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# **THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) BILL**

**Suzie Cave**

Research Officer  
Research and Library Services

The Local Government (Miscellaneous Provisions) Bill was introduced to the Assembly on 22 June 2009. This paper explores the background to the Bill and provides an overview of provisions of the Bill which includes the power of district councils to enter into contracts regarding their assets and services; local government reorganisation addressing existing councils' contracts; statutory transition committees; severance payments; and councils' ability to take over land.

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## SUMMARY OF KEY POINTS

The Local Government (Miscellaneous Provisions) Bill has 23 clauses and comprises 3 parts. In summary these clauses include provisions which:

- Deal with the entry of Councils into contracts, to ensure there is:
  - clarity on the power of councils to enter into contracts regarding their assets and services, and to ensure that certified contracts are lawful.
  - the preserved right to challenge the lawfulness of certified contracts, and provide protection for any private body which has entered into a contract with a council.
  - scope for the introduction of an alternative contract should the existing one be deemed unlawful by the court.
  
- Deal with the Reorganisation of Local Councils, which:
  - ensures control on disposals of land and contracts entered into by councils before the establishment of the 11 new councils
  - states the role of Transition Committees during the transition from 26 local government districts to the new 11 councils.
  - provides power to modify existing legislation of local governments, and gives the Department of the Environment (the Department) power to make severance payments to resigned councillors.
  
- allows councils to vest land, and permits Arc21 and SWaMP<sup>1</sup> to enter into contracts and vest land for waste management purposes.

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<sup>1</sup> Under current arrangements, the 26 District Councils have statutory responsibility for the collection and disposal of municipal waste. The three Waste Management Groups – Arc21 (the umbrella waste management group for 11 councils in the east of Northern Ireland), the Southern Waste Management Partnership (SWaMP), and the North West Region Waste Management Group (NWRWVG) – are responsible for drawing up Waste Management Plans on behalf of their constituent District Councils and, to varying degrees, for procuring infrastructure on the Councils' behalf.

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## BACKGROUND AND PURPOSE OF THE BILL

The Local Government (Miscellaneous Provisions) Bill was introduced to the Assembly on 22 June 2009. The purpose of the Bill is to provide for the reorganisation of local government. The Bill has 23 clauses and comprises 3 parts:

Part 1: Contracts of councils

- Contracts of councils for provision of assets and services (clause 1);
- Certified contracts (clauses 2-8);

Part 2: Local Government reorganisation:

- Introductory (clause 9);
- Control of disposals and contracts of existing councils (clauses 10 - 13);
- Statutory transition committees (clauses 14 – 16);
- Severance payments to councillors (clause 17);

Part3: Miscellaneous and Supplementary:

- Acquisition of land otherwise than by agreement (clause 18);
- Joint committees (clause 19);
- Supplementary (clauses 20 – 23);

## OVERVIEW OF THE CLAUSES

### CONTRACTS OF COUNCILS

#### **Clause 1: Functions to include power to enter contracts**

This includes provisions which clarify the power of councils to enter into contracts regarding their assets, services and the dispatch of their functions. The clause also enables councils to enter into separate or collateral contracts with financiers and insurers of any contracts. This will give a third party, who provides finance to any party of a contract (contractor), 'step-in' rights in case the contractor performs inadequately, becomes bankrupt or is unable to honour the contract.

#### **Clause 2: Certified contracts to be intra vires**

This includes provisions to ensure that contracts classed as 'certified' (see Clause 3) are to be within the legal power (intra vires). This provides the first stage of 'safe harbour' protection to private sector contractors, and their financiers, from legal challenge. The clause provides that even if a council does not have the power to enter into a contract or had abused its existing power, a certified contract is still presumed legal, unless challenged by judicial or audit review.

The following suggestions were made in response to this section of the draft Bill:

- Include a paragraph to clarify that Councils or Joint Committees should have direct power to grant warranties, guarantees and indemnities, and should have the power to accept joint and several liability; and
- Have an extension made to Part 1 of the Bill (Contracts of Councils), to include provisions for Stakeholder Agreements and Collateral Guarantees<sup>1</sup>.

**Clause 3: The certification requirements**

This clause sets out certain requirements a council must satisfy for a contract to be deemed 'certified'. One requirement is that the contract must operate for more than five years. The clause also gives the Department the power to make regulations to amend certification requirements.

**Clause 4: Certified contracts: supplementary**

A certificate is to be issued to certified contracts providing the council satisfies the requirements. Inaccuracies on the certificate do not invalidate it, and copies of it are to be obtainable by the general public.

