



AN BILLE RIALTAIS ÁITIÚIL, 1991
LOCAL GOVERNMENT BILL, 1991

EXPLANATORY MEMORANDUM

General

1. The Bill contains provisions for the implementation of a range of local government reform measures designed primarily to strengthen local democracy, to improve the system of local government, to increase its role and to give local authorities the capacity to serve the interests of their communities more effectively. It constitutes the initial legislative segment of the local government reform programme; further legislation will be required to bring it to completion. However, this Bill will enable the implementation of various reforms on an ongoing basis as well as providing for certain measures which will have direct effect on commencement.

2. The provisions of the Bill cover a wide range of matters pertaining to local government and local authorities including local government structures and boundaries; powers, functions and procedures of local authorities; provisions relating to elected members and managers of local authorities; certain local electoral matters, including postponement of elections to authorities other than county councils and county boroughs and special provisions for the re-organisation of local government in the Dublin area.

3. The main provisions of the Bill are as follows—

Part I contains provisions of a general nature dealing with preliminary and general matters such as citations, construction and commencement; interpretation; regulations and orders and repeals.

Part II contains provisions relating to the powers and functions of local authorities including, a statement of their representational role; provision of a general competence for local authorities to take action in the interests of the local community; ancillary powers of local authorities; and matters to which local authorities are required to have regard in performing their functions. Power to devolve functions from the central to local level and to transfer functions between local authorities is also provided for.

Part III contains provisions relating to local electoral matters including, postponement of local elections to authorities other than county and county borough councils and consequential matters; disqualification of Ministers and Ministers of State from membership of, or election to, a local authority and other provisions in relation to plural voting and a consolidation of existing law in respect of local electoral areas in county boroughs.

Part IV contains provisions dealing with the reorganisation of local government in the Dublin area. The local elections in June, 1991 will be held on the basis of the areas of the three electoral counties

determined by the Local Government (Reorganisation) Act, 1985. Necessary technical amendments to that Act are included to allow elections to be held on that basis. Provision is made for a process whereby three separate county councils — Fingal, South Dublin and Dun Laoghaire-Rathdown will be established. Following the local elections, three area committees will be established in respect of the three electoral counties and appropriate powers will be delegated to the members elected for those areas by Dublin Co. Council and Dun Laoghaire Corporation. Area managers will be appointed with responsibility for the general operation of the area committees and appropriate powers delegated to them by the Dublin County Manager; the area managers will draw up a joint reorganisation report outlining arrangements necessary for the creation of the three new administrative counties, the establishment of county councils in place of the area committees and the abolition of Dublin Co. Council and the Corporation of Dun Laoghaire. The Minister will be empowered to make regulations, in the light of the reorganisation report and any other reports necessary, in relation to preparations for the establishment of the new counties and their councils and for any necessary ancillary or consequential matters. The intention is to effect a phased build up of the area committees with adaptation of existing administrative and organisational structures to ensure a smooth change over to the new county councils to be formally established by a further Act.

Part V contains provisions relating to local authority boundary alteration, including procedures in relation to proposals for such alteration; provision for the establishment of a boundary advisory committee to review boundaries or other matters referred to it; power for the Minister for the Environment, subject to specified conditions, to alter boundaries by order and provisions in relation to transitional and consequential matters connected with alteration of boundaries.

Part VI contains provisions in relation to the establishment of committees and joint committees of local authorities for particular purposes and for matters such as the functions, membership and regulation of committees and joint committees. This Part consolidates and modernises the existing law in relation to committees which is scattered throughout a range of outdated enactments.

Part VII contains provisions relating to a miscellaneous range of matters. The matters dealt with include the reserved functions and policy-making role of local authority members; payment of expenses of local authority members and provision for allowances in relation to expenses of local authority chairmen; alteration of the requirements relating to notice of, and passing of a resolution under section 4 of the City and County Management (Amendment) Act, 1955 in relation to planning applications; formal designation of regions and establishment of regional co-ordinating authorities; power for local authorities to confer civic honours, to participate in town twinning arrangements and to hold events for purposes such as receiving or honouring distinguished persons; publication of annual reports by the larger local authorities; provision in relation to the tenure of office of city and county managers; power to remove outdated statutory controls which apply to local authorities and to repeal, amend, modify or adapt legal provisions consequent on this Act, and technical amendments of certain existing statutes.

