

Local Government Policy Division

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**To All Consultees
(listed in Annex B)**

**THE LOCAL GOVERNMENT (CONTRACTS) REGULATIONS
(NORTHERN IRELAND) 2010**

Purpose

1. The purpose of this consultation is to seek comment on the Department's proposal to make the Local Government (Contracts) Regulations (Northern Ireland) 2010. A copy of the draft Regulations is attached as Annex A to this letter.

Background

2. The Department proposes to make the Regulations using powers in the Local Government (Miscellaneous Provisions) Bill - formerly the Local Government (Contracts and Compulsory Purchase) Bill – which was introduced to the Northern Ireland Assembly on 22 June 2009.
3. The Department carried out a consultation exercise on the former Bill, which included provisions relating to contracts of councils, during the period December 2008 to March 2009. Those provisions are now included in the current Local Government (Miscellaneous Provisions) Bill. One of the aims of the current Bill is to clarify the power 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

such contracts. When made, the legislation will enable councils to certify contracts which cannot be challenged in private law proceedings (i.e. cannot be held to be ultra vires) but may be challenged in public law proceedings (i.e. by means of judicial review or audit review). However, even if on application for judicial review or audit review a court was of the opinion that a council did not have the power to enter into the contract or had exercised any power improperly, the court will have discretion to determine that the contract has effect as if the council had had the power to enter into it or had exercised that power properly in entering into it.

4. The current Bill sets out a number of “certification requirements” a council must satisfy for a contract to be certified. Those “certification requirements” are that a council must have issued a certificate which:
 - includes details of the period for which the contract operates or is to operate;
 - describes the purpose of the contract;
 - contains a statement that the contract is or is to be a contract falling within subsection (5) or (6) (subsections (5) and (6) essentially provide that a contract is with another person, or his financier, and that the contract operates or will operate for a period of at least 5 years);
 - states that the council has the powers to enter into the contract and specifies what those powers are;
 - states that a copy of the certificate has been given (or will be given) to those parties required *by regulations*;
 - deals with any other matters required to be dealt with *by regulations*; and
 - confirms that the council has complied (or will comply with) any requirement imposed *by regulations* with respect to the issue of a certificate.

5. Two further “certification requirements” are set out in the Bill. These are that a council must:
 - ensure a certificate is signed by any person who is required to sign it *by regulations*;
and
 - have obtained the consent to the issue of the certificate from each of the persons with whom the council has entered into the contract.

The Local Government (Contracts) Regulations (Northern Ireland) 2010

6. Using powers in the Bill (the Bill will become the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009 (the 2009 Act) when Royal assent is obtained) identified in paragraphs 4 and 5 above, the Department proposes to make the above mentioned Regulations.
7. Regulation 1 cites the title of the Regulations and will bring them into operation. The Department proposes to commence the Regulations at the same time as the contracts provisions in the 2009 Act become operational.
8. Regulation 2 defines certain terms used in the Regulations. In particular, it provides that, for the purposes of the Regulations, a district council includes arc21 and SwaMP2008, i.e. two of the three local government Waste Management Groups which have been formed as joint committees and have been constituted as bodies corporate and to which the contracts provisions of the 2009 Act have been applied.
9. Regulation 3 requires a council to ensure that a copy of every certificate in respect of a certified contract is given to:
 - the local government auditor who has been assigned to audit the accounts of the council; and
 - each of the persons who are party to the contract.
10. The 2009 Act will require that, in the case of a certified contract, the certificate must state that the council has the power to enter into the contract and it must specify the statutory provision (or each of the statutory provisions) which confers that power (see fourth bullet point in paragraph 4 above) . Regulation 4 provides that, where a council states in a certificate that its power to enter into the contract is section 99 of the Local Government Act (Northern Ireland) 1972, the council must also specify in the certificate each statutory provision conferring a relevant function or, where there are two or more relevant functions, the statutory provisions conferring the main relevant functions. Section 99 of the 1972 Act is a general power enabling a council to enter into contracts necessary for the discharge of any of its functions and should only be used in support of a function given by other statutory powers. Regulation 4 also

defines, for the purposes of that regulation, that a function is a relevant function if the contract is reasonably necessary for or incidental to the discharge of the function.

11. Regulation 5 requires a council to ensure that a certificate issued by it is signed by the council's chief financial officer or a person who reports directly to or is directly accountable to the chief financial officer.

Freedom of information

12. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations as they give guidance on the legal position about any information given by you in response to this consultation.
13. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.
14. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances.
15. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk>).

Equality

16. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the proposed Regulations will not

lead to discriminatory or negative differential impact on any of the section 75 groups. A copy of the screening form can be viewed on the Department's website http://www.doeni.gov.uk/index/information/equality_unit.htm

Comments

17. Comments on the draft Regulations should be sent by 29 January 2010 to Jim Stewart at the address or e-mail address above.

18. This Consultation Document is being circulated to persons and bodies listed in Annex B and is also available to view at http://www.doeni.gov.uk/index/local_government/lg_funding/local_government_consultations.htm.

Local Government Policy Division
Department of the Environment

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2010 No.-DRAFT

LOCAL GOVERNMENT

**The Local Government (Contracts) Regulations (Northern Ireland)
2010**

Made - - - - - ***
Coming into operation - - - - - ***

The Department of the Environment makes the following Regulations in exercise of the powers conferred by sections 3(2)(e) and (f) and 3(3) of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009(a).

