



IRISH CONGRESS OF TRADE UNIONS

GUIDELINES FOR UNIONS ON
CONSULTATIONS WITH STATE AGENCIES
AND PUBLIC AUTHORITIES IN THE
REPUBLIC OF IRELAND CONCERNING
PUBLIC PRIVATE PARTNERSHIPS

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Overview

These guidelines have been prepared by Congress in order to assist unions and their members, in the Republic of Ireland, who may be engaged in consultations with a public authority or a state agency on a proposal to develop new infrastructure or provide a service by way of a Public Private Partnership.

The guidelines draw on two agreements that Congress has entered into with Government concerning the use of PPP's. These agreements were developed as part of the social partnership process and the views of Congress were largely incorporated into the final text. The first of these is the National Framework Agreement on PPP's. This agreement, entitled "Working Together for Quality Public Services" was published in 2001. The full text of the Framework is attached in Appendix One. The second agreement concerns the methodology by which consultations with employee representatives are to be conducted. The full text of this agreement is contained in Appendix Two.

Congress policy on PPP's is based on Biennial Conference resolutions and at the 2003 Biennial Conference the following resolution was adopted:

"Conference notes with deep concern that Governments, North and South, have made Public Private Partnerships (PPPs) a key element in the delivery of future capital infrastructure programmes. Conference also notes the stated intention of both Governments to use PPPs to develop greater private sector provision. Acknowledging there may be differences in the policy frameworks for PPPs North and South, nevertheless Conference believes that PPPs pose a serious threat to the delivery of future public services by public service staff.

Conference reaffirms its opposition to the privatisation of public services. Conference also reaffirms its belief that public services should be delivered by public servants using public owned assets. Conference therefore calls on the Executive Council to seek to ensure that:

- (a) PPPs are not used as a vehicle for privatisation and/or for transferring public servants compulsorily to the private sector.
- (b) Governments, North and South, are required to examine fully public funding and public provision of each public infrastructure project as an alternative to use of PPPs.
- (c) Private sector involvement in all PPP infrastructure projects should be strictly limited to the design and build elements only.
- (d) There is a presumption in favour of the disclosure of the finances of PPPs for consultation before any contracts are signed.
- (e) As a condition of involvement in PPP projects, private sector companies must apply industry or national norms for pay, pension and conditions of employment, including equality and health and safety obligations and should be required to grant recognition and bargaining rights to the appropriate trade unions for the relevant sectors."

Up until now the use of Public Private Partnerships in the Irish economy has been relatively limited. The experience of unions to date has been mixed and some public authorities have failed to meet their obligations to fully consult with unions and employees on proposals to use Public Private Partnerships. Trade Unions and employees in other countries have encountered very significant difficulties where Public Private Partnerships were utilised inappropriately.

A prime example of the latter is the experience of trade unions with Public Private Partnerships/Private Finance Initiative in the UK including Northern Ireland. It needs to be clear therefore that this guidance deals only with the policy framework for PPPs in the Republic of Ireland. Congress will continue with its efforts to address the major threats that PPP's pose for future public service provision in Northern Ireland.

Congress will continue to monitor the use of Public Private Partnership in the Irish economy. It is hoped that this material will be a useful reference point for unions and assist them in responding effectively to the many challenges they will encounter.

Introduction

In the context of the National Development Plan 2000 – 2006 the Government adopted a policy of encouraging state bodies to consider the use of Public Private Partnerships (PPPs) when initiating new infrastructure or service projects. The matter was the subject of discussion between the social partners within the National Economic and Social Council (NESC) during 1999. The NESC¹ supported a more widespread use of PPPs but recommended that a framework be developed within which their appropriateness could be assessed and their development and implementation guided. The NESC also recommended that the process take account of wider economic, social and environmental objectives and that these should be considered when deciding on the most appropriate method for procurement. The Programme for Prosperity and Fairness (PPF) agreed in early 2000 endorsed the NESC recommendations and gave the PPP Advisory Group the task of developing a framework that would guide the PPP procurement process. The Advisory Group is composed of representatives of government, ICTU, IBEC and CIF and is chaired by an official of the Department of Finance.

The Advisory Group published a 'Framework for Public Private Partnerships - Working together for quality public services' in November 2001. Section 7 of the Framework dealt with consultation with stakeholders. Stakeholders are stated to 'include employees and their trade unions, the public, the people who will use the assets and services provided, local community groups and sectoral interest groups'. This Section of the Framework specifies mechanisms for consultation on issues such as pay and conditions and health and safety. Further discussions took place on employee and employee representative consultative arrangements culminating in the publication of Guidelines for State Authorities titled 'Stakeholder Consultation for Employees and their Representatives' in early 2005. The Framework document and the agreed Consultation Guidelines are both reproduced in these guidelines.

This document is in two sections. The first explains key aspects of PPP arrangements and the second section provides guidance on the issues that are likely to be of importance to unions during the consultation process.

¹ Opportunities, Challenges and Capacities for Choice, NESC (No. 104) Dec. 1999

ASPECTS OF PPP ARRANGEMENTS EXPLAINED

What are PPPs?

Public Private Partnerships are arrangements where the private sector becomes involved in the design, construction, operation, maintenance or financing of public infrastructure or services projects in a way that differs from traditional public sector procurement. The Framework and Guidelines define a PPP as:

an arrangement between the public and private sectors (consistent with a broad range of possible partnership structures) with clear agreement on shared objectives for the delivery of public infrastructure and/or public services by the private sector that would otherwise have been provided through traditional public sector procurement.²

Traditionally the public authority develops a project to the design stage, often contracting private architects, engineers or other consultants in the process, and then invites private contractors to tender for the construction phase. Subsequently and separately, contractors might be engaged for maintenance or operation in situations where the state was not directly providing these services. Under PPP arrangements the same private contractor is likely to be involved, continuously and in partnership with the public body concerned, at all or most stages of the project i.e. design, build, operate, finance, maintain. It may just involve the integration of the design and build stages but sometimes the PPP will be of the DBO type, i.e. design, build and operate. In large projects the private sector contribution will often involve the establishment of consortium, integrating a number of companies, each providing particular competencies to the development of the overall project. Further integration is achieved if the PPP is a DBOF, e.g. design, build, operate and finance. In this instance the private sector finances all or part of the project expecting their investment to be recouped in the future based on income generated by the new infrastructure or service. Payment by the state is, however, dependent on the achievement of predetermined quality or output standards. A failure to deliver on the specifications contracted to can result in penalties or the cancellation of a PPP operating contract.