The Schedule to the Bill specifies provisions which are being repealed.

PART I

PRELIMINARY AND GENERAL

Section 1 sets out the short title and provides for collective citations, construction and commencement.

Section 2 contains definitions of terms used throughout the Bill.

Section 3 provides a general power for the Minister to make regulations for the purpose of the Bill and contains provisions in relation to regulations, orders and directions. Orders and regulations are generally subject to annulment by either House of the Oireachtas and in certain cases approval of a draft order or regulation by each House is required before the order or regulation can be made.

Section 4 provides for the repeal of provisions in Acts as set out in the Schedule and for the revocation of specified provisions in orders.

PART II

FUNCTIONS OF LOCAL AUTHORITIES

Section 5 contains express statutory provision for the exercise of representational functions by local authorities and indicates activities which may be undertaken pursuant to the section. A decision under the section in relation to the representation of the views of the local community will be a reserved function.

Section 6 provides a general power (general competence) for local authorities to take action to promote the interests of the local community in such manner as they consider appropriate and indicates various measures which may be undertaken to promote the community interest. This provision will greatly relax the now out dated *ultra vires* principle under which local authorities had to adduce specific statutory authority for each individual action and will allow for a much freer and more flexible statutory framework. *Sub-section (4)* provides that a decision by a local authority to take action under the section (other than in relation to the provision of services of staff) will be a reserved function. The general power in this section cannot be used by a local authority to perform a function which is conferred otherwise by law on the authority and action may not be taken under the section which would prejudice or duplicate activities arising from the performance of a statutory function or involve wasteful or unnecessary expenditure. *Sub-section (7)* contains a reserve power for the Minister to exercise appropriate controls should this prove necessary.

Section 7 requires local authorities in performing their statutory functions to have regard to certain matters such as, the availability and effective use of resources, maintenance of essential services, achievement of reasonable balance between functional programmes, Government or Ministerial policy and the need for co-operation, co-ordination or consultation with other public bodies.

Section 8 confirms the power of local authorities to do things ancillary or related to their express powers, subject to any legal prohibitions, conditions or restrictions which may exist. *Sub-section (4)* allows for the allocation of certain monies within functional programmes by way of resolution of the elected members.

Section 9 contains power for the devolution of functions of Ministers (subject to Constitutional requirements) to local authorities by provisional order of the Government, subject to confirmation by an Act of the Oireachtas. The section provides also for the transfer by the

Minister of functions between local authorities of different classes. *Sub-section (3)* provides that an order for the transfer of functions may contain necessary ancillary provisions. This section will allow the necessary flexibility for a broadening of the functional role of local authorities and for appropriate consequential adjustments.

PART III

LOCAL ELECTIONS AND RELATED MATTERS

Section 10 contains a prohibition on plural voting at local elections to make it clear that a person may vote in an election for one local authority only at the same local elections, save in the case of a person who is entitled to vote at an election to a borough or urban district council or town commissioners, in addition to a county council election.

Section 11 contains technical amendments to the Local Elections Regulations, 1965, consequential on the provisions of *section 10*.

Section 12 provides for the division of county boroughs into local electoral areas and the specification of the number of members, including aldermen, to be elected for such areas. This is a consolidation of existing law scattered over a number of enactments to remedy a defect in relation to Galway arising from the Local Government (Reorganisation) Act, 1985.

Section 13 provides that a Minister or Minister of State will be disqualified for being elected, chosen or appointed as a member of a local authority or for being a member of a local authority after the next local elections. *Subsection (2)* provides that a member of a local authority shall on appointment as a Minister or Minister of State, cease to be a member.

Section 14 provides that at the next local elections, there will not be elections to authorities other than to county councils and county borough corporations. The members of those urban authorities to which elections are not being held will continue in office. The position of Dun Laoghaire is covered in *Part IV*.

