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## **An Coiste um Thithíocht, Rialtas Áitiúil agus Oidhreacht**

Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim Ghinearálta an Bhille Rialtais Áitiúil (Cosaint Máithreachais agus Bearta Eile le haghaidh Comhaltaí Tofa Údarás Áitiúil) 2022

Deireadh Fómhair 2022

## **Joint Committee on Housing, Local Government and Heritage**

Report on Pre-Legislative Scrutiny of the General Scheme of the Local Government (Maternity Protection and Other Measures for Local Authority Elected Members) Bill 2022

October 2022



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## CATHAOIRLEACH'S PREFACE



On 22 July 2022, the Minister of State for Planning and Local Government, Mr. Peter Burke T.D., forwarded the General Scheme of the Local Government (Maternity Protection and Other Measures for Local Authority Elected Members) Bill 2022 in accordance with Standing Orders for the purpose of pre-legislative scrutiny of the General Scheme. The Committee agreed to undertake pre-legislative scrutiny and has sought to scrutinise the proposed legislation with the aim of making recommendations to assist Minister Burke in improving this important piece of legislation.

The Committee welcomes the introduction of the proposed Local Government (Maternity Protection and Other Measures for Local Authority Elected Members) Bill 2022, which will grant an entitlement of maternity leave to local authority elected members and provides for the possibility of a temporary substitute in their absence. Previous maternity legislation gave no entitlement of maternity leave to councillors, which has created a massive barrier to the participation of women in local government. This legislation seeks to rectify this while contributing to a broader culture change, by creating a supportive environment for women in politics, starting at the local authority level.

I would like to thank Minister Burke, the officials from the Department, and the Committee Members for their contribution to the scrutiny of the proposed legislation. I hope this report will help to inform the legislative process and I look forward to further engagement on the matter as it progresses through the Houses.

A handwritten signature in black ink that reads "Steven Matthews".

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Steven Matthews TD.,  
Cathaoirleach,  
Joint Committee on Housing, Local Government and Heritage,  
25 October 2022

## INTRODUCTION

In accordance with *Standing Order 173*<sup>1</sup> the *General Scheme of the Local Government (Maternity Protection and Other Measures for Local Authority Elected Members) Bill 2022* (the General Scheme) was referred to the Joint Committee on Housing, Local Government and Heritage (the Committee) on 22 July 2022. The Committee agreed to undertake pre-legislative scrutiny of the General Scheme at its meeting on 13 September 2022.

The Committee conducted pre-legislative scrutiny in a meeting on 22 September 2022, in which Minister of State for Local Government and Planning, Mr. Peter Burke T.D. was invited to speak on the General Scheme. The Committee also invited stakeholders to make written submissions on the General Scheme, which are linked in [Appendix 4](#).

### Thursday 22<sup>nd</sup> September 2022

#### Department of Housing, Local Government and Heritage

- Mr. Peter Burke T.D., Minister of State for Local Government and Planning
- Mr. Diarmuid O’Leary, Principal Officer, Local Government Governance & Elected Members
- Mr. Brendan Buggy, Assistant Principal, Local Government Governance & Elected Members

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<sup>1</sup> [Standing Orders 2020 consolidated version as of 26 May 2022 \(oireachtas.ie\)](#)

## **BACKGROUND**

### **PART 1 – PRELIMINARY AND GENERAL**

This Part consists of standard matters such as the short title of the Bill and collective citation for a listing of acts, definitions and interpretations of terms which appear in multiple Parts of the Bill, provision for the enacted Bill to come into effect by way of Commencement Orders by the Minister for Housing, Local Government and Heritage (the Minister), and provision for expenses of the Minister to be met from moneys provided by the Oireachtas in administering the enacted Bill.

The Bill provides that the Minister may make regulations relating to matters in the Bill, following consultation with the Minister for Children, Equality, Disability, Integration and Youth, and any other Minister of the Government the Minister considers appropriate.