² Framework for Public Private Partnerships (2001) Section 2.1; Stakeholder Consultation for Employees and their representatives (2005) Section 2.2.

WHY DOES THE REPUBLIC OF IRELAND GOVERNMENT ENCOURAGE PPPS?

It is argued that a number of advantages can accrue from utilising a PPP structure to procure a service or piece of public infrastructure. These include:

- Long term value for money for the exchequer.
- The involvement of the private sector can result in accelerated delivery of vital infrastructure.
- A sharing of the risks between the public and private sector. For example, if there are cost overruns the private sector bears all or a major part of the loss.
- By linking design, construction, and other aspects of the project mismatches are potentially avoided and efficiencies obtained. For example a consortium that will have future responsibility for maintaining and/or operating a facility will be more conscious of the need to ensure quality during the design and construction phases.
- Combining design, construction and other aspects of a project reduces the risk of disputes and litigation. Cost overruns on traditional procurement often result from claimed deficiencies or inadequacies in public sector design and specifications for which the builder has no responsibility.
- The private sector is sometimes seen by public agencies as likely to bring new competencies to a project and a PPP structure incentivises the private sector contractor to apply its managerial, technical or financial competencies to reduce costs and deliver on time. Commercial and competitive experience may also contribute to a more innovative approach to delivery.
- The partnership aspects allows for a fruitful interaction between the public and private sector and involves an exchange of ideas and competencies leading to improvements in the quality of the public service or infrastructure provided.

The extent to which any such benefits can be realised will depend on the type of infrastructure or service being procured and the type of arrangements entered into between the public body and the private sector. As with all infrastructure projects a PPP must comply with all planning requirements

Are all public projects liable to be developed through PPPs in the future?

No. As the NESC has pointed out, not all projects are suitable for PPP development. A PPP arrangement is only one of a number of procurement options open to a public authority and only a small minority of projects are likely to be suitable for a PPP. Recently Government has allocated multi-annual capital envelopes. These envelopes allocate resources to Government Departments to develop capital projects between 2005 and 2009. The table below shows the amounts that have been allocated for Public Private Partnerships. The amount allocated for PPP represents a small proportion of the overall capital expenditure for the period between 2005 and 2009. In this period the entire capital spend by Government in the Republic of Ireland will be €36 billion.

Department	Allocation
Arts, Sport and Tourism	€170m
Education and Science	€555m
Environment, Heritage and Local Government	€190m
OPW	€220m
Health and Children	€350m
Justice	€380m
Transport	€890m

Source: Department of Finance

This is different to the situation in the UK including Northern Ireland. Under the Private Finance Initiative it is mandatory for public agencies to consider the involvement of the private sector through a PPP arrangement for all infrastructure projects. In the Republic of Ireland a PPP structure is only considered appropriate where an evaluation shows it to be likely to deliver better value for public money. A key aspect of such an evaluation would relate to the extent to which risks associated with traditional contractual arrangements are avoided or minimised and, most importantly, the degree to which there is real risk sharing between the public and private sector partners. Many 'turn key' type contracts, where the contractor is responsible for all stages of a development up to the commissioning stage, may offer comparable advantages to a PPP and may even provide better value for public money in some type of developments. For a PPP to be chosen it must be seen as offering better potential because of the higher risks and risk sharing involved and because a PPP structure is considered more likely to provide for better quality, expertise, and innovation. For a PPP arrangement to be justified it must also be shown to provide better value for money over the full life of the project as compared to traditional methods of procurement.

What types of projects have been delivered through PPP arrangements?

To date the majority of approved PPP projects are in the area of road construction and in the provision of water supply, sewerage treatment facilities. Projects that are operational include one involving the design, construction financing and maintenance of facilities at the maritime college in Cork.

When would unions be opposed to a PPP?

Unions would oppose a PPP arrangement where it was clearly inappropriate and / or where it was in breach of existing national or local level agreements. A PPP would also not be supported where it was not value for public money. Most importantly, unions would be opposed to any PPP arrangement that involved the transfer of the ownership of publicly owned assets to the private sector.

How can unions be sure that PPPs will not become a vehicle for privatisation?

Congress is opposed to attempts to use the PPP concept as a vehicle for the privatisation of public services or the forced transfer of public sector employees to the private sector. As the Framework for Public Private Partnerships states: 'There is a clear distinction between a PPP arrangement under which the private sector partner supplies public infrastructure and public services on behalf of the state for the contract period and the sale (i.e. privatisation) to the market sector of specific state assets' (Section 2.3). The difference is also made clear in presentations made by the Department of Finance as the box below illustrates. Congress has been assured that PPPs will not become a mechanism for "privatisation by the back door".³

PPPs are not privatisation	
PPP	Privatisation
<ul style="list-style-type: none">• Not irrevocable• Public authorities responsible for policy and levels of service• Mechanism for delivering services• Sharing risk / reward• PPP involves partnership	<ul style="list-style-type: none">• Transfer of ownership of asset• Public Authorities responsible for regulation• Authorities withdraw from service• Transfer risk / reward• Privatisation involves shareholder interest
Source: Department of Finance Presentation	

As is clear from the above in the Republic of Ireland, a PPP arrangement does not involve any transfer of assets out of public ownership. On occasions, it may involve the delivery of a public service by a private contractor for a designated period but the asset remains the property of the state. An example is the operation of the LUAS by Connex for a contracted period. The infrastructure and rolling stock remain in the ownership of the state under the control of the Rail Procurement Agency.

³ National Communication Strategy (2002), page 15.

GUIDELINES FOR UNIONS ON THE CONSULTATION PROCESS

Background to Congress role in the Development of PPP Framework

The involvement of Congress in the debate concerning Public Private Partnerships arose out of the social partnership process and because of concerns about an apparent absence of union consultation by a number of public agencies during the pilot phase of PPP development. It was in order to ensure consistency in the approach of public bodies towards meaningful consultation with unions that Congress proposed a PPP Framework and later Guidelines on Stakeholder Consultation for Employees and their Representatives.

The involvement of Congress during all discussions on PPPs was directed at ensuring that the important role played by state institutions in the provision of public services and infrastructure was recognised and secured and that the pay and conditions of workers was protected during any PPP process. Congress is particularly anxious to ensure that there would be no diminution in employment standards at any stage in the process. While recognising the potential utility of public private partnership arrangements in the delivery of new infrastructure under appropriate criteria, Congress in its submissions argued for a partnership approach to the development of projects with decisions made in an open and transparent manner and for adherence to good industrial relations practices by any private sector participants⁴. The consultation criteria that public bodies should follow, based on the agreed guidelines, provides unions with an opportunity to ensure that necessary protections are in place that protect employment standards and the standard of public services provided.

