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*Judgment: approved by the Court for handing down  
(subject to editorial corrections)*

Delivered: **25/01/2007**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**APPLICATION BY DERRY CITY COUNCIL FOR JUDICIAL REVIEW**

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**WEATHERUP J**

[1] On 29 March 1613 King James I granted a Charter which provided ".....that the said city or town of Derry, for ever hereafter be and shall be named and called the city of Londonderry...." The Charter defined the boundaries of the city as being three Irish miles from the middle of the city.

[2] The 1613 Charter made further provision for the administration of the city and the surrounding area. The county of Londonderry was established comprising the city and surrounding lands, formerly known as County Coleraine, together with parts of the counties of Tyrone, Antrim and of Tyrconnell, the latter to become known as Donegal. Further the 1613 Charter established that the citizens and inhabitants of the city of Londonderry should form a new corporate body by the name of the Mayor and Commonality and Citizens of the city of Londonderry. In addition the Charter created "the Society of the Governor and Assistants, London, of the new plantation in Ulster, within the realm of Ireland" which Society became known as The Honourable the Irish Society.

[3] The applicant in this Judicial Review, Derry City Council, seeks a declaration that the present name of the city is Derry. Alternatively the applicant seeks an order requiring HM Government or the Department of the Environment to take the necessary steps to effect a change of the name of the city from Londonderry to Derry. Mr Lavery QC and Mr Farrelly appear for the applicant and Mr McCloskey QC and Mr Maguire QC appear for the respondents.

[4] The Irish Society made grants to the companies of the City of London. The companies of the City of London and the Irish Society did not fulfil their obligations under the 1613 Charter. In 1635 the companies and the Irish Society were fined £70,000 in the Court of Chancery for their breach of the terms of the Charter and the rights of the companies of the City of London and of the Corporation of Londonderry and of the Irish Society were annulled and invalidated.

### **The Charter of 10 April 1662**

[5] On 10 April 1662 King Charles II granted a further Charter and the extent of the present application of that Charter was a matter of debate in these proceedings. By the terms of the 1662 Charter it was stated that "... we will, ordain, constitute, *confirm*, and declare that the said city or town of Derry, for ever hereafter be, and shall be named and called the City of Londonderry....." The boundaries of the city were again stated to be three Irish miles from the middle of the city. Secondly the Charter provided that the surrounding county was to be named the County of Londonderry. Thirdly the citizens and inhabitants of the city of Londonderry were to be a body corporate by the name of Mayor and Commonality and Citizens of the city of Londonderry. It was further provided that a Mayor of the city be elected, that there be twelve Aldermen of the city and twenty four Chief Burgesses of the city, together forming the Common Council of the City. The Charter described the body corporate formed by the 1613 Charter and later annulled as the Corporation of Londonderry. Fourthly the Charter re-established the Honourable the Irish Society consisting of a Governor, a Deputy and 24 Assistants. There were many additional provisions set out in the 1662 Charter.

### **The Municipal Corporations (Ireland )Act 1840.**

[6] Parliament intervened to reorganise municipal corporations in Ireland in 1840. The Municipal Corporations (Ireland) Act 1840 provided for the regulation of municipal corporations in Ireland and the alteration of the Charters by which bodies corporate had been constituted. Section XII stated that it was expedient that the boroughs named in Schedule A to the Act should continue to be towns corporate. Schedule A included the Borough of Londonderry and the style of the corporate body was stated to be the Mayor, Commonality and Citizens of Londonderry. It was further provided by Section XII that after the first election of counsellors under the 1840 Act the body corporate should take and bear the name of the Mayor, Aldermen and Burgesses of the borough. By section XX of the Act the boundaries of the borough were defined in Schedule C of the Act.

[7] By section I of the Act the 1662 Charter was altered in that so much of the Charter "as is inconsistent with or contrary to the Provisions of this Act shall be repealed and annulled." The alteration of the Charter included the style and composition of the corporation and the boundaries of the borough. The name of the city recited in the 1662 Charter was unaffected.

