Policy Framework for Public Private Partnership (PPP) in Ireland

Evolution of PPP Policy in Ireland

November, 2003
**Foreword**

This document is one of a suite of guidance documents, national, departmental and sector specific, which have issued in recent years in relation to Public Private Partnerships [PPPs]. The guidance is designed to assist local authority staff and others engaged on PPP projects within the local government sector.

The purpose of this document is to summarise and update the policy environment for PPP projects.

The document is in two parts. Part 1 outlines details on the most important developments in the evolution of PPP policy in Ireland. It is intended to provide the reader with background information on the policy framework within which PPPs operate in Ireland.

Part 2, the ‘Policy Framework Document for Public Private Partnership (PPP) in Ireland – Local Government Sector’ provides general guidance on how PPP projects are to be implemented by local authorities. The document goes through the various stages of the procurement cycle and details the conditions regarding the appraisal, approval, procurement, management and review of projects that must be met.

Appendix 1 to the guidance lists the main documents and other reference material that are important for anyone who needs further information on the subject.

Please note that both Part 1 and Part 2 of this Policy Framework are Guidance documents. They do not purport to provide legal advice. Indeed the nature of PPP projects is such that they will require local authorities to acquire and retain legal advice due to their complexity etc.

Infrastructure and PPP Section,
Department of the Environment, Heritage and Local Government
# PART 1

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The Policy Framework for Public Private Partnership in Ireland

Local Government Sector

Part I

The Evolution of PPP Policy

1. What is a Public Private Partnership

PPP’s are essentially partnerships between public sector organisations and private sector investors and businesses for the purpose of designing, planning, financing, constructing and/or operating infrastructure projects normally provided through traditional procurement mechanisms by the State. PPP is not just about the private sector financing capital projects in return for an income stream, but also makes use of private sector skills and management expertise to deliver and operate public projects more efficiently over their lifetime.

The benefits of a PPP are that the public and private sectors will have certain advantages relative to each other, and these advantages can be exploited so as to deliver a superior project or service in the most economically efficient manner. The risks are identified from the outset and a key aspect of PPP’s is that risks are placed with the party best able to manage them. As a number of risks associated with the designing, building and operation of the asset may be transferred to the private partner, the risks facing the local authority are lowered. As the private sector is paid according to their performance, the incentive to perform is heightened.

Another advantage of PPP’s is that transferring responsibility to the private sector allows local authority officials to concentrate on service planning and performance monitoring rather than balancing that regulatory role with their day to day running of infrastructure etc.

1 A Public Private Partnership is defined in Section 3 of the State Authorities [PPP Arrangements] Act, 2002.
2. **Types of PPP’s:**

The types of PPP’s are outlined in more detail in Part 2 of this document. The main types are:-

- Outsourcing and service contracts.
- Design, build and operate contracts.
- Design, build, operate and finance contracts.
- Concession contracts.
- Joint Ventures arrangements

3. **Structure of Guidance**

There has been a considerable volume of documentation in the PPP area over the last five years or so. Indeed one could feel overwhelmed by its volume and detail. While this document adds to the volume, it is hoped that it does so in a positive way by:-

- providing a Route Map to the main developments in PPP since 1998,
- summarising the main conditions governing the appraisal, approval, assessment, management and review of PPPs in a single place and
- listing [Appendices] all the key documents and other points of reference that will be of interest to anyone engaged with the PPP process in local government.
Public Private Partnership
Route Map of Significant Events

General

Programme for Prosperity and Fairness

July 1998
–Farrell Grant Sparks report

August 1998
–Government approves Pilot Projects

January 1999
–Central PPP Unit set up in Department of Finance

December 1999
–NESC Report 105

National Development Plan 2000-2006

January 1999
- PPP Unit set up in DOELG

National PPP

December 1999
- PPP Guidance for Roads, Water and Waste Sectors issued by DOELG, supported by PWC

April 2000
-PPP Guidance for Roads, Water and Waste Sectors issued by DOELG, supported by PWC

