

Local Government (Miscellaneous Provisions) Bill

[AS INTRODUCED]

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TO

Make provision about the powers of district councils to enter into contracts and to acquire land otherwise than by agreement; to make provision in connection with the reorganisation of local government, including provision for controls on existing councils, for statutory transition committees and for the payment of severance allowances to councillors; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

CONTRACTS OF COUNCILS

Contracts for provision of assets or services

Functions to include power to enter contracts

5 **1.**—(1) Every statutory provision conferring or imposing a function on a district council confers power on the district council to enter into a contract with another person for the provision or making available of assets or services, or both, for the purposes of, or in connection with, the discharge of the function by the district council.

10 (2) Where—

 (a) a district council enters into a contract such as is mentioned in subsection (1) (“the provision contract”) under any statutory provision, and

 (b) in connection with the provision contract, a person (“the financier”) makes a loan to, or provides any other form of finance for, a party to the provision contract other than the district council,

15 the statutory provision also confers power on the district council to enter into a contract with the financier, or any insurer of or trustee for the financier, in connection with the provision contract.

20 (3) This Part applies to any contract which a district council enters into after 22nd June 2009.

Certified contracts

Certified contracts to be intra vires

2.—(1) Where a district council has entered into a contract, the contract shall, if it is a certified contract, have effect (and be deemed always to have had effect) as if the district council had had power to enter into it (and had exercised that power properly in entering into it). 5

(2) For the purposes of this Part a contract entered into by a district council is a certified contract if (and, subject to subsections (3) and (4), only if) the certification requirements have been satisfied by the district council with respect to the contract and they were so satisfied before the end of the certification period. 10

(3) A contract entered into by a district council shall be treated as a certified contract during the certification period if the contract provides that the certification requirements are intended to be satisfied by the district council with respect to the contract before the end of that period.

(4) Where a district council has entered into a contract which is a certified contract (“the existing contract”) and the existing contract is replaced by a contract entered into by it with a person or persons not identical with the person or persons with whom it entered into the existing contract, the replacement contract is also a certified contract if— 15

- (a) the period for which it operates or is intended to operate ends at the same time as the period for which the existing contract was to operate, and 20
- (b) apart from that, its provisions are the same as those of the existing contract.

(5) In this Part “the certification period”, in relation to a contract entered into by a district council, means— 25

- (a) in the case of a contract entered into before the day on which this section comes into operation, the period of 6 weeks beginning with that day;
- (b) in every other case, the period of 6 weeks beginning with the day on which the district council entered into the contract.

(6) Subsection (1) is subject to section 5 (special provisions about judicial reviews and audit reviews). 30

(7) The application of subsection (1) in relation to a contract entered into by a district council does not affect any claim for damages made by a person who is not (and has never been) a party to the contract in respect of a breach by the district council of any duty to do, or not to do, something before entering into the contract, including, in particular, any such duty imposed by— 35

- (a) a statutory provision for giving effect to any Community obligation relating to public procurement; or
- (b) Article 19(1) of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 (NI 6). 40

The certification requirements

3.—(1) In this Part “the certification requirements”, in relation to a contract entered into by a district council, means the requirements specified in subsections (2) to (4).

5 (2) The requirement specified in this subsection is that the district council must have issued a certificate (whether before or after the contract is entered into)—

- (a) including details of the period for which the contract operates or is to operate;
- (b) describing the purpose of the contract;
- 10 (c) containing a statement that the contract is or is to be a contract falling within subsection (5) or (6);
- (d) stating that the district council had or has power to enter into the contract and specifying the statutory provision, or each of the statutory provisions, conferring the power;
- 15 (e) stating that a copy of the certificate has been or is to be given to each person to whom a copy is required to be given by regulations;
- (f) dealing in the prescribed manner with any matters required by regulations to be dealt with in certificates under this section; and
- 20 (g) confirming that the district council has complied with or is to comply with any requirement imposed by regulations with respect to the issue of certificates under this section.

