



## 2010 CHAPTER 7

### PART 1

#### CONTRACTS OF COUNCILS

##### *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.

### *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 and audit reviews).

(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 \(NI 6\)](#).

### **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).

#### **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.

#### **Special provision for judicial reviews and audit reviews**

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).

(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.

(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

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*Status: This is the original version (as it was originally enacted).*

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public, of a decision that the contract should not have effect) considers that the contract should have effect,

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).

(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**

**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.

(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;
- (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—

- (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
- (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—

- (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—

- (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.

(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 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—

- (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
- (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);

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

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