Planning and Development Act, 2000

Local Government

November 2003
- Policy Framework for PPPs and 'generic' Local Government Framework Document issued by DOEHLG

June 2001 –Review of PPP Structures in Ireland by PWC for Department of Finance

May 2001,
- Framework for PPPs agreed by Social Partners

Local Government Act, 2001

March 2002
- State Authorities (PPP Arrangements) Act, 2002

August 2001
- Framework for PPPs in the Water Services Sector issued by DOELG

December 2002

July 2003 –Interim Guidelines on the Assessment, Approval, Audit and Procurement of Projects issued by Department of Finance

July 2003
- Sustaining Progress

Local Government Act, 2001

Planning and Development Act, 2000

Motorways

Central PPP Unit set up

in Department of Finance

Framework for PPPs agreed by Social Partners

Review of PPP Structures in Ireland by PWC

PPP Guidance for Roads, Water and Waste Sectors issued by DOELG, supported by PWC
4. Origins of PPP in Ireland


The FGS Report was the first major work on PPPs in Ireland. The purpose of the report was to analyse the potential use of PPP’s in Ireland and ‘to develop criteria for and advise on the issues arising in implementing the PPP concept’.

Among issues addressed by them were:-

- The criteria to be applied in considering whether to adopt the PPP approach taking account of both the economic and budgetary contexts;

- The determination and prioritisation of the key objectives of PPP, with particular reference to roads projects;

- The possibilities regarding part self-financing projects;

- The construction of hypothetical cases for comparison purposes using a public sector comparator model (PSC) to illustrate costs/benefits of model cases;

- The identification of areas where the highest level of savings are likely to arise from the use of PPPs.

Taking account of the international experience, the experience in the United Kingdom and Northern Ireland, the consultants stated that there was scope for the use of PPP’s in Ireland in particular in areas such as roads, public transport, education, water and waste services, public buildings, nursing homes and car parks.
In the report the consultants identified a number of potential benefits of adopting a PPP approach including:-

- to increase the speed at which capital projects are brought to development. It was recognised that PPP’s are complex and that in the early years where there was a ‘steep learning curve’ for the public authorities which would initially slow down the process,

- to allocate risk better between the public and private sectors.

- to source alternative financing for major infrastructural developments and

- to reduce project costs by virtue of the synergies and innovative approaches that the private sector can bring to the project.

The report did not see PPP’s as a panacea to be applied in all or even the majority of cases. They were seen as playing an additional or incremental role which should not displace existing programmes or plans for Exchequer capital spending, i.e., traditional procurement.

In recommending a way forward the report argued that a series of pilot projects should be commenced to test the concept. The report did not see merit in universally testing for potential PPP projects. In choosing projects public authorities should have regard to the following criteria:-

- PPP projects should have a **high priority** at national level,
- PPP’s should provide **value for money**, i.e., good economic value which is not necessarily the same as least cost,
- PPP’s should be **affordable**. The assessment of affordability by the procuring body is as important for privately or part privately financed projects as it is for those which are publicly financed,
PPP's should be **bankable** as financiers will be reluctant to commit finance when a project entails high participation costs, unreasonable risk transfer or lengthy and complex contract negotiations,

PPP's should provide for **optimal risk allocation** between the public and private sectors,

PPP's should focus on **service outcomes or outputs** rather than on the provision of assets.

In terms of organisation, the report proposed the setting up of a central PPP Unit within the Department of Finance which should 'roll-out' expertise to other Departments directly involved in the management of projects. Given the complexity of the process, it would be important to streamline procedures and standardise the approach wherever possible.

Irish contractors, financiers, facilities managers, trade union representatives and financial, legal and strategic advisers should be inducted into the process as soon as possible. This could be achieved by establishing a PPP forum to which constituents would be invited.