Citation and commencement

1. These Regulations may be cited as the Local Government (Contracts) Regulations (Northern Ireland) 2010 and shall come into operation on *****.

Interpretation

2. In these Regulations –

“the 1972 Act” means the Local Government Act (Northern Ireland) 1972(b);

“the 2009 Act” means the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009;

“certificate” means a certificate issued by a district council in satisfying the certification requirements in relation to a contract;

“chief financial officer” has the meaning assigned to it by section 148(1) of the 1972 Act and, in the case of a joint committee, means the officer who has responsibility for supervising the joint committee’s arrangements for the receipt of money paid to it and the issue of money payable by it or, if no such officer has been appointed, the chief officer of the joint committee;

“district council” shall include a joint committee–

(a) which has been established under section 19(1) of the 1972 Act,

(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 the 2009 Act has been applied by such an order; and

“the local government auditor” means the auditor assigned by the Department under Article 3(1)(b) of the Local Government (Northern Ireland) Order 2005(c) to audit the accounts of the council.

(a)
(b) 1972 c.9 (N.I.)
(c) S.I. 2005 /1968 (N.I. 18)

Copies of certificates

3. A district council shall ensure that a copy of every certificate issued by it is given to –
- (a) the local government auditor; and
 - (b) each of the persons with whom the district council has entered, or is to enter, into the contract in relation to which the certificate is issued.

Matters to be dealt with in a manner prescribed by regulations

- 4.—(1) Where in relation to a contract, a district council –
- (a) states in a certificate that it had or has power to enter into the contract; and
 - (b) specifies that the statutory provision, or one of the statutory provisions, conferring the power is section 99 of the 1972 Act,

the district council shall specify in the certificate each statutory provision conferring a relevant function, or, where there are two or more relevant functions, the statutory provisions conferring the main relevant functions.

(2) For the purposes of this regulation, in relation to a contract, a function is a relevant function if the contract is reasonably necessary for or incidental to the discharge of the function.

Signature of certificates

5. A district council shall ensure that a certificate issued by it is signed by the chief financial officer of the district council, or a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the chief financial officer.

Sealed with the Official Seal of the Department of the Environment on ***

(L.S.)

A senior officer of the Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the certification requirements, which have to be satisfied in relation to a contract, which is to be a certified contract for the purposes of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009.

Regulation 3 prescribes the persons to whom a district council is required to give a copy of a certificate. Every district council must give a copy of any certificate issued by it to the Chief Local Government Auditor and each person with whom the contract has been, or is to be, executed.

Regulation 4 prescribes matters, which a district council is required to deal with in a certificate where it is stated in the certificate that the statutory provision or one of the statutory provisions, conferring the power to enter into the contract for which the certificate is given is section 99 of the Local Government Act (Northern Ireland) 1972.

Regulation 5 makes provision about the signature of a certificate issued with respect to a certified contract. A certificate issued by a district council must be signed by its chief financial officer or a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the chief financial officer.

These Regulations also apply to a joint committee,—

- (a) which has been established under section 19(1) of 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 of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009 has been applied by such an order.

List of Consultees

Age Concern NI

All Northern Ireland District Councils

An Munia Tober

arc21

Association of British Insurers

Association of Local Government Finance Officers

Association of Public Service Excellence

Belfast Solicitors Association

British Bankers Association

British Chamber of Commerce

Carers NI

Chief Local Government Auditor

Church of Ireland

Civil Law Reform Division

Coalition on Sexual Orientation

Community Relations Council

Confederation of British Industry

Construction and Employers Federation

Disability Action

District Judge - Magistrates Court

Engineering and Employers Federation

Engineering and Employers Federation Northern Ireland

Equality Commission for NI

Equality Forum NI

Federation of Master Builders

Federation of Small Businesses

Finance and Leasing Association

Food Standards Agency for Northern Ireland

Gingerbread

Help the Aged NI

HM Council of County Court Judges

HM Revenue & Customs

Human Rights Commission

Irish Bankers Federation

Law Centre (NI)

Local Government Staff Commission

Men's Project

MENCAP

MEPs

Methodist Church in Ireland

Ministry of Defence

MLAs

MPs

NI Assembly / Committee for the Environment

NI Association of Citizens Advice Bureaux

NI Chamber of Commerce and Industry

NI Council for Voluntary Action

NI Gay Rights Association

NI Political Parties

NIC / ICTU

North Western Region Waste Management Group

Northern Ireland Court Service

Northern Ireland Judicial Appointments Commission

Northern Ireland Law Commission

Northern Ireland Local Government Association

Northern Ireland Ombudsman

Office of the Lord Chief Justice of Northern Ireland

Participation and the Practice of Rights Project

Presbyterian Church in Ireland

QUB – School of Law

RNIB

RNID

Save the Children

Secretary – Catholic Bishops of Northern Ireland

Society of Local Authority Chief Executives

Society of Procurement Officers

SWaMP2008

The Executive Council of the Inn of Court Northern Ireland

The General Consumer Council for Northern Ireland

The Law Society of Northern Ireland

The Northern Ireland Council for Ethnic Minorities

UU – School of Law

Women's Support Network