### **PART 2 – MATERNITY PROTECTION FOR LOCAL AUTHORITY ELECTED MEMBERS**

This Part of the Bill extends the entitlement of maternity leave to local authority elected members, by amending two acts. Chapter 1 of the Bill amends the Maternity Protection Act 1994 (as amended). Chapter 2 amends the Local Government Act 2001 (as amended). Both pieces of legislation are to have new provisions inserted under the proposed Bill to make provision for maternity leave for local authority elected members.

#### ***CHAPTER 1 – APPLICATION OF THE MATERNITY PROTECTION ACT 1994***

As local authority elected members are not defined as employees under the Maternity Protection Act 1994 (as amended), they are currently not entitled to maternity leave. The Bill inserts a new provision into the Maternity Protection Act 1994 (as amended), which provides that elected members will be considered employees of the local authority.

Elected members will be considered employed under a contract of service for a fixed term. This reflects the elected member's term of office, which comes to an end in advance of the next local election. As such, the General Scheme provides that the period of maternity leave taken by the elected member ends when the term of office ends. The General Scheme provides that certain notifications required to be made to

the employer of the employee under the Maternity Protection Act 1994 (as amended) will be communicated by the elected member to the meetings administrator of the local authority in this instance.

## **CHAPTER 2 – CHANGES NECESSARY TO THE LOCAL GOVERNMENT ACT 2001 (AS AMENDED)**

The Bill inserts a new provision into the Local Government Act 2001 (as amended), providing that where the elected member takes maternity leave, this will not result in a casual vacancy, and a resolution of the council to extend this period of maternity leave beyond 6 months will not be required of the elected member.

## **PART 3 – TEMPORARY SUBSTITUTE**

This Part of the Bill allows for the possibility to appoint a temporary substitute by co-option by inserting Section 19A into the Local Government Act 2001 (as amended), thereby providing maximum flexibility to the elected member as they take their maternity leave. A temporary substitute may be appointed not only where the elected member takes a period of maternity leave under the Maternity Protection Act 1994 (as amended), but also in cases of leave due to illness or for other reasons in good faith under Section 18 of the Local Government Act 2001 (as amended). This provision ensures equality of approach.

Elected members taking leave outlined above will have their preferred choice of a temporary substitute appropriately considered. The Bill provides that the temporary substitute will fill the absence by co-option by the local authority subject to being nominated by the same registered political party (where relevant) as the individual taking the relevant leave. The aim of appointing a temporary substitute is to ease the pressures of managing conflicting demands and responsibilities on the elected member. Although retaining the voice of the community is important and the representation of the local electoral area is to be kept in mind, the choice remains with elected member if they wish to avail of the temporary substitute at all.



## KEY ISSUES WITH THE PROPOSED LEGISLATION

In examining the General Scheme, the Committee notes that the proposed legislation is progressive and gives flexibility and choice to the elected member as they take maternity leave. The Committee expresses its appreciation for local authority elected members who make invaluable contributions to their local communities in acting as the backbone of democracy at the local authority level. The Committee expresses its unanimous support for the legislation, and as such, the Committee is largely satisfied with the proposed Bill. Nevertheless, there were three Heads of the General Scheme which were of interest and may require further consideration before the proposed Bill is introduced.

### HEAD 3: REGULATIONS

Head 3 provides that the Minister may make regulations regarding matters contained in the General Scheme. The Committee welcomes the making of regulations, especially the proposal of administrative support for elected members who do not wish to have a temporary substitute in their absence. The Committee suggests that the salary allocated for this support should meet the requirements of a living wage and be commensurate with the experience of the candidate and the responsibility of the role being undertaken.

Further, the Committee proposes that provision should be made for elected members who do not decide to avail of the temporary substitute. In such cases, the Committee recommends that a mechanism is established to enable the elected member to vote remotely.

