



# Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010

## 2010 CHAPTER 7

An Act 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; to make provision in relation to the exercise of waste management functions of district councils; and for connected purposes. [26th March 2010]

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

### Modifications etc. (not altering text)

- C1** [Act](#): transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

## PART 1

### CONTRACTS OF COUNCILS

#### **Modifications etc. (not altering text)**

- C2** Pt. 1 applied with modifications (2.4.2012) by [The Local Government \(Constituting Joint Committees as Bodies Corporate\) Order \(Northern Ireland\) 2012 \(S.R. 2012/10\)](#), **arts. 1, 9**
- C3** Pt. 1 applied by [S.R. 2004/49](#), art. 6A(a) (as inserted (27.3.2010) by [Local Government \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2010 \(c. 7\)](#), **ss. 23(1)**, 26(1)(c))
- C4** Pt. 1 applied by [S.R. 2008/310](#), art. 6A(a) (as inserted (27.3.2010) by [Local Government \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2010 \(c. 7\)](#), **ss. 23(2)**, 26(1)(c))

#### *Contracts for provision of assets or services*

#### **Functions to include power to enter contracts**

**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.

**(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,

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.

**(3)** A provision of this Part does not apply to a contract which a district council enters into before the commencement of that provision.

#### **Modifications etc. (not altering text)**

- C5** Ss. 1-8 applied (1.4.2015) by [The Local Government \(Constituting a Joint Committee a Body Corporate\) Order \(Northern Ireland\) 2015 \(S.R. 2015/183\)](#), arts. 1, **9**

### *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).

(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.

(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—

- (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
- (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 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<sup>F1</sup>...).

(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—

- (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).

#### **Textual Amendments**

- F1** Words in s. 2(6) repealed (1.4.2015) by [Local Government Act \(Northern Ireland\) 2014](#) (c. 8), s. 129, **Sch. 10** (with s. 124(4)); S.R. 2015/209, art. 2, Sch. 1

#### **Modifications etc. (not altering text)**

- C5** Ss. 1-8 applied (1.4.2015) by [The Local Government \(Constituting a Joint Committee a Body Corporate\) Order \(Northern Ireland\) 2015](#) (S.R. 2015/183), arts. 1, **9**

### **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).

(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;
- (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;
- (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
- (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.

(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—

- (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.

(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
- (b) any insurer of or trustee for such a person.

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

**Modifications etc. (not altering text)**

- C5** Ss. 1-8 applied (1.4.2015) by [The Local Government \(Constituting a Joint Committee a Body Corporate\) Order \(Northern Ireland\) 2015 \(S.R. 2015/183\)](#), arts. 1, **9**

**Commencement Information**

- II** S. 3 wholly in operation at 1.8.2011; s. 3 in operation for specified purposes at 27.3.2010 see s. 26(1)(a); s. 3 in operation at 1.8.2011 in so far as not already in operation by [S.R. 2011/227](#), art. **2**

**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.

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

- (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.