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AN BILLE RIALTAIS ÁITIÚIL, 1994 LOCAL GOVERNMENT BILL, 1994

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The Bill provides for elections to be held in 1994 to borough corporations (5), urban district councils (49) and town commissioners (26) and allows for the extension of outdated boundaries for the purposes of the elections in the case of particular boroughs, urban districts and towns. It also provides for the establishment of a statutory Local Government Reorganisation Commission to make proposals for the modernisation of town local government (including future classification of town local authorities, functions, finances and procedures for the establishment of new local authorities).

The Bill encompasses a range of other reform measures, including updating and consolidation of provisions relating to local authority membership, local elections, local authority cathaoirleach and leas-chathaoirleach, and meetings and procedures of local authorities. The next elections to all local authorities are fixed for 1998 and at five-yearly intervals thereafter. It restates, in a comprehensive and updated format, the law relating to local authority library services and local authority powers in relation to the provision of various types of amenities, facilities and services. There is a new power for local authorities to make bye-laws generally without the need for Ministerial consent. Aspects of the law relating to local authority estimates and rates, personnel, local authority associations, local archives and certain other minor technical matters are also being updated and unnecessary controls removed. Provisions in various enactments which are outdated or are to be replaced by provisions in the Bill are being repealed or revoked.

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 various terms used in the Bill.

Section 3 provides for the making of necessary orders and regulations for the purposes of the Bill and contains provisions in relation to them. 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 they can be made.

Section 4 provides for the repeal of provisions in Acts and the revocation of orders and regulations as set out in the *First Schedule* and for amendments to provisions of Acts set out in the *Second Schedule*.

PART II

LOCAL AUTHORITY MEMBERSHIP

Part II updates and consolidates the law in relation to local authority membership, including eligibility, disqualification, term of office, resignation and filling of casual vacancies.

Section 5 states the general eligibility criteria for local authority membership.

Section 6 provides the grounds for disqualification for membership of a local authority. New disqualifications under the Bill include disqualifications in respect of the Ceann Comhairle of the Dáil, the Cathaoirleach of the Seanad, chairpersons of Oireachtas select committees (other than committees specified in the Bill or others which may be designated by order), the Comptroller and Auditor General, Judges, members of the European Commission and other EU office-holders. There will also be disqualification for failure to comply with a court judgement for payment of money due to a local authority and on conviction for fraudulent or dishonest dealings affecting a local authority or corrupt practice. The provisions of this section will not come into operation until the next elections to all local authorities due in 1998.

Section 7 provides that it is an offence to act or vote as a local authority member when disqualified and provides for a maximum penalty of £1,000 for such offence.

Section 8 provides that where a person becomes disqualified under *section 6*, that person ceases to be a member of the local authority and any body to which he or she was appointed by a local authority.

Section 9 provides that the term of office of local authority members will continue until the seventh day after polling day at the next local elections whereupon the newly elected members come into office.

Section 10 provides for the resignation of a local authority member.

Section 11 provides that a person will cease to be a local authority member in the event of continued absence.

Section 12 provides for the filling of casual vacancies on local authorities through co-option by the local authority.

Section 13 validates any acts, decisions or proceedings of a local authority notwithstanding possible participation by a disqualified person.

PART III

LOCAL ELECTIONS

Part III provides for the holding in 1994 of elections to borough councils, urban district councils and town commissioners (which were postponed by the Local Government Act, 1991) and for consequential

matters. Provision is made for the alteration of the boundaries of certain boroughs, urban districts and towns so that electors resident in their environs will have the right to vote at local elections. This Part also restates with amendments, the law in relation to the conduct of local elections — at present mainly contained in Part VI of the Electoral Act, 1963. This will facilitate the modernisation and codification of the detailed regulations relating to local elections. This Part also provides for the holding in 1998 of the next local elections to all local authorities.

Section 14 is a standard interpretation provision for *Part III*.