### **The Local Government (Ireland) Act 1898.**

[8] Parliament intervened again to reorganise local government in Ireland in 1898. The Local Government (Ireland) Act 1898, at section 1, provided that a Council was to be established in every administrative county. By section 21(1) each of the boroughs mentioned in the second schedule to the Act was to be an administrative county of itself and was to be called a county borough. The second schedule named six county boroughs in Ireland and included Londonderry. The name of the city recited in the 1662 Charter was unaffected.

[9] Constitutional development has witnessed sovereign powers move from the Crown, by the exercise of the Prerogative, to Parliament by the passing of legislation. When Parliament legislates on any issue it displaces any exercise of the Prerogative on that issue. "Once the superior power of Parliament has occupied the territory, the prerogative must quit the field" per Lord Mustill in R (Fire Brigades Union) v Secretary of State [1995] 2 All ER 244. 265d. Thus the territory occupied by the 1840 Act and the 1898 Act displaced the 1662 Charter from that territory. Accordingly the terms of the Charter in relation to the corporation were replaced by the terms of the legislation. In relation to the name of the city it is common case that the 1840 Act and the 1898 Act did not affect the provision in the 1662 Charter that the city name was to be Londonderry.

[10] The extent to which the exercise of the Prerogative may be affected by legislation passed by the Northern Ireland Parliament remains to be considered below.

### **The Local Government (Northern Ireland) Act 1972.**

[11] The Northern Ireland Parliament was established by the Government of Ireland Act 1920. The Northern Ireland Parliament reorganised local government and the present arrangements were established by legislation in 1971 and 1972. The Local Government Boundaries Act (Northern Ireland) 1971 section 1(i) provided that Northern Ireland be divided into 26 districts to be known as local government districts. Each local government district was to incorporate the whole or the major part of the places specified and this included Londonderry County Borough as one of the 26 local government districts. The recommendations of the Local Government Boundaries

Commissioner were adopted by the Local Government (Boundaries) Order (NI) 1972 which specified the names of the 26 districts and the names of the wards and the boundaries of each district. Londonderry was named as a local government district comprising 27 wards and the names of the wards and a description of the boundaries were set out. The 26 local government districts included 8 boroughs and 2 county boroughs, namely Londonderry and Belfast.

[12] The Local Government Act (Northern Ireland) 1972 provided for a new structure of local government.

Every local government district established under the 1971 Act was to be a district council and the council was to be a body corporate. The name of the council was the name of the district with the addition of the words "district council" (section 1).

The councils were given powers to apply for the grant of a charter to become a borough. Where such a charter was granted or where there was an existing charter "(a) the district shall be known as a borough; (b) the council shall be known as the council of the borough" (section 2(7)). Where a borough was a city, for any reference to the borough there was substituted a reference to the city (section 2(8)). There were then two boroughs that were cities, namely Belfast and Londonderry.

[13] Further, the 1972 Act provided for the future of existing charters at section 132 as follows -

"(1) On 1st October 1973 the charter of the corporation of every borough other than a county borough or a borough to whose corporation subsection (3)(b) applies shall be annulled.

(2) The council for a district which includes the whole or the major part of a borough other than a county borough may, before 1st October 1973, resolve that the charter of the corporation of the borough shall have effect in relation to the district; and, if the borough bears a name other than the name of the district, the resolution shall provide for the name of the corporation of the borough to be changed to correspond to the name of the district.

(3) On and after 1st October 1973 the charter of-

- (a) the corporation of each county borough;
- and

(b) the corporation of a borough with respect to whose charter a resolution has been passed under subsection (2); shall have effect in relation to the district which includes the whole or the major part of the borough as existing immediately before that date, but subject to any order made under section 134(4)(c).

(5) The corporation established or regulated by a charter to which subsection (3) applies shall continue to bear the name it bore immediately before 1st October 1973 or, where a resolution passed under this section provides for a change of its name, shall on and after that date bear the name specified in the resolution, and shall continue to have perpetual succession, and shall act by the council of the district mentioned in that subsection."