Sections 15 and 16 contain provisions consequential on *section 14*, whereby the term of office of certain members of harbour authorities and vocational education committees, respectively, is extended in respect of persons who were appointed by local authorities to which elections are postponed by *section 14*.

PART IV

REORGANISATION OF LOCAL GOVERNMENT FOR THE COUNTY OF DUBLIN

Section 17 contains definitions of terms used in *Part IV*.

Section 18 provides that, after the next local elections Dublin County Council will be required to establish an Area Committee for each of the three electoral counties to be known as Fingal, South Dublin and Dun Laoghaire-Rathdown, consisting of the members elected for the relevant electoral county.

Section 19 provides that as soon as the area committees are established, Dublin County Council or Dun Laoghaire Corporation, as the case may be, shall delegate appropriate functions to them in respect of their committee districts. Such delegation is subject to any terms

and conditions specified by the delegating authority. Power to adopt estimates, make a rate or borrow money may not be delegated but the Minister may, by direction, add to or reduce such "excluded matters". Delegation of powers to area committees is a reserved function and it will be necessary for such resolution to be passed, that more than one-half of the total number of members of the delegating authority vote in favour.

Sections 20, 21 and 22 provide for management arrangements for the area committees.

Section 20 complements *section 19* and requires the Dublin County Manager, to delegate to an assistant county manger appropriate executive functions in respect of each committee district and to make other necessary arrangements to enable the area committees and their managers to perform their functions. *Section 21* provides for the creation of three offices of assistant county manger in Dublin and makes special provision for the appointment of persons to these offices as area managers for the area committees on the basis of a Local Appointments Commission competition. *Section 22* provides that the area managers will become managers for the administrative counties which will be established in due course by way of a further Bill to replace the area committees.

Section 23 provides for the preparation of a joint reorganisation report by the three area managers within 6 months of the establishment of the area committees outlining general arrangements needed in preparation for the abolition of the existing county council and Dun Laoghaire Corporation and the division of the existing county into three administrative counties the areas of which would be co-terminous with the district committee areas, and the establishment of county councils in place of the three area committees. The intention is that the role of the area committees will be progressively expanded in preparation for the formal change over to the new county councils which will be affected by a further Bill. The reorganisation report will outline the necessary administrative, organisational and transitional measures necessary for implementing the new arrangements. Area managers are required to consult their area committees and the Dublin City and County Manager in preparing the report and to have regard to specified matters such as costs and staffing implications and the need for economic provision and co-ordination of services. Various matters to be included in the reorganisation report are set out including: arrangements for transfer of staff, assets and liabilities; accommodation requirements; financial estimates and consequential adjustments; co-ordination arrangements for services; transitional measures to be taken in respect of existing authorities in anticipation of the establishment of the proposed councils. Copies of the reorganisation report will be transmitted to the Minister and to the Dublin local authorities and area committees, who may make submissions to the Minister on the matter.

Section 24 empowers the Minister, after consultation with the Minister for Finance and having considered the reorganisation report and any other reports required by him, to make regulations which would provide a statutory backing for the necessary preparations for the establishment of the proposed counties and councils and for transitional arrangements for these purposes. Various types of matters which may be included in such regulations are set out. This will allow for a progressive build-up of the area committees pending the change over to full county council status by way of a further Act.

Section 25 confers a general power on the Minister during this

transitional phase to give directions to local authorities and managers in Dublin for the purposes of giving full effect to this Part of the Bill.

Section 26 contains technical amendments to the Local Government (Reorganisation) Act, 1985 for the purpose of enabling the next local elections to be held on the basis of the three electoral counties established by that Act.

PART V

LOCAL AUTHORITY BOUNDARY ALTERATION

Section 27 contains definitions of terms used in *Part V*.

Section 28 empowers the Minister to establish an independent boundary committee and contains provisions in relation to membership, disqualification, vacancies, etc. *Subsection (3)* provides that a boundary committee will be independent in the performance of its functions.

Section 29 empowers a local authority to propose the alteration of its boundaries. Public notice must be given by the proposing authority and any submissions received must be considered. The section prescribes the procedure to be followed including the making of a statement of response to such a proposal by any local authority whose boundary is affected, consideration of the response by the proposing authority and application to the Minister for alteration of the boundary. A proposal for alteration of a boundary, a response to such a proposal and an application to the Minister will be reserved functions.

