

# DEPARTMENT OF THE ENVIRONMENT'S RESPONSE TO COMMENTS RECEIVED ON ITS PROPOSAL FOR A LOCAL GOVERNMENT (CONTRACTS AND COMPULSORY PURCHASE) BILL

## Introduction

1. On 12 December 2008, the Department issued a Consultation Document to interested parties on its proposal for a Local Government (Contracts and Compulsory Purchase) Bill.
2. The main aim of the Bill is to clarify the powers of district councils to enter into long-term service contracts with the private sector and so remove any concerns contractors and financiers might have about entering into Public Private Partnership (PPP) or Private Finance Initiative (PFI) type contracts with councils. The Bill will also give power to councils to acquire land otherwise than by agreement (i.e. vest land) for waste management purposes.
3. The need for the Bill has arisen because of an EC Landfill Directive which requires Member States to achieve targeted reductions in the amount of biodegradable waste being sent to landfill. It is imperative that councils meet those targets and so avoid possible infraction proceedings. However, to do so will require the construction of new recycling facilities and one of the options being progressed by councils (through their Waste Management Groups) is to contract with private sector contractors to build the facilities and provide recycling services to the Waste Management Groups by means of PPP/PFI contracts.

## Comments received

4. The Department received 14 responses to its Consultation Document. Of those, 2 advised that they had no comments to make, while another simply stated that it supported the Bill.
5. One respondent noted that, while the Bill was primarily to meet the demand of waste management, it welcomed that the legislation could be applied to other

local government functions. It considered that some guidance could be given for potential other areas of application and queried whether the legislation could be interpreted in the same way as the Local Government (Contracts) Act 1997 in England and Wales.

#### *Department's response*

*Clause 1 of the Bill clarifies the powers of district councils to enter into contracts for the provision of assets or services (or both) for the purpose of, or in connection with, the discharge of any of their functions. That provision is not limited to Public Private Partnership (PPP) or Private Finance Initiative (PFI) contracts, but includes all procurement arrangements, including leases and service agreements.*

*Certified contracts (clauses 2 to 7 of the Bill) will however facilitate longer-term arrangements (contracts of at least 5 years) such as PPP/PFI contracts. Councils will be free to use these provisions in relation to any of their functions but, as indicated in the Consultation Document, they will have to demonstrate that such arrangements represent best value as required by the Local Government (Best Value) Act (Northern Ireland) 2002.*

*PPP/PFI contracts often extend between 15 and 30 years and generally include the provision, or improvement, of assets. Such contracts must be of significant capital value (at least £20M) to be viable so that procurement costs are not disproportionate. While local authorities in the rest of the UK have entered into PPP/PFI type contracts in relation to a number of their functions (e.g. housing, schools, transport, highways, social care, etc.), it is unlikely that councils in Northern Ireland will have the same opportunities to do so as they will not be responsible for the same range of functions as their UK counterparts (and their budgets will be significantly smaller).*

*The Bill is very similar to the Local Government (Contracts) Act 1997 in England and Wales and should be interpreted in much the same way as that legislation.*

6. Another respondent advised that it was supportive of the Department's proposals to enable councils to engage the private sector to build the facilities and provide recycling services by means of PPP/PFI. The respondent was also supportive in principle of provisions in the Bill that would enable arc21 and SWaMP2008, as bodies corporate, to enter into certified contracts and vest land for waste management purposes so long as the necessary governance arrangements were in place to ensure that these groups continue to act in the best interest of local government.

#### *Department's response*

*The participant councils of arc21 and SWaMP2008 have agreed, for the purpose of establishing an appropriate legal vehicle tasked with implementing the major procurement arrangements which will arise from their respective Waste Management Plans, to form joint committees in accordance with section 19 of the Local Government Act (Northern Ireland) 1972. The councils have separately and effectively adopted a Statement of Principles as fundamental principles, which underpin the role, and purpose of the joint committees and which establish the parameters within which the joint committees shall function and operate. Those Principles are:*

- Principle of Consensus;*
- Principle of Limit of Delegation;*
- Principle of Functional Responsibilities;*
- Principle of Equitable Shared Funding; and*
- Principle of Equal Committee Representation.*

*It is an overarching principle that all policy decisions and decisions with significant financial implications for the joint committees shall be taken on the basis of the consensus of all the participant councils within the framework of their Waste Management Plans. Any material change to the Waste Management Plans, or any decisions in relation to the acquisition or use of significant assets, or the incurring of significant liabilities, would require the prior approval of the participant councils.*

7. Comments received from nine respondents were very similar. Two welcomed the Bill; the other seven commented that, while the Bill will be helpful in facilitating waste infrastructure procurements, it will not address all of the legislative issues concerning the procurement process.

One respondent urged the Department to ensure that the Bill was in place by summer 2009 to suit waste management procurements. Seven others commented that current indications were that the Bill should complete its passage by mid-2009 and they considered it important that this timescale should be complied with and that any suggested revisions do not compromise this timing.

All nine respondents requested that consideration should be given to the inclusion of the following in the Bill:

- (a) the power for councils to grant warranties, guarantees and indemnities;  
and
- (b) the power for councils to grant cross-indemnities and to accept joint and several liability.

Eight of the nine respondents further requested that consideration be given to the inclusion of the following provision in the Bill:

- (c) the removal of the need for Departmental sanction to be given for loans.

All nine respondents recognised that the Bill was the first of a two-phase process to provide the legislative provisions which they thought were necessary. They requested that consideration be given to the inclusion of the following in the next phase of legislation:

- (d) the power for councils to form and hold an equity share in a joint venture or arm's length company;
- (e) the power for councils to indemnify their members and officers if they become directors of such companies; and
- (f) the power for councils to delegate certain functions and decision-making to such companies.

## *Department's response*

*There has been a slight slippage in the legislative timing for the Bill and it is now expected to become operational from November 2009. The Department is content that this is unlikely to have an adverse impact on the proposed waste procurement process.*

*As regards (a), (b) and (f) above, the Department proposes to address these issues in its forthcoming Waste Bill. A consultation paper on proposals for inclusion in this Bill issues on 6 April with a deadline for comments of 3 July 2009. It is proposed that the relevant legislation will be introduced in the Assembly as soon as possible thereafter.*

*The power at (c) above will be included in the Department's forthcoming Local Government (Finance) Bill. Consultation on that Bill is due to commence in summer 2009 and its provisions are scheduled to come into operation by autumn 2010.*

*The Department proposes to include provisions in a forthcoming Local Government Bill to provide the power at (d) above.*

*As regards (e) above, the Department proposes to make an order under Article 33 of the Local Government (Northern Ireland) 2005 to enable councils to indemnify some or all of their members and officers. The Order is subordinate legislation and it is hoped to commence consultation in autumn 2009 and have the legislation in place by spring 2010.*