These Guidelines are intended to inform and advise unions on their approach to a PPP consultation process. The content draws on commitments made by government within the social partnership process and is largely based on the contents of the PPP Framework and Guidelines on Consultation. The commitments given to Congress regarding prior and adequate consultation are essential to union co-operation with the process. A failure to adequately consult is a breach of the agreed framework and guidelines. Any such failure to consult in good time should be reported to Congress and to the Project Auditor responsible for ensuring that proper procedures are followed.⁵

⁴ This approach was outlined in the ICTU Executive Council Report 1999- 2001, (Part I, p. 55-6) adapted by 2001 Biennial Conference.

⁵ The role of the process auditor is set down in 'Guidelines for the Reporting Arrangements, Role and Function of a Process Auditor in a Public Private Partnership Project' PPP Unit Department of Finance (2004)

When should unions be notified of a PPP project?

The Framework for PPPs states that:

Public service employees should be informed at the earliest possible stage of proposals and of significant developments throughout the process.⁶

The agreed guidelines on consultation⁷ state that:

Consultation should occur at a point which allows enough time for employees to gain information about any proposed changes in their working arrangements and to give feedback before any decision is made.

The key point is that notification should take place as early as possible and in sufficient time to allow the union and any members likely to be effected to secure the necessary information and to make representations that can be taken into consideration before any final decisions are taken.

Who is responsible for notifying unions?

The Public Sector Agency sponsoring the project has primary responsibility for notifying the union or partnership forum and keeping it informed of developments. Under the agreed Consultation Guidelines, a Project Liaison Officer should be designated by the Agency whenever a PPP project has employee implications. (S)he will be the primary point of contact between the Agency and the employees and their representatives.

Who should be notified?

The Framework and Consultation Guidelines both state that:

Existing structures and agreements should be used to ensure extensive consultation and open communication in respect of PPP projects.

These are defined as 'formal partnership agreements and fora established under the Programme for Prosperity and Fairness (e.g. Public Transport Forum, Health Partnership Forum and the Local Authority Partnership Fora)'. In addition, the Guidelines state that

State Authorities should inform the relevant trade unions of their intention to place the matter on the agenda of the local partnership committee.⁸

⁶ 'Framework for Public Private Partnerships – Working together for quality public service' (Section 7.2)

⁷ 'Stakeholder Consultation for Employees and their Representatives – Central Guidelines for State Authorities undertaking PPP Projects' (Section 1)

⁸ 'Stakeholder Consultation for Employees and their Representatives – Central Guidelines for State Authorities undertaking PPP Projects' (p. 7)

It is important to note therefore that unions, and not just partnership committees, should be notified of a proposed PPP development. In all situations, the specific union representing staff in areas potentially affected should be notified, provided with the relevant information and invited to participate in a consultation process directly and through any existing partnership structure. It is also open to unions to raise the issue of PPPs directly with a state authority or through a partnership committee before it has been formally notified of a development.

What information should be provided and sought?

The commissioning public body should provide the union and partnership forum with all relevant information, including:

- Details of the type of infrastructure or service to be developed
- The form and structure of PPP envisaged
- The number and categories of staff who may be affected, directly and indirectly
- Any potential implications for pay, tenure, pensions, working time and other conditions of employment,
- Any changes in reporting arrangements, and,
- Any implications for health and safety and the work environment.

The union may also seek to be informed of arrangements for the recruitment, payment and other working arrangements of new employees in circumstances where a private contractor is to operate or maintain public infrastructure or otherwise provide a service.

Would a Public Body be entitled to withhold some information?

The process should be as transparent as possible. However, certain market sensitive information, e.g. cost estimates and contract prices, may require to be kept confidential within a competitive tendering process.

What should a consultation process involve?

Although not specifically defined in the PPP Framework or Consultation Guidelines, the consultation process should take account of the provisions contained in the European Directive on Information and Consultation. Article 4 (d) and (e) of the Directive state that consultation shall take place:

- ‘in such a way as to enable employees’ representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate’
- and
- ‘with a view to reaching an agreement on decisions within the scope of the employer’s powers referred to in paragraph 2(c)’⁹.

⁹ Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community

This is consistent with the Consultation Guidelines which refer to the Directive (Section 2.2) and advises State Authorities to 'seek constructive feedback on issues impacting on employees with a view to reaching agreement in advance of any changes' (Section 1). Workers also have legal protections under the Transfer of Undertakings Regulations¹⁰ in the event of a change of employer. However, these regulations, which are based on the EU Acquired Rights Directive, do not as yet provide protection for existing pension entitlements. While this matter is being pursued by Congress unions are advised to secure specific guarantees in respect of future pension entitlements in the unlikely event of any change in the employment status of their members as a consequence of a PPP.

Consultation and Negotiations

It is clear from the Framework and Guidelines that the consultation process should be partnership focussed and be directed towards reaching agreement. This requires both sides to engage meaningfully on a proposal to develop a PPP. However, consultation is not the same as negotiations and as the Consultation Guidelines state:

It may not be possible to resolve every employee concern. While the sponsoring Agency has the right to proceed in accordance with government policy, it should act in good faith to try to address raised to the greatest extent practicable and try and reach agreement on the maximum number of issues

It should also be noted that the guidelines also state that:

Consultation will take place without prejudice to the right of employees to avail of industrial relations processes in the event of disagreement on the relevant issue.

The extent of consultation desired will obviously reflect the level of concern among members about any proposed development. In the event of serious issues arising that cannot be rectified within the consultation process, unions should ensure that all the issues dealt with through the normal industrial relations channels.

The consultation process / key issues for unions

While the agenda of unions will vary depending on the nature of the PPP proposal the following items are listed as a potential checklist.

