

THE DEPARTMENT OF THE ENVIRONMENT'S RESPONSE TO COMMENTS RECEIVED TO THE DRAFT LOCAL GOVERNMENT (CONTRACTS) REGULATIONS (NORTHERN IRELAND) 2011

Introduction

1. The Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 (the 2010 Act) received Royal Assent on 26 March 2010. While Parts 2 and 3 of the 2010 Act came into operation at that time, Part 1 (which concerns contracts of councils) has yet to be commenced. The main aim of Part 1 is to clarify the power of councils to enter into long-term service contracts (certified contracts) with the private sector (e.g. PPP/PFI type contracts). Part 1 enables the Department to make regulations in relation to the certification requirements for certified contracts.
2. The Department issued a Consultation Document on its draft Local Government (Contracts) Regulations (Northern Ireland) 2010 on 2 November 2009 to interested parties and requested comments by 29 January 2010.

General comments

3. The Department received seven responses. Of those seven, two advised that they had no comment to make, while three simply welcomed, supported or were satisfied with the draft Regulations.

Other comments

4. The remaining two respondents both suggested that the Regulations should make provision for, or set out, a pro forma certificate to ensure administrative consistency and clarity (to be used where a council contract is to be a "certified contract" under the 2010 Act).

Department's response

The Department can only include in regulations that which it is permitted to include by powers in the enabling legislation (i.e. sections 3(2)(e) to (g) and 3(3) of the 2010 Act refer). Those powers do not include a power for the Department to include provision for, or set out, in regulations a pro forma certificate. The Department does however propose to issue a Guide to Part 1 of 2010 Act and its Regulations (when both are made). That Guide will include pro forma certificates which should ensure consistency and clarity where councils, or the local government waste management groups, issue certificates in respect of any certified contracts they enter into.

5. Of the two respondents mentioned in paragraph 4, one (one of the two local government Waste Management Groups which have been established and constituted as bodies corporate) commented that the intention behind the Regulations was unclear. The respondent explained that, if the intention is that that body should fall within the meaning of "district council" (as provided for in the draft Regulations), the Department should ensure there is suitable clarity to prevent any need to amend the subordinate legislation which established the body. The other respondent commented that there was a need to clarify that the provisions in the Regulations would apply to the two Waste Management Groups which are bodies corporate.

Department's response

The Regulations will provide that a "district council" includes a "joint committee" and defines the latter as a joint committee:

- (a) which has been established under section 19(1) of the 1972 Act (i.e. the Local Government Act (Northern Ireland) 1972);*
- (b) which has been constituted as a body corporate by an order made under section 19(9) of that Act; and*
- (c) to which Part 1 (Contracts of councils) of the 2010 Act has been applied by such an order.*

It is the Department's view that the above provision makes it sufficiently clear that the Regulations apply to any joint committee which has been constituted as

a body corporate (by an order made under section 19(9) of the 1972 Act) provided that that order applies Part 1 of the 2010 Act to that body. Section 23 of the 2010 Act amends the Orders constituting arc21 and SWaMP2008 as bodies corporate to apply Part 1 of the 2010 Act to those bodies. There is therefore no need to amend those Orders. Nevertheless, the Department proposes to clarify this matter in its proposed Guide.

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