Section 15 provides for the holding in 1994 of local elections to borough councils, urban district councils and town commissioners on a day to be appointed by order of the Minister. The members will hold office until the local elections in 1998.

Sections 16 and 17 provide, respectively, for the termination of the term of office of those members of harbour authorities and vocational education committees whose term was extended by the Local Government Act, 1991. Provision is made for the appointment of members following the elections in 1994. The term of office of such members will expire when elections to all local authorities are next held.

Section 18 provides for the alteration of borough, urban district or town boundaries for the purposes of local elections by regulations and by reference to a map submitted by the relevant county manager following the recent review of town boundaries, and for related matters.

Section 19 enables provision to be made for any ancillary matters arising in cases where a boundary alteration under *section 18* involves the alteration of a county boundary.

Section 20 enables temporary arrangements to be made in relation to polling districts which may be split by the alteration of a local authority boundary and for consequential adjustments in any section of the register of electors affected.

Section 21 specifies that local elections to all local authorities will be held in the year 1998 and, as under existing law, in every fifth year thereafter. The term of office of county council and county borough council members is extended until 1998. Appointments to harbour authorities and vocational education committees will take place in the same year as local elections.

Section 22 provides for the fixing by the Minister, by order, of the date and hours of poll at a local election.

Section 23 provides for the detailed rules for the conduct of local elections, including the counting of votes, to be set out in regulations under the section which must be approved in draft by a resolution of each House of the Oireachtas before they are made. Pending the making of regulations under the section, the existing procedures contained in the Local Elections Regulations, 1965, as amended by a number of subsequent enactments, will continue to have effect.

Section 24 restates the general provision regarding the right to vote at local elections.

Section 25 provides that the year in which local elections are to be held may be altered by order. Such an order will not come into force

unless and until it has been confirmed by resolution of each House of the Oireachtas.

Section 26 consolidates the law on the alteration of local electoral areas (i.e. local authority constituencies). Under Part V of the Local Government Act, 1991 a division into local electoral areas may only be made following consideration of a report made under that Act by a statutory boundary committee.

PART IV

CATHAOIRLEACH and LEAS-CHATHAOIRLEACH

Part IV provides for the offices of local authority cathaoirleach and leas-chathaoirleach and ancillary matters.

Section 27 provides that each local authority shall have a cathaoirleach and a leas-chathaoirleach to be elected at every annual meeting of the authority, but provides for the continuation of existing titles of mayor and lord mayor. The cathaoirleach is empowered to nominate a deputy, to represent him or her at particular events or ceremonies. A person who is a member of either House of the Oireachtas is disqualified from election as cathaoirleach or leas-chathaoirleach but this disqualification does not come into effect until after the local elections due in 1998.

Section 28 provides for the procedure to be followed in electing the cathaoirleach of a local authority to be prescribed. It is proposed to continue the existing system of successive ballots to elect the cathaoirleach.

Section 29 provides for the term of office of the cathaoirleach and leas-chathaoirleach of a local authority.

Section 31 provides for the filling of a casual vacancy in the office of cathaoirleach or leas-chathaoirleach.

PART V

MEETINGS AND PROCEDURES OF LOCAL AUTHORITIES

Section 32 allows for the introduction by regulations of a comprehensive, updated and uniform code relating to local authority meetings and procedures in place of existing inconsistent and fragmented provisions which will be repealed. Various matters which may be provided for in the regulations are set out.

PART VI

AMENITY, RECREATION, LIBRARY AND OTHER FUNCTIONS

Part VI provides for local authority functions in relation to the provision of facilities for amenity, recreation and library activities, allowing for the repeal of a large body of outdated and restrictive enactments.

Section 33 contains a general provision empowering local authorities to undertake activities in the provision of amenities, facilities, services and related matters. These powers will be exercisable pursuant to section 6 of the Local Government Act, 1991, which provides a general competence for local authorities to take action in the interests

of their areas and local communities. The provision is, in effect, a restatement of various existing amenity and miscellaneous powers of local authorities in a modern format which involves the removal of outmoded controls and allows for greater local authority discretion.