(3) The requirement specified in this subsection is that the district council must have secured that the certificate is signed by any person who is required by regulations to sign it.

25 (4) The requirement specified in this subsection is that the district council must have obtained consent to the issue of a certificate under this section from each of the persons with whom the district council has entered, or is to enter, into the contract.

(5) A contract entered into by a district council falls within this subsection if—

- 30 (a) it is entered into with another person for the provision or making available of services (whether or not together with assets) for the purposes of, or in connection with, the discharge by the district council of any of its functions; and
- (b) it operates, or is intended to operate, for a period of at least 5 years.

35 (6) A contract entered into by a district council falls within this subsection if it is entered into, in connection with a contract falling within subsection (5), with—

- (a) a person who, in connection with that contract, makes a loan to, or provides any other form of finance for, a party to that contract other than the district council; or
- 40 (b) any insurer of or trustee for such a person.

(7) The Department may by regulations amend subsection (5) or (6).

Certified contracts: supplementary

4.—(1) This section applies where the certification requirements have been satisfied by a district council.

(2) The certificate which has been issued shall have effect (and be deemed always to have had effect) as if the district council had had power to issue it (and had exercised that power properly in issuing it); and a certificate which has been so issued is not invalidated by reason that anything in the certificate is inaccurate or untrue. 5

(3) The district council shall secure that throughout the period for which the contract operates— 10

- (a) a copy of the certificate which has been issued is open to inspection by members of the public at all reasonable times without payment; and
- (b) members of the public are afforded facilities for obtaining copies of that certificate on payment of a reasonable fee.

Special provision for judicial reviews and audit reviews 15

5.—(1) Section 2(1) does not apply for the purposes of determining any question arising on—

- (a) an application for judicial review, or
- (b) an audit review,

as to whether a district council had power to enter into a contract (or exercised any power properly in entering into a contract). 20

(2) Section 2(1) has effect subject to any determination or order made in relation to a certified contract on—

- (a) an application for judicial review, or
- (b) an audit review. 25

(3) Where, on an application for judicial review or an audit review relating to a certified contract entered into by a district council, a court—

- (a) is of the opinion that the district council did not have power to enter into the contract (or exercised any power improperly in entering into it), but
- (b) (having regard in particular to the likely consequences for the financial position of the district council, and for the provision of services to the public, of a decision that the contract should not have effect) considers that the contract should have effect, 30

the court may determine that the contract has (and always has had) effect as if the district council had had power to enter into it (and had exercised that power properly in entering into it). 35

(4) In this section and sections 6 and 7 references to an application for judicial review include any appeal (or further appeal) against a determination or order made on such an application.

Relevant discharge terms 40

6.—(1) No determination or order made in relation to a certified contract on—

- (a) an application for judicial review, or

(b) an audit review,
shall affect the enforceability of any relevant discharge terms relating to the contract.

5 (2) In this section and section 7 “relevant discharge terms”, in relation to a contract entered into by a district council, means terms—

- (a) which have been agreed by the district council and any person with whom the district council entered into the contract;
- 10 (b) which either form part of the contract or constitute or form part of another agreement entered into by them not later than the day on which the contract was entered into; and
- (c) which provide for a consequence mentioned in subsection (3) to ensue in the event of the making of a determination or order in relation to the contract on an application for judicial review or an audit review.

(3) Those consequences are—

- 15 (a) the payment of compensatory damages (measured by reference to loss incurred or loss of profits or to any other circumstances) by one of the parties to the other;
- (b) the adjustment between the parties of rights and liabilities relating to any assets provided or made available under the contract; or
- 20 (c) both of those things.

(4) Where a district council has agreed relevant discharge terms with any person with whom it has entered into a contract and the contract is a certified contract, the relevant discharge terms shall have effect (and be deemed always to have had effect) as if the district council had had power to agree them (and had exercised that power properly in agreeing them).