Section 30 contains supplementary provisions in relation to boundary alteration proposals, responses and applications. It requires that consideration be given to the financial implications and necessary adjustments. *Sub-section (3)* allows a sub county authority adjoining a county boundary, by resolution, to request its county council to formulate a proposal under *section 29* for the alteration of the county boundary.

Section 31 sets out the powers of the Minister to alter local authority boundaries by order where this is considered necessary in the interests of effective and convenient local government. An alteration may be made arising from an application of a local authority under *section 29 (5)* or otherwise, where the Minister considers this necessary. In the latter case the Minister must first request and have regard to the report of a boundary committee. In the case of an application from a local authority, the Minister may request a report of a boundary committee on the matter but, where another authority had made a response disagreeing materially with the proposal, he must request and have regard to such a report. An order proposed by the Minister altering the boundary of a county or county borough must under *section 3 (6)* be laid in draft before, and be approved by, both Houses of the Oireachtas.

Section 32 provides for the making of a request by the Minister to a boundary committee to prepare a report with respect to other local boundaries, including local electoral area boundaries, or with respect to other matters relating to local government.

Section 33 sets out the duties of a boundary committee to carry out a review, make recommendations and furnish a report in pursuance of a request by the Minister, having regard to such matters as may be specified in the request. There are procedural provisions including

requirements in relation to such matters as consultation, giving of notices, powers of a committee to request information and to hold an oral hearing. Reports of a committee must be published.

Sections 34 and 35 provide, respectively, for consequential and transitional matters in the case of boundary alterations. Section 34 provides for the making of a supplementary order in relation to matters related to a boundary alteration and sets out various types of matters which may be provided for in such an order. Sub-section (2) allows the Minister or any other Minister to make all necessary consequential arrangements arising from a boundary alteration. Section 35 provides that applications already made to the Minister under existing legislation may be dealt with under that legislation.

PART VI

COMMITTEES AND JOINT COMMITTEES OF LOCAL AUTHORITIES

Section 36 contains a technical provision to the effect that, for the purposes of this Part, the term "local authority" does not include a committee or joint committee.

Section 37 empowers local authorities to establish committees either for advisory purposes or to perform particular reserved functions which the authority may delegate to the committee. Such delegation is a reserved function and it is necessary for the passing of a resolution for that purpose that more than half the total number of members of the authority vote in favour. An authority may not delegate power to adopt the estimate of expenses, to make a rate, to borrow money, or such other functions as may be prescribed. Sub-section (1) (c) precludes the establishment of committees for local electoral areas with responsibility for local authority functions generally.

Section 38 empowers two or more local authorities to establish a joint committee, either for advisory purposes or to perform particular reserved functions of the authorities which have been delegated to the joint committee, subject to certain exclusions as in section 37. A joint committee may, with the consent of the Minister, be constituted as a body corporate. The same arrangements also apply in relation to the delegation of functions as in section 37. There is power for the Minister to direct particular local authorities to establish a joint committee.

Section 39 contains provisions relating to membership of committees and joint committees. Appointment of members will be a reserved function. Persons who are not members of the local authority or authorities concerned may be appointed but they are not entitled to vote in respect of the performance of a delegated function. At least one third of the members appointed to a committee or joint committee by a local authority must be members of that authority.

Section 40 empowers the Minister to make regulations in respect of various matters relating to committees or joint committees.

PART VII

MISCELLANEOUS

Section 41 gives statutory recognition to the general policy-making role of local authority members and empowers the Minister to declare by order that specified additional functions of local authorities will be

reserved functions for the purposes of the City and County Management Acts.

Section 42 provides for the payment of an allowance for reasonable expenses to the chairman of a local authority. The decision to pay such an allowance will be a reserved function. "Chairman" is defined to include a mayor or lord mayor.

Section 43 provides for the designation of regions consisting of counties and county boroughs and the establishment of regional authorities. The basic role of regional authorities will be to promote the co-ordination of public services in the region. The members of the regional authority will be members of county and county borough councils in the region. Various types of matters which may be provided for in orders establishing regional authorities are set out.