- The union will be satisfied that a PPP arrangement is the best way of proceeding taking into account broad social and environmental criteria and economic criteria
- The union will obviously demand assurances that existing levels of pay and the working and employment conditions of its members are safeguarded into the future and that all protections contained in existing collective agreements are maintained following the introduction of PPP arrangements

¹⁰ European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)

- The union will also seek assurances concerning staff placement, grading promotional opportunities and future work reporting arrangements.
- The project should be the subject of a risk assessment process which should reassure staff that proper health, safety and environmental standards are maintained
- The union will wish to ensure that the pay and conditions of any new employees, including those to be employed by a contractor, will be on par with trade union norms in the sector and that the appropriate union will be facilitated in recruiting such staff into membership. The union should seek to have these type of provisions should inserted into the contract specification
- The union and Congress should also have regard for the social impact of any changes proposed during the consultation process. This may involve consideration of the impact on local communities especially with regard to social exclusion, equality and disadvantage. This is particularly important where new service charges are being contemplated that might adversely affect low-income groups.

Monitoring developments

Congress will continue to monitor developments and advise unions of issues arising from PPP initiatives. In addition to monitoring the implications for public service staff Congress will also seek to ensure that the rights of private sector employees engaged on a PPP project are protected. Of particular, importance in this regard will be the pay and conditions of any migrant workers employed on construction, maintenance or operations. The Framework states that:

All parties to a PPP arrangement should have regard to appropriate industry norms in terms of pay and conditions and of prevailing national and/or industry-wide agreements including health and safety regulations. (Section 7.3)

Unions should remain vigilant to ensure that no exploitation of employees is permissible within a PPP arrangement.

On all PPP projects with implication for members the union or unions concerned should nominate an official to monitor developments and to lead the consultation process. This person should also liase with the Congress representatives on the PPP Advisory Group concerning developments.

Public-Private Advisory Group on PPPs

Framework for Public Private Partnerships

*“Working Together
for
Quality Public Services”*

21 May, 2001

Framework Contents

	Foreword	i
1.	Background	1
2.	Scope of PPPs	1
3.	Public Private Partnership	2
4.	Statement of Principles	3
5.	Goals and Benefits	4
6.	PPP Process	5
7.	Consultations with Stakeholders	5
8.	Communications Strategy	6
9.	Implementation	6
	Structures	
	Procurement	
	Bid Costs	
	Contract Terms	
	Output Specification	
10.	Central Co-ordination of PPP Process	8
11.	Review	9
	Glossary of Terms	10

Foreword by the Minister for Finance

Mr. Charlie McCreevy, T.D.

Public Private Partnerships (PPPs) are crucial to the delivery of priority economic infrastructure projects under the National Development plan and to the provision of quality public services. Delivering the NDP programme within the required time frame and the achievement of value for money for the taxpayer are integral elements of the Government's strategy of maintaining competitiveness and sustaining strong economic growth and social progress over the long term. It is essential that there is a broad consensus in relation to the scope of PPPs, the process through which PPP projects will be developed and the benefits we expect to realise by adopting the PPP approach across all interests in both the public and private sectors. In this regard, I welcome and endorse the Framework for Public Private Partnerships agreed between the social partners as a significant milestone in advancing towards our shared objectives.

The Programme for Prosperity and Fairness (PPF) reaffirms the commitment of the social partners to PPPs in line with the conclusions of the National Economic and Social Council that PPPs embody significant potential for achieving accelerated delivery of strategic national infrastructure and quality public services on a long-term value for money basis for the Exchequer. There is a clear appreciation that the PPP approach is a means of building on the success of social partnership in a positive and tangible way. The PPF called for the development of a framework agreed with the social partners to assess the appropriateness of PPPs for infrastructure projects and to guide their implementation.

The structure for discussions in relation to this requirement was the Public-Private Advisory Group. The Advisory Group chaired by the Central PPP Unit in my Department, comprises representatives of the Irish Business and Employers Confederation, the Irish Congress of Trade Unions, the Construction Industry Federation as well as the main departments and agencies currently engaged in the PPP programme. All of the members of the group approached the discussions in an open and constructive manner leading to a positive outcome.

The adoption of the Framework is an acknowledgement that the delivery of projects through PPPs gives us all an opportunity to maximise the interaction and co-operation between the public and private sectors. Agreement on shared goals, objectives, principles and the appropriate distribution of risks for public investment and services delivery are fundamental. It is entirely appropriate that the full realisation of the potential benefits of Public Private Partnerships should be pursued under an agreed set of principles and common goals. This is now a reality.

The principal features of the Framework include clear statements of the scope, principles and goals of the PPP programme, the identification of key project implementation issues including the requirement for central co-ordination of the programme by the Central PPP Unit, as well as a clear recognition of the critical role of social partnership and stakeholder consultation in underpinning the success of PPPs. The Framework also makes provision for monitoring and review by the Public-Private Advisory Group of implementation of and adherence to the Framework.

The Framework constitutes an important statement of the high-level principles for the conduct of PPPs at national, sectoral and project level that will help embed PPP as an important pillar of public capital procurement and the provision of quality public services.

By further strengthening the sense of common purpose and commitment to genuine partnership that has made such a major contribution to progress achieved in the PPP programme to date this Framework will therefore serve as a key building block for the successful development of PPPs in Ireland in the future.

A Framework for Public Private Partnerships

1. BACKGROUND

- 1.1 It is Government policy to encourage the use of Public Private Partnerships (PPPs) in the provision of public infrastructure and services.
- 1.2 The National Economic and Social Council (NESC) concluded that PPPs have the potential to:
 - play a pivotal role in supporting the accelerated delivery of strategic national infrastructure;
 - yield long-term value for money for the Exchequer - a concept embracing efficiency, effectiveness and economy rather than just least cost; and
 - ensure quality public services.
- 1.3 The Programme for Prosperity and Fairness (PPF) supports the PPP process – in line with the NESC recommendations - and calls for the development of a clear framework to assess the appropriateness of PPPs for infrastructure projects and to guide their implementation, taking into account the wider economic, social and environmental objectives that should guide infrastructural development, irrespective of the procurement method followed.
- 1.4 This Framework provides the starting point for departments and state agencies directly responsible for the programme areas for selecting and developing projects as potential PPPs in the light of overall economic and social priorities.

2. SCOPE OF PPPS

- 2.1 A PPP is an arrangement between the public and private sectors (consistent with a broad range of possible partnership structures) with clear agreement on shared objectives for the delivery of public infrastructure and/or public services by the private sector that would otherwise have been provided through traditional public sector procurement.
- 2.2 A particular arrangement or project may constitute a PPP where the following key characteristics are present:
 - shared responsibility for the provision of the infrastructure or services with a significant level of risk being taken by the private sector, for example, in infrastructure projects linking design and construction with one or all of the finance, operate and maintain elements¹;
 - long-term commitment by the public sector to the provision of quality public services to consumers through contractual arrangements with private sector operators; and
 - better value for money and optimal allocation of risk, for example, by exploiting private sector competencies (managerial, technical, financial and innovation) over the project's lifetime and by promoting the cross-transfer of skills between the public and private partners.
- 2.3 There is a clear distinction between a PPP arrangement under which the private sector partner supplies public infrastructure and public services on behalf of the state for the contract period and the sale (i.e. privatisation) to the market sector of specific state assets.