Absence of relevant discharge terms

7.—(1) Subsection (2) applies where—

- 30 (a) the result of a determination or order made by a court on an application for judicial review or an audit review is that a certified contract does not have effect; and
- (b) there are no relevant discharge terms having effect between the district council and a person who is a party to the contract.

(2) That person shall be entitled to be paid by the district council such sums (if any) as that person would have been entitled to be paid by the district council if the contract—

- 35 (a) had had effect until the time when the determination or order was made; but
- (b) had been terminated at that time by acceptance by that person of a repudiatory breach by the district council.

40 (3) For the purposes of this section the circumstances in which there are no relevant discharge terms having effect between the district council and a person who is a party to the contract include (as well as circumstances in which no such terms have been agreed) circumstances in which the result of a determination or

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order of a court, made (despite section 6(4)) on an application for judicial review or an audit review, is that such terms do not have effect.

Interpretation of this Part

8. In this Part—

“an audit review” means— 5

(a) an application or appeal under Article 19 of the Local Government (Northern Ireland) Order 2005 (NI 18) (application by auditor, or appeal by person objecting to accounts, for declaration as to unlawful item of account);

(b) consideration by an auditor of whether to give a certificate under Article 20 of that Order (certificate about sum not accounted for or loss or deficiency caused by wilful misconduct) or an appeal under that Article; or 10

(c) any appeal (or further appeal) against a decision made on an application referred to in paragraph (a) or on an appeal referred to in paragraph (a) or (b); 15

“the certification period” has the meaning given by section 2(5);

“the certification requirements” has the meaning given by section 3(1).

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Introductory

9.—(1) In this Part—

“existing council” means a district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972 (c. 9) as in force on the date on which this section comes into operation; 25

“new council” means a district council to be constituted under that section as amended by section 3(1) of the Local Government (Boundaries) Act (Northern Ireland) 2008 (c. 7). 30

(2) For the purposes of this Part—

(a) “successor council”, in relation to an existing council, means the new council whose district is, in accordance with section 1 of the Local Government (Boundaries) Act (Northern Ireland) 2008, to incorporate the whole or the major part of the district of the existing council; and 35

(b) in relation to a new council, an existing council is a “predecessor council” if the whole or the major part of the district of the existing council is, in accordance with that section, to be incorporated in the district of the new council.

CHAPTER 2

CONTROL OF DISPOSALS AND CONTRACTS OF EXISTING COUNCILS

Control of disposals and contracts of existing councils

5 **10.**—(1) The Department may direct that, with effect from a specified date, an existing council shall not, without the written consent of a specified statutory transition committee—

(a) dispose of any land if the consideration for the disposal exceeds a specified sum;

(b) enter into any capital contract—

10 (i) under which the consideration payable by the council exceeds a specified sum; or

(ii) which includes a term allowing the consideration payable by the council to be varied;

15 (c) enter into any non-capital contract under which the consideration payable by the council exceeds a specified sum, where—

(i) the period of the contract extends beyond a specified date; or

(ii) under the terms of the contract, that period may be extended beyond that date.

(2) In subsection (1)—

20 “capital contract” means a contract as regards which the consideration payable by the council is capital expenditure;

“capital expenditure” means expenditure which falls to be capitalised in accordance with proper practices (within the meaning of Article 6(3) of the Local Government (Northern Ireland) Order 2005 (NI 18));

25 “non-capital contract” means a contract which is not a capital contract.

(3) A direction under subsection (1)(b) or (c) may provide that the consent of a specified statutory transition committee is not required in relation to a contract of a specified description.

(4) A direction—

30 (a) shall be in writing;

(b) may make different provision in relation to different matters for which consent is required;

(c) may be varied or revoked by a subsequent direction.

(5) In this Chapter—

35 “direction” means a direction under this section;

“specified”, in relation to a direction, means specified in the direction;

“statutory transition committee” means a committee established under section 14.

(6) References in this Chapter to disposing of land include references to—

40 (a) dealing with land in any way mentioned in section 45(3) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

- (b) entering into a contract to dispose of land;
- (c) granting an option to acquire land.