This approach was endorsed by the Government on 4 August, 1998 when the government approved a number of pilot PPP projects.
5 Organisation and Management

Following the recommendations of the FGS Report, a Central PPP Unit was established in the Department of Finance in January 1999. At the same time a second unit was set up in the Department of the Environment and Local Government with responsibility for promoting PPPs within the local government sector. The aim of the PPP Unit in DoELG was to:

'encourage and support the use of PPPs within the local government sector......Within a framework that protects the public interest and the consumer, we will promote measures that encourage a fair and balanced division of responsibilities between the public and private sectors and a competitive environment for the delivery of infrastructure and services across the range of areas for which local authorities are responsible'.

PPP units were subsequently set up in other government departments and the NRA.

To facilitate co-ordination between Departments and to provide leadership for the process, a Cabinet Sub-Committee and an Inter-Departmental Group [IDG] representing the main public bodies engaged in PPPs were established.

Review of PPP Structures [June 2001]

Report prepared by PricewaterhouseCoopers for the Department of Finance

The Department of Finance appointed PWC in January, 2001 to undertake a review of the effectiveness of the Public Private Partnership Structures in place within Government. The review built upon lessons learnt from the PPP experience of other countries while at the same time reflecting the key requirements of the Irish PPP model.

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2 Department’s Statement of Strategy 2003 - 05
A key aspect of this study was the recognition of the necessity of moving from the mobilisation stage in the advancement of PPP projects to the roll out of programmes. This was seen as the core of the organisational challenge for the Irish Government in relation to PPP’s.

The main recommendations from this report, to enable the move to be made from mobilisation to expansion were:-

- to use the existing organisational model [Central PPP Unit and Departmental Units] as the basis for developing the process further,
- to provide leadership through a continued role for the Cabinet Committee and the Ministerial championing of PPP’s,
- to strengthen the central and departmental PPP Units
- to use the Strategic Management Initiative to embed PPP as a procurement method across Government allowing the model to play a full role in a changing environment for the delivery of public services; and
- to use both political influence and Government resources to actively address engagement of stakeholders at levels below national frameworks, particularly with those which directly impact at procurement level.

6 Economic Planning


Public Private Partnerships are addressed in the National Development Plan 2000-2006 at pages 76-79. The following extracts are of most relevance to this document:-

1. The use of output specification, the optimal allocation of risk between the private and public sectors and the objective of value for money for the public sector over the lifetime of a project are at the heart of PPP. PPP’s are an important element within the overall investment planned
under the National Development Plan 2000-2006, particularly under the Economic and Social Infrastructure Operational Programme.

The benefits of increased private sector involvement was recognised in the NDP.

'The private sector can bring benefits in terms of management, financial and technical skills. The benefits of risk sharing and of increased efficiency through improved exploitation of private sector skills can be captured to differing degrees. PPP mechanisms can include options which are funded directly by the public sector, such as Design and Build, or Design/Build/Operate. However, the greater the degree of private sector involvement, the greater the scope to capture such benefits.'

The NDP re-affirmed the commitment to the use of pilot projects but emphasised that the wider adoption of PPPs need not await the final completion of the pilots. The NDP set a target of €2.35 billion in private finance investment mainly to support the Economic and Social Infrastructure Programme. This was to be a minimum target for PPP’s under the Plan. The objective was the ‘maximum usage of PPP’s consistent with the principles of efficiency and best value for money.’ Further investment of public monies in PPP projects was also proposed.

The breakdown between the different sectors was as follows:

Private Finance -

- National Roads €1,270 million
- Water Supply €127 million
- Public Transport €381 million
- Waste Management €571 million.

Public Finance -

- Waste water treatment €890 million [major part thereof]
7 Local Authority PPP Grant ‘Seed Fund’ Scheme

The Public Private Partnership Fund for local authorities was launched in December, 1999- Circular PPP 2/99 of 1 December, 1999.

The Circular referred to the National Development Plan 2000-2006 and the intention that PPP’s would form part of the delivery mechanism for infrastructural investment programmes. The Circular noted that most of the PPP projects would be in the areas of major infrastructure covered by the mainstream investment programmes. Notwithstanding this, it was felt that there was considerable potential for developing PPP’s in other areas such as, leisure facilities, energy generation, car parks, urban development, environmental initiatives etc.