3. PUBLIC PRIVATE PARTNERSHIP

- 3.1 The creation of an environment supporting the development of PPPs extends beyond the application of contract law to the development of consensus and understanding of the main objectives of PPP including, in particular, the need for quality public services.
- 3.2 Collaborative management styles and working practices should foster successful partnership in PPP projects. Partnership skills at project level are a critical element of the PPP agenda.
- 3.3 The core strength of PPPs is the scope they allow for dynamic interaction and co-operation between the public and private sectors, highlighting the complementarity of the public service ethos with innovation in the provision of public capital infrastructure and services. PPPs are an important part of the ongoing agenda for the modernisation of public services.

¹ Large and complex infrastructural projects being developed as PPPs (e.g. Dublin's Metro) may entail a chain of interlocking contracts linking closely design and construction with the financing, operation and maintenance of the infrastructure.

- 3.4 Genuine partnership has a crucial role to play in helping to achieve the shared goals underpinning the PPP programme and also provides the opportunity for all parties - public and private sectors - to re-evaluate shared areas of interest and develop new and innovative ways of working together in PPPs.
- 3.5 The development of the PPP programme must remain fully consistent with the objectives of social partnership², the key principles underpinning the provision of Exchequer-funded public services and the effective and efficient use of public infrastructure and assets.

4. STATEMENT OF PRINCIPLES

- 4.1 The fundamental principles determining a successful PPP programme have emerged from the Public-Private Advisory Group drawing primarily on the work of the NESC and Government policy as set out in the PPF.
- 4.2 These principles, summarised in this section, are the foundation for this Framework and are central to the achievement of the objectives and the optimum use of PPPs including the maintenance of genuine partnership in the development of Ireland's PPP programme.
- 4.3 PPPs should be progressed within the context of national policy (as set out at present in the National Development Plan, the Dublin Transportation Office strategy and the PPF) particularly in relation to the timely and cost-effective delivery of economic and social infrastructure priorities and quality public services:
- 4.4 PPPs should yield value for money for the Exchequer, which includes:
- allocating risks to the party best able to control and manage them; and
 - maximising the benefits of private sector efficiency, expertise, flexibility and innovation.
- 4.5 The adoption of a PPP approach should be determined by factors, including:
- the likelihood of it providing value for money, particularly as compared to conventional public capital procurement;
 - long-term affordability in the light of overall budgetary sustainability, forward commitments in relation to public expenditure and the potential for returns on private sector investment;
 - willingness of the private sector to participate in the project (i.e. financial viability considerations); and
 - the balance between economic and social benefits and costs (including the opportunity costs of the Exchequer contribution required).
- 4.6 Private finance in PPPs should be additional to public finance, complementing Exchequer (and EU) resources in funding investment in public infrastructure and public services.
- 4.7 The introduction and development of PPPs should take place within the overall process and structures of social partnership and should be managed in an open and transparent manner. PPPs should also be consistent with relevant EU requirements and with best industry and business practices and social partnership agreements.
- 4.8 As recommended by NESC, the role of PPPs in providing for social and community infrastructure should be actively explored.

5. GOALS AND BENEFITS

- 5.1 Identification of the goals of PPP and the prospective benefits from individual projects provide more certainty, in particular, for those (e.g. local communities) whom PPP projects are expected to serve³. These goals and benefits include the following:
- speedy, efficient and cost-effective delivery of projects;
 - value for money for the taxpayer, inter alia, through optimal risk transfer and risk management;
 - efficiencies from integrating design and construction of public infrastructure with financing, operation and maintenance/upgrading;

² *Economic, social and environmental.*

³ *Extract from NESC Report No.105, p.483 - PPP projects should be conducted in an open and transparent manner. This would help to create a more certain environment for everyone involved, including the local communities that PPP projects are expected to serve.*

- creation of added value through synergies between public authorities and private sector companies, in particular, through the integration and cross-transfer of public and private sector skills, knowledge and expertise;
- alleviation of capacity constraints and bottlenecks in the economy through higher productivity of labour and capital resources in the delivery of projects;
- competition and greater construction capacity (including the participation of overseas firms – especially in joint ventures and partnering arrangements);
- accountability for the provision and delivery of quality public services;
- innovation and diversity in the provision of public services; and
- effective utilisation of state assets to the benefit of all users of public services.

6. PPP PROCESS

- 6.1 PPP issues should be reviewed through the structures and systems currently in place for managing the PPP programme. It is essential to ensure a standardised approach consistent with this Framework to the development of the PPP programme overall, while recognising the need for sectoral flexibility to accommodate diversity at project level.
- 6.2 The Inter-departmental Group (IDG), reporting to the Public-Private Advisory Group and drawing on private sector expertise as appropriate, should prepare discussion papers, address and resolve issues and make recommendations to the Advisory Group with the primary objective of establishing the degree of standardisation needed to create an attractive market for PPPs across all sectors of public capital infrastructure and public services.
- 6.3 Where the implementation of recommendations requires a high-level policy decision, they should be submitted through the relevant Department to the responsible Minister and, where appropriate, the Minister for Finance.
- 6.4 The experience and expertise available across both the public and private sectors and from the social partners should be utilised to advance the PPP process.
- 6.5 The PPP Unit in the Department of Finance should bring forward proposals for the priorities and work programme of the IDG and Public-Private Advisory Group for their consideration. The important role of the social partners in bringing forward proposals to the Advisory Group is also recognised.
- 6.6 The principles underpinning this process, which are summarised in this section, should be taken into account in the operation of any new structures for managing the PPP programme.