**Clause 5: Special provision for judicial reviews and audit reviews**

While clause 2 introduces the presumption that a certified contract is lawful, clause 5 enables the lawfulness of the contracts to be challenged by judicial or audit review. This clause provides the second stage in giving 'safe harbour' protection to private sector contractors and their financiers. If the court considers a certified contract unlawful, the court can decide for the contract to continue to have effect once it has considered the potential consequences of its termination. These include the potential financial consequences for the council and the effects on the provision of services to the public.

**Clause 6 and 7: Relevant discharge terms and Absence of relevant discharge terms**

These clauses allow for the introduction of the relevant discharge terms of a certified contract, should the court find the contract to be unlawful, and suggest that it be set aside. Clause 6 provides for terms to be agreed between parties in preparation for this eventuality, while clause 7 provides for the situation where no discharge terms have been agreed and prepared, or where the court finds such terms unenforceable.

**Clause 8: Interpretation of this Part**

The term 'audit review' is defined in this clause as an application or appeal under Article 19 of the Local Government (Northern Ireland) Order 2005 (NI18) by the auditor or the person objecting to the accounts as being unlawful. The auditor considers whether to give a certificate of certification, under Article 20 of the 2005 Order, in circumstances where there is an unaccounted sum or misconduct, which deems the contract as unlawful.

According to this clause the "certification period" is six weeks beginning the day the district council entered into the contract.

The "certification requirements" (mentioned in section 3 (1-4)) are related to a contract entered into by a district council, and they are as follows:

1. The district council must issue a certificate which includes:
  - details of the period the contract operates;
  - the purpose of the contract;
  - a statement that the contract must fall within subsection 5 (if it is for the provision of services and or assets in connection with the discharge by the district council of its functions) or subsection 6 (if the

- contract has a person who makes a loan or provides financial support to a member of the contract other than the district council);
- a statement that the district council has power to enter into the contract, including the specific legal terms of the power;
  - a statement that a copy of the certificate has been given to each person as suggested by regulations under Clause 4;
  - evidence that matters required by regulations under Clause 3 have been dealt with in the certificate; and
  - confirmation that the district council has complied or is to comply with the certificate which states the requirements suggested by regulation in Clause 3.
2. The district council must ensure that the certificate is signed by all the parties regulations require to sign it.
  3. The district council must get consent from all parties involved in the contract to issue the certificate.

## LOCAL GOVERNMENT REORGANISATION

### **Clause 9: Introductory**

According to this part of the Bill, the following terms mean:

- “Existing council” - a district council already formed under section 1 of the old Local Government Act (Northern Ireland) 1972 (c.9);
- “new council”- a district council to be formed under section 3(1) of the new Local Government (Boundaries) Act (Northern Ireland) 2008 (c.7);
- “successor council”- the new council whose district is to incorporate the whole or majority of the old or existing council’s district; and
- “predecessor council”- an existing council, where the whole or majority of the district of the old/existing council is to be incorporated into the district of the new council.

In its response, Belfast City Council suggested the addition of a sub-paragraph under clause 9 (2 (c)) stating that the power of the Department of the Environment (the Department) to give directions and to make regulations should be done so in relation to the circumstances of one or more specified councils, as the council feels this is not

made clear in the existing Bill. The Council stresses the need for provisions to be made between the Department and Belfast and Lisburn/Castlereagh Transition Committee<sup>2</sup>

### **Clause 10: Control of disposals and contracts of existing councils**

This clause outlines a system of controls on disposals of land, and capital and non capital contracts entered into by the existing 26 councils before their dissolution and establishment of the 11 new councils. The Department will have the power to request that councils obtain consent from their statutory transition committee before commencing particular activities.

Subsections to this clause define the meaning of the following terms:

- “capital contract”- a contract where the consideration payable by the council is capital expenditure;

- “capital expenditure”- an amount to be paid which has to be capitalised under the proper practices of the Local Government (Northern Ireland) Order 2005 (NI 18), Article 6 (3); and
- “non-capital contract”- a contract which is not a capital contract.

The clause states that a direction may provide that a specified contract does not require consent from a statutory transition committee, and that a direction:

- should be in writing; and
- may be varied or revoked by a succeeding direction.