Section 34 provides that county and county borough councils are library authorities, as is the existing position. It also provides for the continuation of joint library committees.

Section 35 restates the role of library authorities in modern provisions and removes an anomaly which prohibited the compulsory acquisition of land for library purposes. There is a new provision for the adoption of library development programmes. A range of outdated and restrictive library legislation is repealed by *section 4*.

Section 36 provides for the continued operation of An Chomhairle Leabharlanna (the Library Council).

Section 37 confirms that *section 8(1)* of the Local Government Act, 1991 (which confers a general power on local authorities to do things ancillary to the performance of specific statutory functions) applies to all functions conferred on local authorities acting in any capacity.

PART VII

BYE-LAWS

Part VII confers on local authorities (elected members) a broad power to make bye-laws governing the operation of various facilities (e.g. parks, libraries, etc) provided by them and a general power to control or regulate any matter which in the opinion of the local authority should, in the interests of the common good of the local community, be so regulated or controlled, provided such matter or thing is not the subject of existing law. Local authorities will have greater discretion in the making of bye-laws and procedures are streamlined. The general requirement that bye-laws be confirmed by the relevant Minister is removed.

Section 39 provides a general power for local authorities to make bye-laws for the regulation of facilities, services, etc provided or managed by them or to regulate, in the interests of the common good, matters causing local concern or nuisance. The section sets out examples of various types of matters which may be included in such bye-laws. Bye-laws may not be made in respect of matters specifically provided for under another enactment or matters prescribed by the appropriate Minister. The bye-law making power is a reserved function of the elected members.

Section 40 sets out the procedures to be followed in the making of a bye-law, including the giving of public notice, an obligation to make available a copy of a draft bye-law and consideration of any submissions made in relation to the draft.

Section 41 provides that the appropriate Minister may provide by regulations that bye-laws in respect of specified matters will require ministerial approval.

Section 42 provides that it is an offence to contravene a bye-law, and allows for fines to be specified, subject to a maximum fine of £1,000. It also deals with enforcement and prosecution.

Section 43 provides that bye-laws may include provision for a system

of fixed payment notices i.e. "on the spot fines", payment of which will preclude prosecution for a contravention of a bye-law.

Section 44 provides for the publication of notice of the making of bye-laws, requirements as to availability of bye-laws for public inspection, provision of copies of bye-laws and maintenance and availability for public inspection of a register of any bye-laws made by a local authority.

Section 45 provides for continuation in force of existing bye-laws for a maximum of three years after the repeal of enactments under which they were made.

PART VIII

LOCAL AUTHORITY ESTIMATES, RATES ETC.

This Part makes provision for some technical amendments to rating law, including provisions dealing with a situation where an insufficient estimate is adopted by a local authority.

Section 46 updates the existing law, in relation to a situation where an insufficient estimate of expenses is adopted by a local authority and sets out the procedures which will apply in that respect.

Section 47 removes the technical necessity for local authorities to make rates on domestic dwellings.

Section 48 updates the basis for the payment of general grants to rating authorities.

Section 49 confirms that revenue collectors are empowered, for the purposes of the collection of rates, to exercise the statutory powers of rate collectors.

PART IX

LOCAL AUTHORITY PERSONNEL

Part IX contains provisions relating to local authority personnel matters.

Sections 50 and 51 amend existing law so as to confirm regulatory powers for the making of ex-gratia payments to local authority officers suspended from the performance of their duties. These amendments arise from a 1986 report of the Oireachtas Joint Committee on Legislation.

Section 52 provides for the activation of a request to the Local Appointments Commissioners seeking the recommendation of a person to fill the office of manager six months before the expiry of the manager's term of office in the case of managers appointed for a fixed term.

Section 53 provides that when a manager is temporarily unable to act, an officer of a local authority may be appointed to be deputy manager for the duration of such inability and removes Ministerial controls in that regard.

Section 54 provides that the manager may delegate any function to any officer of the local authority, without the need to obtain the consent of the relevant Minister.