It was to assist the start-up of such PPP projects that the PPP Grant Fund was set up. The Fund was expected to help develop potentially commercially viable and worthwhile PPP projects by ensuring that a lack of start-up funding did not inhibit the advancement of such projects.

The purpose of the PPP Fund is to encourage local authorities to become more actively involved in the development of new forms of commercial arrangement with the private sector. The Fund provides grants to assist local authorities that are interested in developing innovative projects in partnership with the private sector.

The funding available is €5.078m and it was originally envisaged that the Fund would be in place for 2000, 2001 and 2002 (this was subsequently extended to the end of 2004)

Local authorities were informed that applications to the Department would be assessed under the following headings:-

- The importance of the services/assets provided for the community.
• Commercial viability.
• Value for Money.
• Innovation.
• Replication.

Circular PPP 1/03 of 6 January, 2003 notified local authorities of the extension of the Fund for two years to cover 2003 and 2004. Because of the limited amount of funding remaining, grant aid of 100% which had been available was reduced to 40%-60% depending on the merit of the proposal. The Circular further stated that priority would be given to:

• Projects for priority sectors, i.e., housing and urban renewal.
• New and innovative projects outside the categories approved to date.
• Applications from local authorities who have not participated to date.
• Applications for funding for the 'start-up' phases of projects, e.g., preparation of contract through procurement, rather than for feasibility studies.

Experience gained from the projects is being used to assist local authorities advancing PPP projects outside of the main investment programmes. Studies [and in some cases projects] have been undertaken in the following sub-sectors:

• Business Parks and Industrial Sites.
• Alternative Energy.
• Urban Development.
• Tourism and Leisure.
• Car Parks.
• Public Buildings.
• Crematoria.
• Marinas

Information on projects can be obtained from the PPP Unit - DoEHLG
8 Social Partnership

A reference to the use of Public Private Partnerships was contained in the 
*Programme for Prosperity and Fairness* which was agreed between the 
government and the social partners in January 2000. Under the heading of 
'Infrastructure and Service Delivery', one of the objectives in PPF was :-

>'To maximise the contribution of Public Private Partnerships, 
consistent with the principles of efficiency and best value for money 
and taking account of wider economic, social and environmental 
objectives.'

The PPF went on to recommend that 'a clear framework to assess the 
appropriateness of PPP's for infrastructure projects and to guide their 
implementation' should be established. This should be developed in conjunction 
with the PPP Advisory Group.³

*Framework for Public Private Partnerships – May 2001*

*Informal Advisory Group on PPP’s- [IAG]*

This Framework sub-titled 'Working Together for Quality Public Services', 
followed-on from two other documents,

- NESC Report No. 105 'Opportunities, Challenges, and Capacities for 
- Programme for Prosperity and Fairness (PPF).

It is an important document having been endorsed by IBEC, ICTU, CIF, the 
Department of Finance and the Departments and Agencies engaged in the PPP 
process.

³ An Informal PPP Advisory Group [IAG] had been set up under social partnership arrangements.
The principal features of the Framework include clear statements of the scope (section 2), principles (section 4) and goals (section 5) of the PPP Programme, the identification of key project implementation issues (section 9) as well as a clear recognition of the critical role of social partnership and stakeholder consultation (section 7) in underpinning the success of PPP’s.

**Sustaining Progress- Social Partnership Agreement 2003-2005:**

Sustaining Progress is the successor Partnership Agreement to PPF. Under the heading of ‘Infrastructure’ it broadly reiterates what was said in the earlier about PPP’s and states that:-

‘The Central PPP Unit in the Department of Finance will develop, in consultation with the social partners, detailed guidance in 2003 on PPP’s to State Authorities. These guidelines will provide a clear, consistent and coherent process for State Authorities when developing projects under PPP arrangements’.

The Guidelines referred to are the Interim Guidelines published by the Department of Finance on 7 July, 2003- see below.

Under ‘Housing- Private Rented Sector’, *Sustaining Progress* states that ‘Consideration is also being given to developing PPP’s arrangements to encourage increased supply of affordable rented accommodation, initially involving a pilot programme focused on households in need of rental assistance’.