According to this clause the following terms mean:

- “direction” - a direction under this section;
- “specified” - specified in the direction;
- “statutory transition committee” - a committee established under section (clause) 14; and
- references to disposing of land include: dealing with land in any way mentioned in section 45(3) of the Interpretation Act (Northern Ireland) 1954 (c.33); entering into a contract to dispose of land; or granting an option to acquire land.

Responses to this clause include:

One recommendation from Omagh District Council stated that transition committees should only have a “consultative role” in relation to budgets and business of councils in the year leading up to the establishment of the new council. The Council feels that statutory transition committees should not have the power to veto transactions where councils have already taken corporate decisions on land disposal or capital and non-capital contracts

In its Response, Belfast City Council suggested<sup>3</sup>:

- That transitional committee(s) should hold or have responsibility for land disposal or capital contract post Review of Public Administration (RPA);
- That the transitional committee should be responsible for disposals/capital contracts with respect to their assets outside their current boundary;
- That more detail on amounts and thresholds etc of specified sums, dates and description is required;
- The need for consultation with district councils whilst detail is being developed in subordinate legislation; and
- The need for more clarity with respect to the mechanism for varying or revoking a direction.

**Clause 11: Directions: Supplementary**

This clause states that:

- Consent for a direction may be given in respect of a disposal or contract of any description, unconditionally or subject to conditions;
- Consent required by any direction is in addition to any consent required by any other statutory provision;
- Where the consideration is not in money, the limits specified in a direction in section 10 (1) (a) to (c) apply to the value of the consideration; and

- If the value of any consideration can not be determined and there is no agreement between the council concerned and the specified statutory committee, then the Department determines the value.

**Clause 12: Consideration to be taken into account for purposes of direction**

Clause 12 suggests that the consideration of any disposal of land made by an existing council, is to be taken into account, if a specified sum (section 10 1(a)) is exceeded. The consideration payable by the council under any other contract, shall be taken into account if the limit specified in section 10(1) (b) or (c) is exceeded. Under this section the Bill explains the term “relevant contract” as being a contract which is entered into after a specified date by the council and the other party.

**Clause 13: Contravention of Direction**

An existing council can not enforce a successor council if the contract entered into by the existing council contravenes a direction. Further, if a contract contravenes a direction, then it is not considered to be certified.

In relation to this clause, Belfast City Council has requested that more clarification is needed around the enforcement of this clause and the legal effect<sup>4</sup>.

**Clause 14: Statutory transition committees: constitution**

In relation to each new council there will be a statutory transition committee. The Department will be responsible for the establishment of statutory transition committees. Regulations will also provide for the appointment of a chair and members (to include the number from each predecessor council and the requirements they must fulfil) and how long they will hold position. The regulations will also determine:

- the procedure to be followed by statutory transition committees;
- the payments of allowances to members;
- the making available of facilities, staff and premises of existing councils to the committees; and
- other matters in relation to the discharge by committees of their functions, decided by the Department.

The Department will also determine the terms and conditions for the payments they may make to the committees. This clause also highlights that a statutory transition committee is a local government body under Part 2 of the Local Government (Northern Ireland) Order 2005 (NI 18), and is not to be considered as a joint committee of existing councils.

In its response, Omagh District Council requested that committees comprise a maximum of 16 members with equal representation from each constituent council, except for Causeway Group and Belfast City councils which should have 20 members.<sup>5</sup>

Belfast City Council has responded to this clause by suggesting the idea of Belfast City Council handling its own transition process, which according to their response, is supported by the previous Environment Minister, Mr. Sammy Wilson MLA. The Council has further suggested that their Strategic Policy and Resources Committee be designated as the Belfast’s Transition Committee with 20 members. The Council recommends the introduction of a formal mechanism between the Lisburn/Castlereagh Transition Committee and the Belfast Transition Committee to



handle transitional matters and ensure service continuity for citizens. They have further requested that the Department ensures that local councils are consulted in the drafting of any emerging subordinate legislation<sup>6</sup>.

### **Clause 15: Statutory Transition Committees: Functions**

1. This clause explains that the functions of statutory transition committees should concentrate on the preparation for the reorganisation of local government, and in particular for facilitating:
  - The exercise of their functions by the new councils, as from their initial formation; and
  - The winding-up of existing councils and the transfer of their assets, liabilities and staff.
2. A statutory transition committee may do anything which appears to it to be necessary for the purpose of reorganisation of the local government.
3. The Department has the authority to make provisions for presenting powers or imposing duties on a committee to:
  - consider the budgets and rates for the new council; and
  - to appoint staff for the new council.