7. CONSULTATION WITH STAKEHOLDERS

- 7.1 Stakeholders include employees and their trade unions, the public, the people who will use the assets and services provided, local community groups and sectoral interest groups. In selecting, developing and implementing PPP projects, the economic, social and environmental concerns of those directly affected at local level should be taken into account along with the statutory rights and legitimate economic interests of stakeholders in line with the NESC recommendations.
- 7.2 Existing structures and agreements⁴ should be used to ensure extensive consultation and open communication in respect of PPP projects. Public service employees should be informed at the earliest possible stage of proposals for the introduction of PPPs and of significant developments throughout the process. They should also have the opportunity to contribute positively to the development of projects, building on progress in the development of workplace partnerships under the PPF. The partnership approach should be maintained throughout the project's lifetime.
- 7.3 All parties to a PPP arrangement should have regard to appropriate industry norms in terms of pay and conditions and of prevailing national and/or industry-wide agreements including health and safety regulations. Such an approach should be consistent with protections provided under the Transfer of Undertakings (Protection of Employees) Regulations and the Acquired Rights Directive. PPPs should be approached on the basis that no less favourable terms than the Transfer of Undertaking Regulations apply.

⁴ i.e. formal Partnership agreements and fora established under the Programme for Prosperity and Fairness (e.g. Public Transport Partnership Forum, Health Services Partnership Forum and the Local Authority Partnership Fora).

8. COMMUNICATIONS STRATEGY

- 8.1 The success of the PPP programme requires widespread public support. A PPP communications and awareness strategy⁵ will be led by the PPP Unit in the Department of Finance directed at key stakeholders, officials of public service procuring agencies, employees in sectors where PPPs will be developed and the general public. It will continue to be developed by the Public-Private Advisory Group, in co-operation with other Departments and Agencies and collaboratively with the social partners.⁶
- 8.2 Information on progress in assessing and implementing the various PPP projects should be made available to all those interested in Ireland's PPP programme using project trackers posted and updated regularly on the PPP website (www.ppp.gov.ie). This information will also be reported at regular intervals to the Advisory Group.

9. IMPLEMENTATION

- 9.1 **Structures:** PPP projects under the Framework are implemented by the appropriate public authority (e.g. Government departments, the Office of Public Works, the National Roads Authority, local authorities or other relevant agencies). Implementation of PPP projects should follow the Framework and the Best Practice Guidelines for Project Implementation, approved by the Cabinet Committee on Infrastructural Development and PPPs and relevant future policy directives.
- 9.2 **Procurement:** The projects should be procured in an open and transparent fashion consistent with national and EU procurement rules and with the need to ensure effective competition. Opportunities to avail of e-procurement should be actively explored.
- 9.3 **Bid Costs:** Section 2.8.5 of the PPF requires that the question of a client contribution to PPP tender bid costs be negotiated. In any event, insofar as possible the procurement process should be operated in a manner that does not unnecessarily raise the costs of bidding for PPP projects for firms/consortia.
- 9.4 **Contract Terms:** In PPP projects, a long-term partnership is created for the procurement of an asset and/or the delivery of a service to a specified quality level. The design of the PPP contract is crucial. As the pilot PPP programme is rolled-out, a number of broad principles should guide the design of PPP contracts.⁷ These include the following:
- risks should be clearly identified and distributed appropriately between the parties to the contract;
 - innovation by the private sector in providing infrastructure and public services should be encouraged, to realise value for money over the life-cycle of the project;
 - the provisions governing the transfer of public capital infrastructure from a public authority to a private sector consortium (i.e. by means of lease or licence) and its reversion at expiry of the concession period should be clear and transparent at the outset and over the lifetime of the PPP project;
 - the payment mechanism should provide a clear procedure for establishing the charge on public expenditure over time;
 - reduction in costs over the life span of the contract should be incentivised in order to bolster price-competitive quality public service provision;
 - adequate flexibility, where feasible, to encompass, with the agreement of the contract parties, new and innovative ways of upgrading the quality of services (in response to advances in technology and innovations in potential delivery mechanisms);
 - full disclosure of all relevant information relating to the conduct of the PPP over time should be encouraged in order to minimise the scope for costly information gaps arising between the public and private sector partners; and
 - regard for prevailing national and/or industry wide agreements on pay and conditions including health and safety regulations.

⁵ In accordance with the general communications strategy under the NDP, 2000-2006.

⁶ Funding for associated approved communication activities is available under the CSF Technical Assistance Programme administered by the Department of Finance.

⁷ Pending the development of model contracts and standard documentation.

- 9.5 Output Specification: The output specification should take account of the following general principles:
- the level of service quality and design should be related to the objective for the service and user requirements;
 - social and environmental sustainability and gender equality/disability considerations; and
 - any need for improvements in service standards over the lifetime of the contract required to comply with regulatory obligations, for example, relating to environmental, and public health standards.
- 9.6 User charges, where they apply in PPP projects, can make a valuable contribution to enhanced service quality and efficient use of infrastructure or services consistent with the need to maintain environmental sustainability and to conserve scarce environmental resources (taking account of the “polluter pays principle”).
- New financially viable free-standing PPP projects will be expected to generate a revenue stream from user charges to remunerate and redeem the private sector finance⁷.
 - Any Exchequer contribution should ensure that the level of charges is consistent with efficient use of the infrastructure.
 - Mechanisms should be developed, where feasible, to reduce the negative impact of user charges on low-income groups.⁸

10. CENTRAL CO-ORDINATION OF PPP PROCESS

- 10.1 Central direction should continue to be provided to the PPP process by the institutional structures established by Government to manage the PPP programme. This will ensure a consistent and co-ordinated approach and maintain a positive business climate for the private sector.
- 10.2 The Central PPP Unit in the Department of Finance, working together with the other sectoral PPP Units and the social partners, should continue to give a high priority to:
- delivery of the PPP programme;
 - developing a standardised approach in terms of tendering procedures, model contracts and documentation, in step with progress in the pilot programme;
 - developing PPP policy; and
 - resolving outstanding obstacles to the wider use of PPPs (including legal, taxation, financial and other issues).
- 10.3 This will ensure that:
- PPP becomes a standard element of Government procurement methods; and
 - a stream of PPP projects is developed and a sustainable and dynamic PPP market is created in Ireland in the long term.

11 REVIEW

- 11.1 A comprehensive and regular review of the overall process should be a core responsibility of the structures managing the development of PPPs. Reviews should be prepared openly and transparently within an appropriate time-frame. The review should specify implications for the procurement of assets and the delivery of quality services helping to shape the future evolution of the PPP programme.
- 11.2 The implementation of, and adherence to, the Framework will be monitored and reviewed by the Public-Private Advisory Group focussing, in particular, on the consistency of conduct of the PPP process with the Framework and the need for any revisions required to maintain its consistency with ongoing developments and expansion of Ireland’s PPP programme.

⁸ This does not imply any change in government policy regarding domestic water charges.