This legislation which became operative on 21 March, 2002 was introduced to remove any uncertainties regarding the powers of State Authorities, including local authorities, to enter into PPP arrangements.

In summary, the Act:-

- Verifies that State Authorities, including local authorities, have the power to enter into PPP arrangements,
- Empowers State Authorities to form companies and enter into joint ventures for the purposes of PPP arrangements,
- Provides that the private partner can perform specified functions of the State Authority, but these functions remain vested in that State Authority concurrently.
- Deals with a number of issues which may be required in a PPP arrangement- making of payments to partner, entering into arrangements with financiers, transfer of assets etc and
- Provides that the appropriate Minister may make directions in relation to joint venture arrangements or the formation of companies by State Authorities for the purposes of entering into PPP arrangements.

Section 3(2) of this Act requires that local authorities must obtain the approval of the Minister for the Environment, Heritage and Local Government before forming companies or entering into joint ventures for the purposes of PPP arrangements.
The National Development Finance Agency (NDFA) was established on 1 January, 2003 under the National Development Finance Agency Act, 2002. The main functions of the NDFA are to:

- provide financial advice to State Authorities, including local authorities, to assist in the evaluation of financial risks and costs of infrastructure projects and to facilitate them in availing of the best financial package for each project. The NDFA will also advise on project insurance costs.

- assess the optimal financing for major infrastructure projects as set out in the National Development Plan and other infrastructure priorities.

- raise finance for projects (including PPP projects) where this could be more cost effective than private funding and where, in the case of conventionally procured capital projects, there are clear financial benefits in using Agency funding over Exchequer funding; and

- create special-purpose companies that can raise project finance with guarantees, raise revenues from projects with user charging and receive land or other property assigned or transferred from local authorities for use in financing infrastructure projects.

The legislation establishing the NDFA places a number of obligations on local authorities. In instructions issued by the Department of Finance these obligations are to be seen as follows:

- For all major projects and grouped projects with capital costs estimated to exceed €20 million, to seek the advice of the Agency on how best to finance the project as soon as practicable before commencement of the project;
• For projects where local authorities intend to appoint financial advisers, to ask the NDFA to act as financial adviser. Where the NDFA agrees to act as financial adviser to a project, they would expect to be represented on the Project Board and to have access to all relevant correspondence and documentation;

• For projects involving the use of private finance, to provide the NDFA with the opportunity at an early stage of reviewing the financing options, including where appropriate, providing the funding itself.

Circular PPP 2/03 of 16 June, 2003 provides further information on how to deal with situations where financial consultants are already in place, how to seek financial advice from the NDFA and the information likely to be required by the NDFA in such cases.

**Planning and Development Act 2000**

The Planning and Development Act, 2000 contains new provisions of interest to local authorities engaged in PPP projects. Section 49 provides that local authorities may require supplementary development contributions in respect of public infrastructure work carried out by a private developer. On the basis of an agreement between the local authority and the developer, the contributions can be allocated to pay for the works. Supplementary development schemes can be used for public transport, roads or water services infrastructure.

The 2000 Planning Act also allows local authorities to enter into agreements with private developers whereby the developers undertake work on behalf of the authority under the exempted planning conditions [Section 4 & 179] that would normally apply to local authorities.
From time to time the Central PPP Policy Unit and the PPP Unit in the DoEHLG have issued guidance on the approach to be adopted to implementing PPP projects. In so far as they relate to local authorities the key documents are:

- Policy Framework for PPPs: DoEHLG / April 2000
- Framework for PPPs [DoF] / May 2001 [see above]
- Interim Guidelines [DoF] / July 2003

**A Policy Framework for Public Private Partnerships / April 2001**

*Prepared for DOEHLG by consultants - PWC*

The Department sought consultants to assist it in developing a framework within which Public Private Partnerships could be advanced in the roads, water and waste sectors and to identify and address issues relevant to the successful implementation of PPP's in these sectors. An advisory team led by PWC consultants developed a Policy Framework and fifteen Guidance Notes. The Policy Framework provides general contextual information on PPP's and specific procedural guidance in relation to the delivery of infrastructure using a PPP approach.