[14] The effect of the above provisions was that the charter of every borough (other than the county boroughs of Londonderry and Belfast) was annulled unless the council for the district resolved that the charter was to apply to the district. The charters of the county boroughs of Londonderry and Belfast continued to apply to their respective boroughs. The names of the corporations of the county boroughs continued to apply. Thus the Charter of the corporation of the county borough of Londonderry continued after 1 October 1973; the name of the corporation, Londonderry, continued to apply; as Londonderry was a city the name of the council of the borough became Londonderry City Council.

[15] In addition the 1972 Act provided for the change of name of the district of a council as follows -

51(1) The [Department] may, by order made on the application of a council, change the name of the district of the council.

52(8) Where the name of a district which is a borough is changed, the charter of the borough shall have effect as if the new name were substituted for the old.

[16] In exercise of the powers under section 51(1) of the 1972 Act the Department of Environment made the Change of District Name (Londonderry) Order (Northern Ireland) 1984. Article 2 stated -

"The name of the district of Londonderry shall be changed to Derry."

[17] Thus in 1984 the name of the district became Derry. Under section 52(8) of the 1972 Act the 1662 Charter has effect as if the new name Derry was substituted for the old name Londonderry. Does section 52(8) apply to change the name of the city, as the applicant contends, or does it apply to change only the name of the local government district, as the respondents contend?

**The applicant's grounds for Judicial Review.**

[18] The applicant's challenge is in two parts. The first part challenges "the failure of Her Majesty's Government and the Department of the Environment to recognise and accept that the name of the City of Londonderry established by the Charter was changed to the City of Derry by virtue of Sections 51(1) and 52(8) of the Local Government Act (Northern Ireland) 1972 and the Change of District Name (Londonderry) Order (Northern Ireland) 1984. Secondly the challenge is to the failure of HM Government and the Department of the Environment "to take all reasonable steps to change the name of the city to Derry or to seek the exercise of the Royal Prerogative to ensure that the name is Derry."

[19] The applicant's grounds for Judicial Review are stated as follows -

"(a) In failing to recognise and accept that the name of the city is Derry the Government has failed to acknowledge change brought about by legislation.

(b) By maintaining that the name of the city remains unchanged the Government is obstructing the wish to the citizens of the city as represented by the City Council.

(c) The Department of the Environment has failed in its duty as the Government body with responsibility for Local Government in not recognising and accepting that the name of the city is Derry.

(d) The Department of the Environment has failed to provide any or adequate reason for its unwillingness to accept the name of the city as Derry.

(e) In the alternative the Government and the Department of the Environment have failed to take

steps to accede to a request for a change in the name of the city to Derry.

(f) Derry City Council has legitimate expectation that the Department of the Environment would cooperate, guide and advise regarding the name of the city and this has not been met.

(g) In the circumstances the failure by the Department of the Environment to adequately respond to inquiries was unreasonable and a disservice to Derry City Council and the citizens it services."

### **The competence of the 1972 Act to alter the 1662 Charter.**

[20] The respondents raise three preliminary grounds on which they contend that the limited powers of the Northern Ireland Parliament were not capable of changing the 1662 Charter and hence the 1972 Act was not capable of changing the name of the city. The Government of Ireland Act 1920 limited the legislative competence of the Northern Ireland Parliament by listing certain "excepted matter". The respondents contend that legislation made in Northern Ireland can not alter the 1662 Charter on the ground that it is outside the competence of such subordinate legislation to alter the Charter as an exercise of the Prerogative. There are two relevant "excepted matters" relied on by the respondents. First, by section 4(1) of the 1920 Act, the Parliament of Northern Ireland did not have power to make laws in respect of "the Crown or the succession to the Crown, or a regency, or the property of the Crown..... ". Secondly, by section 4(2) there was no power to make laws in respect of "dignities or titles of honour". These excepted matters were carried through into the Northern Ireland Constitution Act 1973 which by section 2(2) and Schedule 2 paragraph (1) did not extend legislative devolution to "the Crown etc" and at paragraph (5) did not extend legislative devolution to "dignities and titles of honour". This in turn was carried through into the Northern Ireland Act 1998 which by section 4 and Schedule 2 paragraphs 1 and 6 contain the same excepted matters from the legislative competence of the new Northern Ireland Assembly.

