



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government (Exclusion of Non-
commercial Considerations) Order (Northern
Ireland) 2015: DOE Officials

30 April 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Cathal Boylan
Mr Ian Milne
Lord Morrow
Mrs Sandra Overend

Witnesses:

Ms Julie Broadway	Department of the Environment
Ms Mylene Ferguson	Department of the Environment
Mr Tommy McCormick	Department of the Environment

The Chairperson (Ms Lo): We are getting a departmental briefing from Mylene Ferguson, Julie Broadway and Tommy McCormick. I advise everyone that the briefing is being recorded by Hansard. Julie will brief members on the issue.

Ms Julie Broadway (Department of the Environment): This draft order is being made really to continue the policy that was in place before the coming into operation of the Local Government Act (Northern Ireland) 2014. It replicates and will re-establish the provisions of the Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2012 to enable councils to continue to include social clauses in their works and supply contracts.

I will briefly explain the background to the legislation because I think that, as usual, it is a bit convoluted. Article 19 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 makes provision in respect of the exclusion of non-commercial considerations in district council contracts. It prevents councils from introducing non-commercial considerations into their procurement processes for the award of public supply and works contracts by specifying a list of non-commercial matters. This was introduced in the context of the compulsory competitive tendering policies that were introduced in other jurisdictions.

The Local Government (Best Value) Act (Northern Ireland) 2002 made provision for councils to make arrangements for continuous improvement in the way in which a council's functions are exercised. It contains an enabling power to permit the Department to make subordinate legislation to amend the list of non-commercial matters and to provide for a matter to cease to be a non-commercial matter. The Department has made one statutory rule under that enabling power to specify that certain matters contained in article 19 of the 1992 Order should cease to be non-commercial matters. Those were the terms and conditions of employment by contractors of their workers; the composition and

arrangements for promotion, transfer or training of their workforce; and the conduct of contractors or workers in industrial disputes.

The Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2012 was made at the request of councils. It removed these restrictions to enable councils to include social clauses in their works and supply contracts. A public consultation on that 2012 order and regulations was carried out from 7 September to 31 October 2011 and the regulations were approved by the Assembly on 3 July 2012.

I will move on to the making of the Local Government Act 2014. This made provision for a new performance management framework which replaced the best-value regime. The Local Government (Best Value) Act 2002 was repealed by the Local Government Act 2014. The Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2012 was made under a power in the Local Government (Best Value) Act 2002. In general, if the provisions of a parent Act are repealed, any statutory rule made under that Act would also fall. That would mean that the 2012 order would cease to have effect. However, the facility for councils to continue to include social clauses in their council contracts is still required. The 2014 Act made the necessary enabling power to enable us to make a similar statutory rule to that of the 2012 Act.

That is really what these draft regulations do; they replicate and re-establish the provisions of the 2012 order to enable councils to continue to include social clauses. The draft order was not consulted on because it really is maintaining what was the previous legislation. The draft order, by specifying that certain matters will cease to be non-commercial matters for the purposes of article 19, will enable councils to consider the inclusion of social clauses in their contracts; for example, the provision of apprenticeships, the employment of people who are long-term unemployed and the provision of work experience. Those are the types of social clauses that we know have already been written into contracts since the 2012 legislation came in.

I am happy to take any questions.

The Chairperson (Ms Lo): I welcome the inclusion of social clauses in public service tendering. They very much encourage good practice and help employment and, as you say, apprenticeship schemes. It is really a tidying-up job with this one, is it not?

Ms Broadway: It is almost a technical amendment, to be honest. It is just really putting back in place something which was taken out.

The Chairperson (Ms Lo): It is something that you put in, took out, and are now putting back in.

Ms Broadway: Yes. There is no change in the policy. They are the same provisions that were in the earlier legislation.

The Chairperson (Ms Lo): I do not have any questions for you on that. Have we any guidance on social clauses?

Ms Broadway: We had issued guidance back in 2012. We are actually working on amending that guidance so that it reflects the current 2015 order.

Mr Boylan: Thank you very much for your presentation. The social clauses element is welcome. I missed the wee bit about the Local Government (Best Value) Act 2002. Can you clarify that point?

Ms Broadway: Yes. The Local Government (Best Value) Act 2002 has been repealed by the 2014 Act and replaced by the performance-improvement provisions.

Mr Boylan: Thank you.

The Chairperson (Ms Lo): They are quite different. Best value is about money, the financial basis, and continuous improvement is more about the practice of the whole organisation.

Ms Broadway: Yes, but that is how everything was moving in other jurisdictions; towards this performance-improvement framework. Councils will still be able, through the performance improvement framework, to ensure that they are delivering value for money.

The Chairperson (Ms Lo): Why did you take out value for money? Does it mean that they now do not have to consider value for money?

Ms Broadway: No, it does not mean that. It is just because things have moved on from the best-value regime to this performance improvement regime.

The Chairperson (Ms Lo): Are members content?

Members indicated assent.

The Chairperson (Ms Lo): OK. Well, that is it. Julie, did I not tell you that it would be quick?

Ms Broadway: It took me longer to explain the background.

The Chairperson (Ms Lo): Are members content for the Department to proceed with making the rule?

Members indicated assent.