The key objectives in developing the Policy Framework were to:-

- Implement national policy as set out in the National Development Plan.
- Assist with the timely delivery of the capital projects set out in the National Development Plan.
- Help deliver better value for money and achieve cost effective allocation of risk.
• Improve delivery of services by tapping into expertise and skills from the private sector.
• Ensure affordability and financial security of projects in the long term.
• Provide a mechanism to attract private finance.
• Provide guidance on sector specific issues and
• Provide user-friendly guidance on key stages of project selection, project procurement and contract management.

The Policy Framework also outlines a Public Private Partnership Route Map (Figure 1, Page 15) and this is attached as Appendix 2 to this document. One of its key functions is to show the differences between the traditional and PPP procurement routes.

The Guidance Notes deal with the following subjects:

Interim Guidelines for the Provision of Infrastructure and Capital Investments through Public Private Partnerships - Procedures for the Assessment, Approval, Audit and Procurement of Projects

These Guidelines were issued by the Department of Finance on 7 July, 2003 and should be examined and followed carefully by everyone involved in the PPP process. They deal with the appraisal, planning, implementation and post-project review stages for all public infrastructure projects. They should be seen as imposing additional requirements over and above those already in place and which deal with the procurement, management and appraisal of capital works.
The key additional requirements for PPP projects are:

*For all PPP projects [or grouped projects] with a capital value of €20 million or more:* -

- the appointment of a process auditor [PA] to certify that proper procedures have been followed throughout the project. The PA will be appointed by and report to the Secretary General of the DOEHLG.

*For all PPP projects:* -

- the appointment of a Project Board to manage the project,
- the undertaking of a Public Sector Benchmark [PSB] to determine the estimated cost of carrying out the project by traditional means.
- the preparation by the DoEHLG of an Affordability Cap for each project based on the PSB. If at any time the estimated cost of the project increases beyond the Affordability Cap the local authority concerned must immediately seek Departmental approval before proceeding further,
- the carrying out of a formal 'post-project review' following completion of the construction of the works.
11 Communications and Training

Proper training for local authority staff is essential if the PPP process is to succeed. To ensure that such training was available in Ireland, the Department of Finance, put in place a PPP Training Framework which sets out the nature of the training required and encourages private companies to provide same. Further information on what courses are available can be obtained from the national PPP website at www.ppp.gov.ie.

A National PPP Communications strategy has also been put in place with a section dealing specifically with local government. The main thrust of this strategy is to ensure that local authority officials are aware of the potential benefits of PPPs and of the main issues involved in implementing them.

Information on the PPP process, a project tracker and guidance material is available on the national PPP website. Newsletters [national and local government sector] are used to keep interested parties informed of developments.

An online users forum has been set up for local authority staff engaged on PPP projects. The forum includes a dataroom containing guidance and technical documents, feasibility studies, project reviews and standard contracts. The forum can also be used to share experience among local authority personnel responsible for some aspect of the PPP process.
Appendix 1- Key Documents in the PPP Area- November, 2003.


Planning Act, Training Framework, Communications Strategy
Appendix 2 - Public Private Partnerships

Figure 1: Public Private Partnership Route Map

Key
- No change to existing process
- Changes to existing process
- New stage for PPP projects

Project Identification
Assessment of PPP Suitability

Project Appraisal

PPP Assessment

Statutory Process Assessment

Procurement Procedure Selection

If PPP recommended

Project Management
Stakeholder Consultation

Statutory process risk with contracting authority

Statutory Process

Preparation of Contract Documentation

Tendering Process

Contract and Performance Management of Construction and Operation

Elements of Statutory Process Retained by Public Sector

Preparation of Contract Documentation

Tendering Process

Contract Management of Planning Phase

Elements of Statutory Process Transferred to Private Sector

Contract and Performance Management of Construction and Operation