[21] The respondents rely on the above limitations to contend that the 1972 Act, being Northern Ireland legislation, was not competent to amend the 1662 Charter. In the first place it is contended that the limitation in relation to "the Crown" extends to the exercise of the Prerogative and hence the Charter cannot be amended by Northern Ireland legislation. Secondly it is contended that matters affecting the name and status of the City of Londonderry concern

"dignities and titles of honour" and are thus outside the legislative competence of Northern Ireland legislation.

[22] Under Schedule 10 of the Northern Ireland Act 1998 a "devolution issue" includes a question whether a purported or proposed exercise of a function by a Minister or Northern Ireland department is or would be invalid by reason of Section 24 (being incompatibility with Convention rights, community law, discrimination or aiding or inciting another to discriminate on the grounds of religious belief or political opinion or modifying an entrenched enactment) and any question arising under the 1998 Act about excepted or reserved matters (as listed in Schedules 2 and 3 of the Act). As required by Schedule 10 of the 1998 Act and Order 120 of the Rules of the Supreme Court this Court ordered the issue of a Notice of a Devolution Issue to the Attorney General, the Attorney for Northern Ireland and the Office of First Minister and Deputy First Minister. The devolution issues concerned the proposed exercise of a function by the Department, namely action to effect a change of the city name to Derry, as contended for by the applicant, when such action related to excepted matters, namely the Crown and dignities and titles of honour, as contended by the respondents. Mr McCloskey QC and Mr Maguire QC on behalf of the notice parties indicated that the notice parties did not intend to enter an appearance as a party in the proceedings.

[23] The first limitation on legislative competence concerns the Crown. "The Crown" carries a number of distinct though associated meanings chief among them being the legal and constitutional distinction to be drawn between "the Crown as monarch" and "the Crown as executive". The Crown as executive describes the collective structure of central government in the United Kingdom. (Halsburys Laws Volume 12 paragraph 1 - 3). The respondents contend that this limitation has the effect of preventing Northern Ireland legislation touching areas covered by the 1662 Charter as an exercise of the Prerogative. Professor Calvert in Constitutional Law in Northern Ireland (1968) at page 222 suggests a narrow interpretation of "the Crown" because the paragraph deals separately with questions of succession, regency and Crown property. Further, there are subsequent limitations dealing with various aspects of the Prerogative, such as the making of peace or war and the armed forces. I am satisfied that the exclusion of legislative competence in the area of "the Crown" is to be narrowly interpreted as applying to the Crown as monarch and does not extend to the exercise of the Prerogative. Accordingly I am satisfied that the reference to "the Crown" in Section 4(1) of the 1920 Act did not have the effect of preventing Northern Ireland legislation for being applied to areas where there had been an exercise of the Prerogative. As the applicant points out, if that were so it would not be necessary to include the later limitation in respect of "dignities and titles of honour" which are themselves instances of the exercise of the Prerogative. Instances of the exercise of the Prerogative will be outside the competence of the Northern Ireland Parliament to the extent that the subject matter of the

exercise is within the list of excepted matters. I reject the respondents first ground of objection to the competence of the 1972 Act to alter the 1662 Charter.

[24] Further the respondents contend that the name of the city is an excepted matter under the heading of "dignities or titles of honour". The monarch enjoys the sole right of conferring all titles of honour and dignities (Halsbury's Laws Volume 8(2) para 831). The dignities now usually created are peerages and knighthoods. The grant of armorial bearings, which is governed by the law of arms, is regarded as a dignity (Halsbury's Laws Volume 35 paras 901 -976). The instances referred to in Halsbury's Laws are dignities and titles of honours to individuals, and in the case of awards for services to industry, to corporations. There are no instances of the naming of a place amounting to a dignity or title of honour. There are instances of royal patronage of places including the grant of place names but I have not been referred to any authority that indicates that such measures are dignities or title of honour. I have not been satisfied that the name of the city is an excepted matter as being a dignity or title of honour. I reject the respondents second ground of objection to the competence of the 1972 Act to alter the 1662 Charter.