The Department drafted the Bill in consultation with local authority organisations, namely the Association of Irish Local Government (AILG), and the Local Authority Members Association (LAMA), in addition to women's organisations, including Women for Election, the National Women's Council of Ireland, and See Her Elected, thereby ensuring the legislation is thorough and inclusive.

The Committee asks that the Department engages with the Committee on any proposed regulations on this matter before they are published. In addition, the

Committee considers it appropriate that the Minister engage with AILG, among other bodies representing local authority elected members such as LAMA, as it drafts regulations relating to this Bill.

## RECOMMENDATIONS

1. The Committee recommends that where an elected member avails of administrative support, the salary for such support should be commensurate with the experience of the candidate and the responsibility of the role and should meet the requirements of a living wage.
2. The Committee recommends that where an elected member decides not to avail of a temporary substitute, a mechanism is put in place to enable the elected member to vote remotely.
3. The Committee recommends that the Department engage with the Committee, AILG, and LAMA, in making and reviewing proposed regulations.

## HEAD 6: AMENDMENTS TO THE MATERNITY PROTECTION ACT 1994 (AS AMENDED) TO PROVIDE FOR MATERNITY PROTECTIONS FOR LOCAL AUTHORITY ELECTED MEMBERS

The Committee notes that under Head 6, the local authority elected member will be considered as an employee with a fixed contract of employment for the purposes of the Maternity Protection Act 1994 (as amended). The Head provides that the period of maternity leave ends when the term of office ends. The Committee asks that for full completeness, this definition be extended to include circumstances where a member resigns their seat.

In addition, the Committee is of the opinion that consideration should be given to the status of the maternity leave of a local authority elected member in circumstances

where the member's maternity leave coincides with a local election period where they are re-elected.

The Committee notes that the elected member will be considered an employee on a fixed contract of employment for the purposes of the Maternity Protection Act 1994 (as amended) and that the elected member who wishes to take maternity leave will enjoy a primary legislative right to this entitlement. Nevertheless, the Committee is of the opinion that as this is not a straightforward employee-employer relationship, it is appropriate that safeguards, such as review mechanisms, are put in place to ensure its implementation, thus ensuring the desired outcome of the legislation, namely a cultural change in our local authorities.

Finally, beyond legislation and regulations, the Committee considers the provision of guidelines useful in supporting elected members who return to work following a period of maternity leave. Following the implementation of this legislation, the Committee suggests that best practice guidance regarding the provision of facilities and supports at council buildings should be issued to the County and City Management Association (CCMA) for briefing to Chief Executives following the Councillor's return to work after taking a period of maternity leave.

## RECOMMENDATIONS

1. The Committee recommends that the Department extend the definition of the end of a term of office of a local authority elected member to include circumstances where the elected member resigns their seat.
2. The Committee recommends that the Department consider the status of a local authority elected member's maternity leave entitlement where such leave coincides with a local election period, and the member is re-elected to their local authority.
3. The Committee recommends that the Department make provision for safeguards such as a review mechanism of the implementation of this legislation to ensure cultural change in local authorities.

4. The Committee recommends that the Department issue best practice guidance to local authorities regarding the provision of facilities and supports for elected members returning to work from a period of maternity leave. Such guidance should be issued to the CCMA for briefing to Chief Executives.

## **HEAD 8: APPOINTMENT BY CO-OPTION OF AN INDIVIDUAL AS A TEMPORARY SUBSTITUTE FOR AN ELECTED MEMBER**

The Committee notes that Head 8 states that the preferred choice of the person causing the temporary absence will be taken into account when filling their absence with a temporary substitute. As the legislation sets forth that the nomination will be made by the elected member's political party, where relevant, the Committee observes that the elected member does not have full control over the decision of their substitute. The Committee notes that this may create stressful situations for the elected member while on maternity or illness leave, should their temporary substitute be a direct competitor, for example.