⁸ Taking account of other Government policies and measures towards these groups.

GLOSSARY OF TERMS

Value for Money (VFM)

Value for money for the Exchequer in PPP projects is gained through the engagement of private sector efficiency, effectiveness and economy and the appropriate allocation of the risks in the project.

Optimal Allocation of Risks

Sharing of a project's risks between the public and private sector parties to the contract so that specified risks are managed by the party best positioned to do so and at least cost.

Quality Public Services

The provision of a service to a level that meets or exceeds the requirements of the grouping to be served by the service and the public at large.

Conventional Public Procurement

Covers the range of procurement methods traditionally used by public procuring agencies in providing public infrastructure projects and services (e.g. contracting the private sector to construct infrastructure to a predetermined public sector commissioned design).

PPP Interdepartmental Group (IDG)

Comprises representatives of all public service bodies engaged in PPPs (Department of Finance PPP Unit and PPP Units in the Department of the Environment and Local Government, the Department of Public Enterprise, the Department of Education and Science and the National Roads Authority - also represented are the Department of the Taoiseach, the Department of Enterprise, Trade and Employment, the Department of Health and Children, the Office of Public Works and the National Treasury Management Agency). Its primary role is to bring together key decision makers across the public service to ensure that there is coherence and consistency across the public service in advancing Ireland's PPP programme.

Public-Private Advisory Group on PPPs

Includes IBEC, ICTU, CIF, and Forfás in addition to members of the Departmental PPP Units, the NRA and the OPW, and helps to develop partnership arrangements with the private sector by reflecting the interests of the social partners in the area, facilitating the parties involved to exchange views and information on issues arising in relation to PPP.

Stakeholder Consultation for Employees and their Representatives

*Central Guidelines for State Authorities
undertaking PPP Projects*

Issued by the Central PPP Unit, Department of Finance

January 2005

Contents

1	Purpose of these Guidelines	3
2	Employees and their Representatives	4
2.1	Sustaining Progress	4
2.2	Public Service Employees	5
2.3	Principles of Consultation	6
2.4	Approach to Consultation	7
2.5	Project Liaison Officer	8
2.6	Final Decision	8
2.7	Industrial Relations Machinery	9
3	Existing structures and agreements	9
4	Process Auditor	9

PURPOSE OF THESE GUIDELINES

The aim of employee consultation is to provide a process for meaningful two-way communication between State Authorities, and employees and their representatives, in the course of which relevant issues arising in connection with PPP projects are signalled, communicated and discussed. Such consultation could:

- a) Provide information concerning PPP projects, and/or
- b) Seek constructive feedback on issues impacting on employees with a view to reaching agreement in advance of any changes¹
- c) foster and develop, in a spirit of partnership, a climate of participation and mutual understanding among management, staff and unions in relation to the management of change.

The need for and level of consultation will vary depending on the level of employee implications of a given project. Consultation should occur at a point which allows enough time for employees to gain information about any proposed changes in their working arrangements and to give feedback before any decisions are made.

State Authorities should also familiarise themselves with the requirements of the Framework Agreement on Public Private Partnerships, the appropriate collective agreements and EU Directives and Regulations etc., which provide the context for such consultation.

EMPLOYEES AND THEIR REPRESENTATIVES²

2.1 The PPP Framework Agreement and Sustaining Progress

Section 7 of the Framework for Public Private Partnerships states that;

“Existing structures and agreements³ should be used to ensure extensive consultation and open communication in respect of PPP projects. Public service employees should be informed at the earliest possible stage of proposals for the introduction of PPPs and of significant developments throughout the process. They should also have the opportunity to contribute positively to the development of projects, building on progress in the development of workplace partnerships under the PPF. The partnership approach should be maintained throughout the project’s lifetime.”

Section 21.12, (Management of the Introduction of Change and New Development), of the Sustaining Progress Social Partnership Agreement states that;

“In accordance with the Partnership Approach, unions will be informed in advance of all new and significant workplace-related initiatives, the reasons for them and the proposed implementation date. Notification will be given in advance and in sufficient time to allow discussions with the unions concerned to take place. Such discussions will cover the nature of the changes involved, the reasons for them and the impact on staff. The discussions will be approached in a partnership manner and will be concluded in time to allow the changes to be introduced by the date specified. Subject to this, it is accepted that management have the right to implement changes in accordance with the provisions of this agreement”.

2.2 Public Service Employees

The purpose of this guidance is to outline the process in PPP projects, especially where there are implications for employees. As set out in the Framework for Public Private Partnerships, a PPP is an arrangement between the public and private sectors (consistent with a broad range of possible partnership structures) with clear agreement

¹ See also section 2.6.

² Representative means a trade union, staff association or excepted body with which it has been the practice of the employees’ employer to conduct collective bargaining negotiations, or in their absence, a person or persons chosen by such employees (under an arrangement put in place by the employer, including by means of an election) from among their number to represent them in negotiations with the employer.

³ i.e. formal Partnership agreements and fora established under the Programme for Prosperity and Fairness (e.g. Public Transport Partnership Forum, Health Services Partnership Forum and the Local Authority Partnership Fora).

on shared objectives for the delivery of public infrastructure and/or public services by the private sector that would otherwise have been provided through traditional public sector procurement (see Part 2 of the Framework, Scope of PPPs).

Employees may have genuine concerns about the impact of a PPP on their tenure, terms and conditions of employment and their future careers. However, different PPP projects will impact differently on different categories of public service employees. The level and degree of consultation will be dependent on a range of factors including the size and complexity of the project, whether it is a new or existing service/facility, whether staff are likely to be transferred or otherwise affected by the proposed development (e.g. will it involve the transfer of existing roles but not of personnel) or whether the service/facility has traditionally been provided directly by the State. For example, some employees may be transferred permanently or temporarily with their work under a PPP arrangement, while for a toll roads project there may be no local authority employees directly affected. Consequently there is a spectrum within which the need for and degree of consultation may vary. In certain other projects the need for and level of consultation will be minimal because of low/nil impact on employees either in the short or long term. In all cases, in accordance with existing partnerships and good practice generally, information on developments or proposals that might impact on staff should be provided to staff/staff representatives in advance. Consultation will not need to be extensive where:

- There are no existing public service employees; or
- There is no consideration being given to transfer employees.

However, even in such cases, basic information regarding the proposed PPP project should be provided to the relevant union/staff interests (e.g. Congress Construction Group of Unions in road and other significant construction projects) who may, of course, raise any issues arising from the proposed project which affect employees, within existing structures and agreements.