[25] The respondents third ground of objection relies on section 7 of the Interpretation Act (Northern Ireland) 1954 which provides:

"No enactment passed or made after the commencement of this Act shall bind or affect in any manner whatsoever Her Majesty or Her Majesty's rights or prerogatives, unless it is stated therein that Her Majesty is bound thereby to the full extent authorised or permitted by the constitutional laws of Northern Ireland or to such less extent as is specified in the enactment."

[26] It is evident from the terms of section 7 of the 1954 Act that there are circumstances in which Northern Ireland legislation may affect the Prerogative, thus appearing to undermine further the respondents argument above that the exclusion of the Crown from the remit of Northern Ireland legislation extends to the exercise of the Prerogative. However under section 7 the Prerogative may only be affected by Northern Ireland legislation in accordance with "the constitutional laws" of Northern Ireland and then only as "specified" in the legislation. The former condition recalls the range of excepted matters from legislative competence set out in the Government of Ireland Act 1920, as discussed above. The second condition requires that the Prerogative may only be affected as specified in the Act.

[27] The effect of section 7 of the 1954 Act was considered by the Court of Appeal in Re W's Application [1998] NI 219. The Secretary of State purported to exercise the Prerogative in circumstances that were incompatible with a statutory scheme. It was held, in accordance with The Fire Brigades Union above, that the Crown had yielded its prerogative powers on the subject to Parliament. Counsel for the appellant relied on section 7 of the 1954 Act to the effect that in the absence of express words the Prerogative remained intact and capable of exercise, notwithstanding the existence of the statutory scheme. Carswell LCJ at page 230b - 230e stated that the principle of statutory interpretation applicable in England, where there was no statutory equivalent of section 7, was that the Crown was not bound by a statute unless its terms expressly so provided or it so appeared by necessary implication. Section 7 did no more than make specific provision for the same rule in Northern Ireland, but omitting that part founded on necessary implication. It was not considered that the effect of section 7 was intended to preserve the Prerogative where its exercise had been curtailed by the existence of inconsistent statutory provisions.

[28] That the 1972 Act affects the exercise of the Prerogative under the 1662 Charter is in accordance with the constitutional laws of Northern Ireland. Further the effect of the 1972 Act on the 1662 Charter, for the purposes of the present dispute, is specified in the Act, as appears from sections 132(1), (2), (3) and (5) and 58(2) set out above. Accordingly section 7 of the 1954 Act does not operate to prevent the provisions of the 1972 Act from applying to the 1662 Charter. I reject the respondents third ground of objection to the competence of the 1972 Act to alter the 1662 Charter.

### **Londonderry Corporation.**

[29] The respondents raise a further ground of objection to the change of name to Derry City Council having the effect of changing the name of the city. The respondents contend that while the amendments under the 1972 Act had the effect of creating Londonderry City Council they also had the effect of retaining the former Londonderry Corporation. Thus it is said that the name of Londonderry remains as the name of a corporate entity and the name of the city also remains Londonderry. This is said to arise from the effect of section 132(3) of the 1972 Act above, which provides that the Charter of Londonderry Corporation should have effect in relation to the district of the county borough and by section 132(5) above that such corporation should continue to bear its previous name.

[30] I am unable to accept this argument. The name of the corporation prior to 1 October 1973 was "Londonderry" and by virtue of section 132(5) that continued to be the name of the corporation. I do not interpret this to mean

that the old corporation continued in existence. Rather I interpret this to mean that after 1 October 1973 the corporate body that continued was to bear the same name, which in the present case was "Londonderry". By virtue of other provisions of the 1972 Act referred to above the description of the corporate body became "City Council". The 1972 Act took the 26 local government districts and established a district council for every local government district. Each such district could petition for the grant of a Charter designating the district a borough. If there was an existing Charter for a borough the Charter was annulled unless the Council resolved that the Charter applied to the district. The existing Charter for each county borough (as in the case of Londonderry) continued to apply to the district. Boroughs could thus emerge in three ways, being by petition by the Council to become a borough (Section 2(1)), by the resolution of a borough to continue its Charter (Section 132(2)) or, in the case of a county borough, continuation of the existing Charter (Section 132(3)). In each case, if the borough was a city, the Council would be known as such (Section 2(7) and (8)). Section 132(5) applied to Charters for county boroughs (being Belfast and Londonderry) and to Charters for boroughs that resolved to continue. Section 132(5) provided continuity for the previous names of the boroughs or county boroughs. Section 135(5) did not maintain a separate entity known as Londonderry Corporation after 1 October 1973. I reject the respondents further ground of objection based on the continuation of Londonderry Corporation.