Directions: supplementary

11.—(1) A consent for the purposes of a direction may be given—

- (a) in respect of a particular disposal or contract, or in respect of disposals or contracts of any description; 5
- (b) unconditionally or subject to conditions.

(2) The consent required by a direction is in addition to any consent required by any other statutory provision.

(3) Where the consideration or any of the consideration under a contract is not in money, the limits specified in a direction by virtue of section 10(1)(a) to (c) apply to the value of the consideration. 10

(4) Where—

- (a) a question arises in relation to a direction as to the value of any consideration, and 15
- (b) the existing council concerned and the specified statutory transition committee fail to reach agreement,

the value is to be determined by the Department.

Consideration to be taken into account for purposes of direction

12.—(1) In determining whether the limit specified by virtue of section 10(1)(a) is exceeded in the case of a disposal of land by an existing council, the consideration with respect to any other disposal of land made by the council after a specified date is to be taken into account. 20

(2) In determining whether the limit specified by virtue of section 10(1)(b) or (c) is exceeded in the case of a contract entered into by an existing council (“the contract in question”), the consideration payable by the council under any other relevant contract shall be taken into account. 25

(3) For the purposes of subsection (2) a “relevant contract” means a contract which is either or both—

- (a) a contract entered into after a specified date by the council and the person with whom the contract in question is entered into; 30
- (b) a contract entered into after that date by the council which relates to the same or a similar description of matter as that to which the contract in question relates.

Contravention of direction 35

13.—(1) A disposal made in contravention of a direction is void.

(2) A contract entered into by an existing council in contravention of a direction is not enforceable against a successor council.

(3) A contract which apart from this subsection would be a certified contract for the purposes of Part 1 is not a certified contract for those purposes if it is entered into in contravention of a direction. 40

CHAPTER 3

STATUTORY TRANSITION COMMITTEES

Statutory transition committees: constitution

5 **14.**—(1) In relation to each new council there shall be a body called a statutory transition committee.

(2) A statutory transition committee shall be a body corporate to which, subject to the provisions of this Chapter, section 19 of the Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply.

10 (3) The Department shall by regulations provide for the establishment of statutory transition committees.

(4) Those regulations shall ensure that the statutory transition committee in relation to a new council consists of members of the predecessor council or councils.

(5) Those regulations may make provision as to—

15 (a) the appointment of the Chair and other members of a statutory transition committee (including the number of members to be appointed from each predecessor council and any conditions to be fulfilled for appointment);

20 (b) the tenure of office of the Chair and other members (including the circumstances in which they cease to hold office or may be removed or suspended from office).

(6) Regulations may make provision for, or in connection with—

(a) the procedure to be followed by statutory transition committees;

(b) the payment of allowances to members of statutory transition committees;

25 (c) the making available to statutory transition committees of the facilities, staff and premises of existing councils;

(d) such other matters in connection with the efficient and effective discharge by statutory transition committees of their functions as the Department thinks appropriate.

30 (7) The Department may make payments to statutory transition committees on such terms and conditions as the Department may determine.

(8) Except to the extent to which regulations otherwise provide, a statutory transition committee—

(a) is a local government body for the purposes of Part 2 of the Local Government (Northern Ireland) Order 2005 (NI 18); but

35 (b) is not to be treated as a joint committee of any existing councils.

Statutory transition committees: functions

40 **15.**—(1) The functions of a statutory transition committee are exercisable for the purpose of preparing for, and giving full effect to, the reorganisation of local government provided for by the Local Government (Boundaries) Act (Northern Ireland) 2008 (c. 7) and, in particular for facilitating—

(a) the exercise of their functions by new councils as from their initial constitution; and

(b) the winding-up of existing councils and the transfer of their assets, liabilities and staff.

