropriate use of CEOs. This will improve the consistency of the preparation and administration of Orders across the organisation and will ensure that proper procedures are adhered to.</p>	<p>Examination of sample CE Orders across the Directorates and guidelines to be prepared for consistency.</p>	<p>June 2021</p>	<p>—</p>
2	<p><u>10.2 Register of CEOs</u></p> <p>The CEO register should be made available for inspection by the elected council at every meeting in accordance with Section 151 (4) of the Local Government Act, 2001.</p>	<p>Register available at all Plenary meetings and availability of same is referenced in the notice of meeting issued to members.</p>		
3	<p><u>10.3 Numbering</u></p> <p>The current CE Order system be reviewed by I.S. and updated as necessary in order for users to have a more up to date, user friendly system to enable them to generate and maintain CEO numbers in an effective and efficient manner.</p>	<p>Current system to be reviewed with I.S.</p> <p>I.S. also to discuss ownership of the system with relevant Directors of Service.</p>	<p>June 2021</p>	<p>—</p> <p>—</p> <p>—</p> <p>.</p> <p>—</p>
4	<p><u>10.4 Storage</u></p> <p>All CE Orders be retained in a secure manner and that the practice of retaining some Orders in lever arch files be discontinued.</p>	<p>Arrangements for storage to be reviewed. Secure storage of all CE Orders to be reviewed and co-ordinated by Council Secretariat.</p>	<p>June 2021</p>	<p>All Directorates</p>

5	<u>10.5 Storage of Planning CEOs</u> The Planning Directorate undertake a review of the current filing processes in relation to CE Orders, the storage space currently available, potential alternative storage space and the availability of staff should all be considered under this review.	Current filing process to be discussed with Planning and examined in conjunction with storage of orders generally.	June 2021	
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Appendix 4 – Legislation information

The Local Government Act, 2001 (as amended)

Section 151 of the Local Government Act 2001 (revised 2016) deals with Chief Executive Orders, as follows:

Section 1: The chief executive shall in carrying out the executive functions for each local authority for which he or she is chief executive act by a written order signed and dated by him or her in respect of the functions to which this section applies.

Section 2: This section applies to every executive function which—

(a) is required by this or any other enactment to be done by order of a chief executive,

(b) is mentioned in Schedule (details below),

(c) is designated by order made by the Minister under subsection (9), or

(d) is considered by the chief executive to be of sufficient importance to be done by order.

Section 3: Every chief executive shall keep, in respect of each local authority for which he or she is chief executive, a register in which is entered a copy of every order made by him or her in accordance with this section for such local authority.

Section 4: At every meeting of a local authority, there shall be available for inspection by the elected council so much of the register referred to in subsection (3) as contains any orders made by the chief executive since the last previous meeting of the local authority.

Section 5: Any member of a local authority is entitled on request to be furnished by the chief executive for the local authority with a copy of a particular order made by the chief executive.

Section 6: Every document claiming to be an order made and signed by a chief executive shall – (a) be received in evidence without proof of the signature of the person claiming to sign such document or that such person was such chief executive, and (b) until the contrary is proved, be deemed to be an order duly made and signed by such chief executive in accordance with this section and to have been so signed on the date stated in that document.

Section 7: Every document claiming to be certified in writing – (a) by a chief executive to be a true copy of an order made by a chief executive in accordance with this section, or (b) by a delegated employee in accordance with section 154 to be a true copy of an order made by a delegated employee in accordance with that section, shall – (i) be received in evidence without proof of the signature of the person claiming so to certify or that such person was such chief executive or such delegated employee, as the case may be, and (ii) until the contrary is proved, be deemed to be evidence of the contents of the order of which it claims to be a copy and of the fact that such order was duly made and signed by such chief executive in accordance with this section or by such delegated employee in accordance with section 154, as the case may be, on the date stated in the certified copy.

Section 8: The failure or omission to act by signed order in accordance with this section does not of itself operate to invalidate any action or decision taken by a chief executive or a local authority.

Section 151 - Schedule 15 – Functions to be done by Manager’s Order.

1. A decision on an application under any enactment for the grant of a permission, approval, permit, consent, certificate, licence or other form of statutory authorisation.
2. A statutory notice served under the provisions of any enactment requiring compliance with such an enactment.
3. A decision to take legal proceedings.
4. The acquisition or disposal of land or an agreement regarding the use of land.
5. The letting of a dwelling.
6. The acceptance of a tender.
7. The award of grants, loans or other financial assistance.
8. The appointment of staff.

Section 154 of the Local Government Act, 2001 deals with the delegation of duties of the Chief Executive.

Section 2: A chief executive for a local authority may by order delegate such of his or her functions as he or she thinks proper to an employee of any local authority for which he or she is chief executive and such person shall perform such duties as are appropriate to the functions so delegated and shall for that purpose and subject to this section act in place of the chief executive.

Section 11 of the Local Government Act 2001 (as amended) deals with the sealing of documents.

(7) A local authority to which subsection (3) relates shall –

(b) have a seal which shall be judicially noticed and every document claiming to be an instrument made by it and to be sealed with its seal (claiming to be authenticated in accordance with subsection (8)) shall be received in evidence and be deemed to be that instrument without further proof unless the contrary is shown.

(8) The seal referred to in subsection (7) (b) shall be authenticated by the signature of the Cathaoirleach or of an employee of the authority nominated in writing for that purpose by the chief executive following consultation with the Cathaoirleach.

Other Issues referencing Chief Executive Orders in the Local Government Act 2001 (as amended).

Section 148 (1) (a) deals with the appointment of a deputy chief executive which must be done in consultation with the Cathaoirleach.

Section 173 (1) The Ethics Registrar is assigned their duties by way of CE Order.

Section 229 (3) Any contract or instrument which, if entered into or executed by an individual, is not required to be under seal may be entered into or executed on behalf of the local authority by the chief executive in accordance with section 149 (5) or by an employee generally or specially nominated by order of the chief executive for that purpose.