Section 44 provides that section 4 of the City and County Management (Amendment) Act, 1955, shall be amended so as to require that, in the case of a resolution under that section relating to a planning application, the required notice in relation to the resolution must be signed by not less than three-quarters of the total number of the members elected for the electoral area or areas concerned and that it shall be necessary for the passing of such a resolution, that not less than three-quarters of the total number of members of the authority vote in favour.

Section 45 is consequential on *section 44* and provides for the amendment of section 26 of the Local Government (Planning and Development) Act, 1963, to provide that it shall be necessary for the passing of a resolution under sub-section (3) of that section, in relation to permission for development which would materially contravene the development plan, that not less than three-quarters of the total number of the members of the planning authority vote in favour.

Section 46 provides that a local authority may incur reasonable expenses in connection with receptions and entertainment for, or presentations to, distinguished persons or the holding of special events relevant to its functions. A decision to incur such expenditure will be a reserved function. Directions may be issued for the purposes of this section and particulars of the performance of functions under this section must be included in the authority's annual report.

Section 47 provides power for the Minister to specify by order the period of office of city or county managers appointed after the commencement of the section. It is the intention to bring the arrangements into line with those now applying in the civil service in relation to the tenure of office of Departmental Secretaries.

Section 48 provides that a local authority may confer a civic honour, such as admission to honorary freedom of its area, on distinguished persons. A decision to confer a civic honour will be a reserved function.

Section 49 provides for the involvement of a local authority in twinning arrangements between its area and other areas within or outside the State. Details of activities in relation to twinning must be included in an authority's annual report.

Section 50 requires county and county borough corporations to prepare and adopt an annual report on the performance of their functions and provides for matters to be included in such reports and arrangements for their availability to the public. The adoption of an annual report will be a reserved function.

Section 51 provides for payments to local authority members in respect of expenses in connection with particular matters, including meetings of the authority, its committees or joint committees, or of prescribed local authority associations and for other authorised matters. There is provision confirming that a local authority may, subject to the satisfaction of specified conditions, authorise representation at relevant events within or outside the State. The Minister is empowered to make regulations, after consultation with the Minister for Finance, for the purposes of the section. Various types of matters which may be included in regulations are set out. The authorisation of various matters for the purposes of the section is a reserved function. Particulars in relation to payments pursuant to the section must be recorded in a local authority's annual report.

Section 52 empowers the Minister by regulations to dispense with certain statutory controls affecting local authorities such as Ministerial consents or approvals, where he is satisfied that such requirements have become unnecessary.

The Minister is also empowered to adjust provisions of enactments by regulation for the purpose of remedying any inconsistency with, or achieving conformity with, the provisions of this Bill. Under *section 3* such regulations are subject to confirmation by both Houses of the Oireachtas. Provision is also included to modify enactments for the purpose of removing any difficulty in bringing a provision of the Bill into operation or securing or facilitating its operation. This is a temporary provision and lapses after two years.

Section 53 provides for amendment of the Local Authorities (Combined Purchasing) Act, 1939, to provide the Minister with discretionary rather than mandatory power in relation to recoupment from local authorities of administrative expenses associated with the combined purchasing system. It will simplify existing financial arrangements.

Section 54 provides for amendment of the Local Government Act, 1941, to provide the Minister with discretionary rather than mandatory power in relation to recoupment from local authorities of administrative expenses connected with the holding of local inquiries. This will also simplify existing financial arrangements.

Section 55 contains a standard provision enabling expenses of the Minister in administering the Act to be paid out of moneys provided by the Oireachtas. There is also standard provision for expenses of a county council under the Act to be charged on the county exclusive of any borough or urban district. Estimates of expenses under certain sections will be required to be shown separately in the annual estimates of local authorities in the prescribed form.

The Schedule specifies the provisions of enactments which are repealed and the extent of repeal, as provided for in *Section 4*.

*An Roinn Comhshaoil,
Bealtaine, 1991.*

AN ACT TO AMEND THE
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