Primary responsibility for ensuring Stakeholder Consultation takes place rests with the Project Manager, Project Board and the Sponsoring Agency (for an explanation of these roles, see the Guidelines issued by the Central PPP Unit in 2003 on the Procedures for the Assessment, Approval, Audit and Procurement of Projects). However, it is open to employees to have the issue of stakeholder consultation in a particular PPP project raised at appropriate Partnership level.

There are obligations on all sides to engage in a constructive manner. Such consultation will need to be consistent with the requirements of the Information and Consultation Directive, due to be transposed into National Legislation by March 2005, the National Framework Agreement and appropriate collective agreements.

2.3 PRINCIPLES OF CONSULTATION

The principles that govern meaningful consultation, which equally apply to the consulting party and to the consulted, are:

- the consultation process should be entered into in good faith;
- all relevant information should be given in a timely manner;
- the consultation process should be structured and formal, as appropriate
- the process should be given enough time for all parties to respond, to the greatest extent practicable, while recognising project deadlines, and with a view to reaching agreement on relevant issues.
- State Authority decision makers should:
 - ❖ Consider the responses received in a constructive manner; and
 - ❖ Endeavour to address the relevant concerns, as far as is practicable, to the greatest extent possible within the constraints inherent in the project timescale and any other legal and/or policy constraints.

Both stakeholders and State Authorities should be aware that certain financial or related information is commercially sensitive and therefore cannot be released. In the event of such a situation, the justification for withholding information should be communicated to stakeholders.

2.4 APPROACH TO CONSULTATION

As a minimum, where there are employee implications, the State Authority should communicate the following information to employees and their trade unions and/or other representatives⁴:

- An outline of the potential project and the type(s) of possible PPP structure being considered (e.g. DBO, DBOF, DBOM);
- All relevant issues which may impact on employees;
- The timescale for the project; and
- The timescale for feedback on issues raised.

While it is recognised that Government Ministers can and have the right to decide policy, State Authorities should endeavour to ensure that employees and their trade unions and/or other representatives are informed of proposals and/or decisions regarding PPP projects with implications for employees in advance of any public statements on the issue and, in any event, not later than the commencement of PPP Assessment stage.

Normally, the consultation process for employees and their trade unions and/or other representatives will be initiated when the State Authority places the PPP project on the agenda of the local partnership committee. State Authorities should also inform the relevant trade unions of their intention to place the matter on the agenda of the local partnership committee. It is of course open to the union/employee representative to ask for a project to be discussed where the project has not been placed on the agenda; in such circumstances, the State authorities should also be informed beforehand by the union/employee representative of his/her intentions, to facilitate discussions. If there is no local partnership committee and where there are implications for the work arrangements of employees, state employers should communicate directly with employees and their representatives. In accordance with the Framework for PPPs, consultation should take place at the earliest possible stage of proposals for the introduction of PPPs and of significant developments through the process.

2.5 PROJECT LIAISON OFFICER

Where there are employee implications a Project Liaison officer should be identified. This official should be the primary point of contact between the State Authority and employees and their representatives.

The Project Liaison Officer should be familiar with relevant aspects of the project. His/her responsibilities could include:

- Providing updates on the various stages of the PPP projects;
- Acting as a conduit for the flow of information;
- Promoting co-operation;
- Ensuring queries are directed to appropriate officials and addressed, where possible; and
- Identifying and resolving issues as appropriate.

2.6 FINAL DECISION

Consultation which conforms to the principles articulated above⁵ should ideally result in a process which highlights potential problems and addresses those problems to the satisfaction of employees and the consulting party. However, it is recognised that it may not be possible to resolve every employee concern. While the Sponsoring Agency has the right to proceed in accordance with government policy, it should act in good faith to try to address issues raised to the greatest extent practicable and to try and reach agreement on the maximum number of issues. The Sponsoring Agency should also have regard to prevailing national and/or industry-wide agreements and processes.

⁴ Where representative means a trade union, staff association or excepted body with which it has been the accepted practice of the employees' employer to conduct collective bargaining negotiations, the communications referred to hereunder should be copied to the head offices of such organisations for their information.

⁵ See Section 2.3.

2.7 INDUSTRIAL RELATIONS MACHINERY

Consultation will take place without prejudice to the right of employees to avail of industrial relations processes in the event of disagreement on a relevant issue.

EXISTING STRUCTURES AND AGREEMENTS

The Framework for PPPs states that “Existing structures and agreements⁶ should be used to ensure extensive consultation and open communication in respect of PPP projects”. Stakeholder Consultation should take place at the most appropriate level. The managers, employees and their representatives are best placed to assess the likely impact of a proposed project and to explore how these might be resolved. The appropriate structures in the Public Service include the following:

- Local partnership committees at project level
- Partnership fora at sectoral level where they exist
- Public Private Partnership Informal Advisory Group for cross sectoral issues
- Industrial Relations Machinery including direct bilateral contacts with the appropriate trade union(s).

PROCESS AUDITOR

It is a function of the Process Auditor⁷ to record the completion of a number of processes in a PPP project, including the Stakeholder Consultation process. In the event that the Process Auditor has a concern of a material nature in this regard, there are a number of actions available to him/her as set out in the Process Auditor Guidelines.

IMPLEMENTATION AND REVIEW UNDER THE PPP FRAMEWORK AGREEMENT

As referred to in section 2 above, the PPP Framework Agreement sets out its commitment to consultation with stakeholders at paragraphs 7.1 to 7.3 and these Guidelines outline the process of consultation.

Section 11.2 of the PPP Framework Agreement states:

“The implementation of, and adherence to, the framework will be monitored and reviewed by the IAG focussing, in particular, on the consistency of conduct of the PPP process with the Framework and the need for any revisions required to maintain its consistency with ongoing developments and expansion of Ireland’s PPP programme.”

Issues which arise relating to stakeholder consultation under the Framework may be monitored and reviewed by the IAG, in accordance with these provisions. Monitoring and review at IAG level will not pre-empt and is without prejudice to the operation of existing partnership or consultative arrangements, or industrial relations processes, at the appropriate level in relation to specific sectors or instances.

⁶ i.e. formal Partnership agreements and fora established under the Programme for Prosperity and Fairness (e.g. Public Transport Partnership Forum, Health Services Partnership Forum and the Local Authority Partnership Fora).

⁷ See separate guidelines for the Reporting Arrangements, Role and Function of the Process Auditor in a PPP procured project.



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