Belfast City Council recommended that<sup>7</sup>:

- statutory transition committees should be able to establish sub-committees from the outset; and
- the Department should ensure that local councils are consulted during the development phase of any subordinate legislation relating to this clause.

### **Clause 16: Power to Modify Existing Legislation**

Within Clause 16 “Local government legislation” means any regulations or orders made under the Local Government Act (Northern Ireland) 1972 (c.9); or part 2 of the Local Government (Northern Ireland) Order 2005 (NI 18).

The term “rating legislation” according to the Bill, means any regulation or order made under the Rates (Northern Ireland) Order 1977 (NI 28).

Clause 16 provides the power that any local government or rating legislation for existing councils may be applied with or without modification to statutory transition committees.

The Belfast City Council has requested that the Department should ensure that local councils are consulted during the development phase of subordinate legislation to this clause<sup>8</sup>.

### **Clause 17: Severance Payments to Councillors**

Clause 17 gives the Department the power to make regulations for the making of severance payments to councillors who resign as councillors before the end of a specified period and who meet criteria specified by the Department.

The clause also amends section 4 of the Local Government Act (Northern Ireland) 1972 to provide that a person who has received a severance payment is disqualified from being elected or being a councillor.

Belfast City Council has proposed the following points be taken into consideration in the drafting of any subordinate legislation<sup>9</sup>:

- A set amount of £1,000 per year being payable up to a maximum of 38 years;
- Eligibility for severance being restricted to Members who have served a minimum of two Council terms;
- The inclusion of Members of the House of Lords in the severance scheme and also the inclusion of MLAs, MPs, and MEPs only on the basis that their entitlement to an award would be calculated only on those years of Local Government service which they have acquired prior to their election to another tier of Government;
- The next of kin of a Member being entitled to severance in the event that a Councillor dies after applying for severance but before the payment has been made;
- A recipient of severance having to repay it in full in the event that they return to Local Government before a period of two Council terms has elapsed;
- Central Government being responsible for meeting the costs associated with the introduction of a severance scheme; and
- The scheme should apply during the period from January, 2010 until the date of the Local Government elections in May, 2011.

According to the Department of the Environment's document "Synopsis of Responses to Consultation on Severance Arrangements for Consultations":

- One respondent recommended that a minimum of one council term should give eligibility to a severance award, and that there should be an option for MLAs to vacate their Council posts. The respondent also suggests that any recipient of an award who returns to local government at a future date as an elected representative should repay the award in full<sup>10</sup>.
- A different respondent added that the scheme should run from January 2010 to the date of the Local Government elections in May 2011. They have reiterated that the Department should ensure that local Government is consulted during drafting of the relevant subordinate regulations<sup>11</sup>.
- A response from a member of the public displayed opposition to this clause, as the respondent felt that there is no justification for this provision in the Bill, and in the light of present circumstances it is unaffordable<sup>12</sup>.

## MISCELLANEOUS AND SUPPLEMENTARY

### **Clause 18: Acquisition of land otherwise than by agreement**

This clause provides that councils may vest land for any of their waste management purposes as stated in Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997.

The Belfast City Council has expressed their opinion that the power for a district council to acquire land should not be limited to waste management purposes, that in fact councils should have a more general power to acquire land.

### **Clause 19: Application of certain provisions to certain joint committees constituted as bodies corporate.**

Clause 19 suggests an amendment be made to the Local Government (Constituting a Joint Committee a Body Corporate) Order (Northern Ireland) 2004. Northern Ireland councils have formed into 3 Waste Management Groups (Arc21, SWaMP and NWRWMG<sup>2</sup>) to address waste management issues. Two of the groups (Arc21 and SWaMP) have been constituted as bodies corporate by orders by the Department. The amendment to these orders will mean certain provisions of the Bill will apply to these bodies, therefore allowing Arc21 and SWaMP 2008 to enter into contracts and vest land for waste management reasons.

### **Clause 20: Regulations and Orders**

This clause essentially sets out how the Department may make different regulations as provided for in the Bill.

Belfast City Council recommends<sup>13</sup>:

- That the Department should ensure that local council's are consulted during the development phase of any secondary legislation which has a direct impact upon them; and
- The Council supports the intention that Clauses 14, 15 and 16 (and parts of Clause 3) be subject to approved resolution by the NI Assembly and reiterates the need for the Minister and the Committee for the Environment to consult with all interested parties in the drafting phase of any secondary legislation related to these clauses.