(2) Subject to any provision made by regulations, a statutory transition committee may do anything which appears to it to be necessary or expedient for the purpose mentioned in subsection (1). 5

(3) The Department may by regulations make provision for, or in connection with, conferring powers or imposing duties on statutory transition committees.

(4) In particular, regulations may make provision for, or in connection with, conferring powers or imposing duties on a statutory transition committee to—

(a) make a district rate (within the meaning of Article 6(3) of the Rates (Northern Ireland) Order 1977 (NI 28)); 10

(b) appoint staff for the purposes of a new council.

Power to modify existing legislation

16.—(1) Regulations under section 14 or 15 may—

(a) provide for any local government or rating legislation which applies in relation to an existing council to apply, with or without modifications, in relation to a statutory transition committee; 15

(b) provide for any local government or rating legislation which (but for the regulations) would apply in relation to an existing council not to apply in relation to that council or to apply with modifications. 20

(2) In subsection (1)—

“local government legislation” means—

(a) the Local Government Act (Northern Ireland) 1972 (c. 9);

(b) Part 2 of the Local Government (Northern Ireland) Order 2005 (NI 18);

(c) Chapter 2; and 25

(d) any regulations or orders made under any of the above;

“rating legislation” means—

(a) the Rates (Northern Ireland) Order 1977 (NI 28); and

(b) any regulations or orders made under that Order.

CHAPTER 4 30

SEVERANCE PAYMENTS TO COUNCILLORS

Severance payments to councillors

17.—(1) The Department may, by regulations, provide for the making by an existing district council of payments (“severance payments”) to, or in respect of, persons who— 35

(a) immediately prior to the start of the prescribed period were members of the council,

(b) ceased, by resignation, to be members of the council before the end of that period, and

(c) satisfy such other conditions as may be prescribed. 40

(2) The regulations may include provision as to—

(a) the amounts of severance payments and the methods of calculating those amounts;

5 (b) the procedure for applying for severance payments and for dealing with such applications.

(3) In section 4(1) (disqualifications for being elected, or being, a councillor) of the Local Government Act (Northern Ireland) 1972 (c. 9), after paragraph (e) add—

10 “(f) he has received a severance payment (within the meaning of section 17 of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009).”.

PART 3

MISCELLANEOUS AND SUPPLEMENTARY

Acquisition of land otherwise than by agreement

15 **Acquisition of land otherwise than by agreement**

18. A district council may acquire land otherwise than by agreement for the purposes of Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19).

Joint committees

20 **Application of certain provisions to certain joint committees constituted as bodies corporate**

19.—(1) In the Local Government (Constituting a Joint Committee a Body Corporate) Order (Northern Ireland) 2004 (No. 49) after Article 6 insert—

25 “6A. The following provisions of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009 shall apply to arc21 as they apply to a council—

(a) Part 1 (contracts); and

(b) section 18 (acquisition of land otherwise than by agreement).”.

30 (2) In the Local Government (Constituting a Joint Committee a Body Corporate) Order (Northern Ireland) 2008 (No. 310) after Article 6 insert—

“6A. The following provisions of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009 shall apply to SWaMP2008 as they apply to a council—

(a) Part 1 (contracts); and

35 (b) section 18 (acquisition of land otherwise than by agreement).”.

(3) This section does not affect any power to amend or revoke the orders mentioned in subsections (1) and (2).

Supplementary

Regulations and orders

20.—(1) No regulations shall be made under—

(a) section 3(7), or

(b) Chapter 3 of Part 2,

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unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(2) Any other regulations under this Act shall be subject to negative resolution.

(3) Regulations and orders under this Act may contain such incidental, supplementary, consequential, transitory or saving provisions as the Department thinks necessary or expedient.

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Interpretation of this Act

21. In this Act—

“the Department” means the Department of the Environment;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

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Commencement

22.—(1) The following provisions come into operation on the day after the day on which this Act receives Royal Assent—

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(a) section 3 insofar as it confers power to make regulations;

(b) Part 2; and

(c) this Part.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

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Short title

23. This Act may be cited as the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009.