**Has the change to Derry City Council changed the name of the city to Derry?**

[31] I turn to consider the applicants grounds in support of the claim that the change to Derry City Council has changed the name of the city to Derry. The Charter of 1662 declares the name of the city to be Londonderry and also provides for a corporate body comprising the inhabitants and citizens of the City of Londonderry and the make up of the Common Council of the City of the same name. The applicant accepts that the legislative changes of the 19<sup>th</sup> century affected the corporation and did not affect the description of the corporation as Londonderry and did not affect the name of the city as Londonderry. However the applicant contends that there was not a distinct entity comprising "the city" as it is said to be the description of a place that was named Londonderry. According to the applicant this was of no consequence until 1972 when the City Council became entitled to change the name of the district. When the name of the district was changed it becomes important, contends the applicant, to recognise that there is no separate legal entity comprising "the city" and accordingly the change of name applies to the place that is the city as well as the district. The applicant relies on section 52(8) of the 1972 Act which provides that where the name of a district, which is a borough, is changed, the Charter of the borough shall have effect as if the

new name were substituted for the old. The applicant's point about section 52(8) is also based on the premise that a reference to the borough necessarily includes a reference to the city.

[32] First of all reference should be made to the terms of the power to effect a name change. Section 51(1) refers to the change of name of "the district", which is defined in section 1(3) of the 1972 Act as a local government district established under the 1971 Act or the 1972 Act. The 1984 Order that effected the change of name specifies that the name of "the district" shall be changed. It is clear that the power to change the name is dealing with the name of the local government district. As the district was a borough and the borough a city the description of the council became City Council.

[33] Section 51(8) provides that where the name of "a district" is changed the new name shall be substituted for the old in the Charter of the borough. The applicant therefore contends that the substitution in the Charter of the name Derry for that of Londonderry applies, not just in relation to the name of the local government district and borough and council, but also in relation to the name of the city. The applicant's argument does not extend to substituting the name Derry for Londonderry wherever it appears in the Charter, so that the applicant's do not contend for a change in respect of the county name of Londonderry. The applicant's argument is limited to the name of the city on the basis that there is no difference between the identity of the local government district and the identity of the city.

[34] The Charter of 1662 is more than a Charter of the borough. It is indeed a Charter which established a corporation from the citizens and inhabitants of the city with the name of the Mayor and Commonality and Citizens of the City of Londonderry and with the Mayor, Aldermen and Chief Burgesses forming the Common Council of the City. By the 1840 Act the style of Londonderry borough was changed to the Mayor, Alderman and Burgesses of Londonderry. By the 1898 Act the body corporate was Londonderry County Borough. By the 1972 Act it became Londonderry City Council and by the 1984 Order it became Derry City Council. However the 1662 Charter concerned matters other than the corporation. It established the name of the county. It established the name of the city. It recited many supplementary functions unaffected by the name of the administrative district or the borough or the county borough.

[35] The 1984 Order made under the 1972 Act had the effect of changing the name of the administrative district from Londonderry to Derry and hence the name of the Council for that district to Derry City Council. The 1662 Charter recognises the difference between the name of the city and the name of the corporate body administering the city, as it recognises the name of the different entity that is the county. The change of name of the Council affected the name of the corporate body administering the city. I reject the argument

that the city is not a place that is a separate entity. The local government district and the city and the county are three separate entities. Only the name of the local government district (and the consequential changes to the names of the borough and the council) were affected by the Order in 1984. The change of name of the City Council did not have the effect of changing the name of the city.