### **Clause 21: Interpretation of this Act**

This clause gives explanation to some of the technical terms used within the Bill.

### **Clause 22: Commencement**

This clause explains that the provisions made in section 3, Part 2 and Part 3 will come into force the day following the day the Act receives Royal Assent. The remaining provisions come into operation when the Department decides.

### **Clause 23: Short Title**

The final clause states that this Act may be cited as the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2009.

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<sup>2</sup> Arc21 (the umbrella waste management group for 11 councils in the east of Northern Ireland), the Southern Waste Management Partnership (SWaMP), and the North West Region Waste Management Group (NWRWMG) – are responsible for drawing up Waste Management Plans on behalf of their constituent District Councils and, to varying degrees, for procuring infrastructure on the Councils' behalf.

## CONCLUSION

The Bill aims to address the issue regarding the lack of private sector confidence concerning the power of councils to enter into long-term service contracts. The main concerns are:

- the risk of EC Landfill Directive targets not being met; and
- the possible infraction proceedings if the concerns that contractors and financiers might have about contracts are not addressed as soon as possible.

If legislation is put in place as soon as possible, it is hoped that contractors will be encouraged to compete for contracts for the construction of waste infrastructure in Northern Ireland.

Consideration was given to the introduction of a system of controls on existing councils in the run up to their reorganisation, and the outcome was that councils should not be bound into long-term financial commitments over which they have no control. It was also suggested that a wide range of controls would be over restrictive, and that controls applying only to disposal of land and contracts which are in excess of specified thresholds would be sufficient<sup>14</sup>.

Further consideration was given to the idea of a shadow period after the 2011 elections for new councils before they take over full power and responsibility. It was decided that a shadow period would not be necessary and that the statutory transition committees should be responsible for a programme of work in the run up to the elections to ensure the new councils will be able to take over control and services effectively without delay from the outset.<sup>15</sup>

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## References

<sup>1</sup> [ARC21 JOINT COMMITTEE. Meeting No 59. Hosted by Antrim Borough Council \(05/03/09\)](#)

<sup>2</sup> [Consultation on the Local Government \(Miscellaneous Provisions\) Bill: Belfast City Council Draft Response.](#)

<sup>3</sup> [http://minutes.belfastcity.gov.uk/Published/C00000113/M00009493/AI00007208/\\$Appendix1 CouncilResponse.docA.ps.pdf](http://minutes.belfastcity.gov.uk/Published/C00000113/M00009493/AI00007208/$Appendix1 CouncilResponse.docA.ps.pdf)

<sup>4</sup> [http://minutes.belfastcity.gov.uk/Published/C00000113/M00009493/AI00007208/\\$Appendix1 CouncilResponse.docA.ps.pdf](http://minutes.belfastcity.gov.uk/Published/C00000113/M00009493/AI00007208/$Appendix1 CouncilResponse.docA.ps.pdf)

<sup>5</sup> [DOE – Local Government Reform Establishment of Transition Committees in Statute. Consultation Document \(04/09\)](#)

<sup>6</sup> [Consultation on the Local Government \(Miscellaneous Provisions\) Bill: Belfast City Council Draft Response.](#)

<sup>7</sup> [Consultation on the Local Government \(Miscellaneous Provisions\) Bill: Belfast City Council Draft Response.](#)

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<sup>8</sup> [Consultation on the Local Government \(Miscellaneous Provisions\) Bill: Belfast City Council Draft Response.](#)

<sup>9</sup> [http://minutes.belfastcity.gov.uk/Published/C00000113/M00009493/AI00007208/\\$Appendix1 CouncilResponse.docA.ps.pdf](http://minutes.belfastcity.gov.uk/Published/C00000113/M00009493/AI00007208/$Appendix1CouncilResponse.docA.ps.pdf)

<sup>10</sup> [Synopsis of Responses to Consultation on Severance Arrangements for Councillors.](#)

<sup>11</sup> [Synopsis of Responses to Consultation on Severance Arrangements for Councillors.](#)

<sup>12</sup> [Synopsis of Responses to Consultation on Severance Arrangements for Councillors.](#)

<sup>13</sup> [Consultation on the Local Government \(Miscellaneous Provisions\) Bill: Belfast City Council Draft Response.](#)

<sup>14</sup> [Local Government \(Miscellaneous Provisions\) Bill Explanatory Memorandum](#)

<sup>15</sup> [DOE – Local Government Reform Establishment of Transition Committees in Statute. Consultation Document \(04/09\)](#)