PART X

TOWN LOCAL GOVERNMENT

This Part provides for the establishment of a Reorganisation Commission to carry out a review and make proposals for the reorganisation of local government in towns and for the implementation of such proposals.

Section 55 provides for the establishment of a Local Government Reorganisation Commission on a day to be fixed by the Minister.

Section 56 provides for appointment of the chairperson and members of the Commission, the categories of persons to be appointed and disqualifications.

Section 57 sets out matters to which the Commission shall have regard in carrying out its functions.

Section 58 requires the Commission to submit a reorganisation report containing proposals for town local government, including such matters as the number of classes of town local authority, their functions, finances, and other matters in relation to each class and implications for county councils, the appropriate class for each existing town local authority, procedures for the creation of local authorities for non-municipal towns and measures and arrangements for the implementation of the proposals for town local government.

Section 59 provides for publication of notice of the Commission's review, invitation of public submissions and requests to local authorities to make submissions.

Section 60 requires the Commission to complete its work within twelve months or such longer period as the Minister may allow and to submit an interim report if requested by the Minister. It also empowers the Commission to request information from local authorities.

Section 61 provides for implementation of proposals made by the Commission by regulations, subject to approval in draft by both Houses of the Oireachtas. These may provide for different classes of town local authority, their functions, finances, staffing, organisation and relationship with county councils; procedures for the establishment of a particular class of local authority for non-municipal towns; and other relevant matters.

Section 62 contains standard provisions in relation to the provision of services to the Commission by public authorities.

PART XI

MISCELLANEOUS

Section 63 provides that the Minister may delegate functions to officers of the Minister, to be performed under the general control of the Minister and without prejudice to the Minister's own right to exercise the function.

Section 64 provides that separate estimates need not be prepared nor town charges levied in respect of specified towns in which town commissioners have not existed for many years.

Section 65 provides that areas hitherto known as "wards" in county boroughs and "district electoral divisions" in counties will, in future,

be known as "electoral divisions" and that the boundary or name of a division can be altered by regulations.

Section 66 provides statutory recognition for the right of local authorities to affiliate and contribute to the Association of Municipal Authorities of Ireland and the General Council of County Councils, as voluntarily constituted bodies representing the collective interests of local authorities. Certain inconsistencies in existing statutory references are remedied.

Section 67 provides for the keeping of local records and archives by local authorities. These provisions are generally similar to those applying to national archives.

Section 68 provides for regulations to remove any difficulty in relation to the operation of any provisions of the Bill. This is a temporary provision which lapses after three years.

Section 69 amends the provisions of the Local Government Act, 1946 relating to the changing of place names. At future plebiscites on this question all local government electors will be entitled to vote. To take account of situations (e.g. commercial streets) where there may be few, if any, local government electors the rated occupier of a hereditament which is subject to rates will also be entitled to vote, unless he or she already qualifies for the vote by virtue of being a resident local government elector. The majority required for change is being reduced from four-sevenths to a simple majority of the electorate concerned.

Section 70 contains standard provisions enabling expenses of the Minister in administering the Act to be paid out of moneys provided by the Oireachtas and for expenses of a county council under the Act to be charged on the county exclusive of any borough or urban district.

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

The Second Schedule provides for amendments to various Acts as set out in the Schedule.

The Third Schedule provides a list of towns, the boundaries of which may be altered for the town local elections in 1994.

The Fourth Schedule provides examples of types of amenities and facilities or services which may be provided in accordance with *section 33 (2)*.

The Fifth Schedule contains provisions in relation to procedural aspects of the Local Government Reorganisation Commission to be established under *Part X*.

Financial Implications

Generally the provisions of the Bill will not have financial implications. The Local Government Reorganisation Commission will, during its operation, entail some minor additional costs. *Section 67* regarding local authority archives may lead to some additional local expenditure but this would be marginal in the context of their overall expenditure.

An Roinn Comhshaoil,
Aibreán, 1994.

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