**Is the Department required to change the name of the city to Derry?**

[36] The Derry City Solicitor in correspondence with the Department of the Environment set out the applicant's case that the effect of the 1984 Order made under the 1972 Act was to change the name of the city from Londonderry to Derry. In the event that the applicant's argument was not accepted by the Department the Derry City Solicitor requested the Department to take the necessary steps to effect the change of the name of the city from Londonderry to Derry. Letters outlining that request dated 17 February 2005 and 22 March 2005 did not result in a positive response from the Department. The applicant's contend that the Department should exercise powers under section 134 of the 1972 Act or alternatively should facilitate the exercise of the Prerogative to effect a change of name to Derry.

[37] Section 134 provides as follows -

“(1) The [Department] concerned may at any time, whether before or after 1st October 1973, *by order make such incidental, consequential, transitional or supplemental provision as appears to it to be necessary or expedient for the general or any particular purposes of this Act* or of any other transferred provision passed in the same Session as this Act or in any subsequent Session (but before 1st October 1973) or made by Order in Council under the Northern Ireland (Temporary Provisions) Act 1972 before that date or in consequence of any of the provisions thereof or for giving full effect thereto, and nothing in any other provision of this Act or any other such transferred provision shall be construed as prejudicing the generality of this subsection. (Italics added)

(2) Any such order may in particular include provision -

(c) for modifying a charter which continues to have effect by virtue of section 132(3)

(including the making of provision for the designation of aldermen, who shall number not more than one-quarter of the whole number of the councillors, and the conferment of the freedom of the borough)."

[38] Accordingly the applicant requested the Department to make an order under section 134(1) of the 1972 Act modifying the 1662 Charter so that the name of the city would be Derry. The applicant relies on the power of the Department to make an order under section 134(1) "... as appears to it to be necessary or expedient for the general or any particular purposes of this Act..." and contends that an order changing the name of the city to Derry would be "incidental, consequential or supplemental" to the purposes of the 1972 Act. The respondents contest the contention that the proposed name change is necessary or expedient for any purpose of the 1972 Act or for any other permitted purpose under section 134(1).

[39] The relevant purpose under the 1972 Act concerns the power to change the name of the local government district, to which the name of the city is said by the applicant to be incidental, consequential or supplemental. Having found above that the local authority and the district and the city are separate matters I am unable to accept that the change of name of the city is incidental, consequential or supplemental to the change of the name of the city council. The 1972 Act is concerned with the administration of local government, including the names of local government districts and councils. It is not one of the purposes of the Act to provide for the names of towns or cities. Nor am I satisfied that such a change is "necessary or expedient". More particularly the Department has not considered that an order changing the name of the city is necessary or expedient for any purpose of the 1972 Act and no legal basis for setting aside the Departments conclusion has been established.

[40] In the alternative the applicant contends that the Government and the Department should facilitate the exercise of the Prerogative to effect a change of the name of the city to Derry. The respondents contend that there is a process by which alterations might be effected so as to achieve an alteration of the Prerogative and it is for the applicant to undertake such process. As set out in the respondents skeleton argument a Petition may be submitted to Her Majesty in Council, outlining and explaining the proposed changes and the underlying reasons, with an accompanying draft Supplemental Charter, and these would be referred to a Committee of the Privy Council for consideration.

[41] The name of the city has been determined by the 1662 Charter. Alteration of the name of the city will be by alteration of the Charter

accordingly, either by the exercise of the Prerogative or by legislative change. It is for the applicant rather than the respondents to drive that process forward as the applicant may be advised. No ground of Judicial Review has been established for the Court ordering the Government or Department to change the name of the city from Londonderry to Derry.

[42] In summary I reject the applicant's contention that the change of name from Londonderry City Council to Derry City Council under the Change of District Name (Londonderry) Order (Northern Ireland) 1984 had the effect of changing the name of the city specified in the 1662 Charter from Londonderry to Derry. Further I reject the applicant's argument that the Department is obliged to exercise powers under section 134(1) of the Local Government (Northern Ireland) Act 1972 to modify the 1662 Charter to change the name of the city from Londonderry to Derry or that the Department is otherwise obliged to effect that name change. To achieve the name change desired by the applicant it is necessary to alter the 1662 Charter by the further exercise of the Prerogative or by legislation.