

These notes refer to the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 (c.7) which received Royal Assent on 26 March 2010

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5: Special provision for judicial reviews and audit reviews

While section 2 introduces the presumption that a certified contract is lawful, this section preserves the right to challenge the lawfulness of such a contract. Such a challenge is restricted to public law challenge by means of judicial review or audit review. Section 5 also provides the second stage in giving “safe harbour” protection to private sector contractors and their financiers. It does so by providing that where, on public law challenge, a court takes the view that a certified contract is unlawful (because the council did not have the power to enter into the contract or had exercised any power improperly), the court may nevertheless decide that the contract can continue to have effect. In reaching such a decision, the court may take into account a number of factors, in particular the likely consequences for the financial position of the council and the provision of services to the public if a decision were made that the contract should not have effect.