The Committee asks all political parties to respect the preference of the elected member causing the temporary absence. Further, the Committee suggests that the Department consider measures which give the elected member greater control over the decision of their substitute. For example, the ratification of a substitute not being subject to a vote of the full Council would give the elected member full control over the decision of their substitute.

### **RECOMMENDATIONS**

1. The Committee recommends that the Department consider measures which give the elected member who is creating the temporary absence greater control over the decision-making process in selecting their temporary substitute. This may include the ratification of a substitute not being subject to a vote of the full Council.

## RECOMMENDATIONS

### RECOMMENDATIONS

1. The Committee recommends that where an elected member avails of administrative support, the salary for such support should be commensurate with the experience of the candidate and the responsibility of the role and should meet the requirements of a living wage.
2. The Committee recommends that where an elected member decides not to avail of a temporary substitute, a mechanism is put in place to enable the elected member to vote remotely.
3. The Committee recommends that the Department engage with the Committee, AILG, and LAMA, in making and reviewing proposed regulations.
4. The Committee recommends that the Department extend the definition of the end of a term of office of a local authority elected member to include circumstances where the elected member resigns their seat.
5. The Committee recommends that the Department consider the status of a local authority elected member's maternity leave entitlement where such leave coincides with a local election period, and the member is re-elected to their local authority.
6. The Committee recommends that the Department make provision for safeguards such as a review mechanism of the implementation of this legislation to guarantee a cultural change in local authorities.
7. The Committee recommends that the Department issue best practice guidance to local authorities regarding the provision of facilities and supports for elected members returning to work from a period of maternity leave. Such guidance should be issued to the CCMA for briefing to Chief Executives.

8. The Committee recommends that the Department consider measures which give the elected member who is creating the temporary absence greater control over the decision-making process in selecting their temporary substitute. This may include the ratification of a substitute not being subject to a vote of the full Council.

## APPENDIX 1: ORDERS OF REFERENCE

### a. FUNCTIONS OF THE COMMITTEE – DERIVED FROM STANDING ORDERS [DSO 95; SSO 71]

(1) The Adil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

- (a) legislation, policy, governance, expenditure and administration of—
  - (i) a Government Department, and
  - (ii) State bodies within the responsibility of such Department, and
- (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

- (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
- (b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

- (a) for the accountability of the relevant Minister or Minister of State, and
- (b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

- (a) consents to such consideration, or
- (b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

- (a) the Committee Stage of a Bill,
- (b) Estimates for Public Services, or
- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
- (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and



- (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
- (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

#### **b. SCOPE AND CONTEXT OF ACTIVITIES OF COMMITTEES (AS DERIVED FROM STANDING ORDERS) [DSO 94; SSO 70]**

1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(2) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/Seanad;

(3) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under DSO 125(1) and SSO 108(1); and

(4) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

- (a) a member of the Government or a Minister of State, or
- (b) the principal office-holder of a State body within the responsibility of a Government Department or
- (c) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

### **c. POWERS OF COMMITTEES (AS DERIVED FROM STANDING ORDERS) [DSO 96; SSO 72]**

Unless the Dáil/Seanad shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

- (a) minutes of such evidence as was heard in public, and
- (b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil/Seanad;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

- (i) submit a memorandum to the Joint Committee explaining the statutory instrument, or
- (ii) attend a meeting of the Joint Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Joint Committee, which may report thereon to the Dáil, and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Joint Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Joint Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Joint Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Joint Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Joint Committee in relation to the consideration of a report under DSO 197/SSO 168;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,

shall attend meetings of the Joint Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil/Seanad; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under DSO 120(4)(a)/SSO 107(4)(a).

## APPENDIX 2: COMMITTEE MEMBERSHIP

### DEPUTIES



Francis Noel Duffy  
*Green Party*



Joe Flaherty  
*Fianna Fáil*



Thomas Gould  
*Sinn Féin*



Emer Higgins  
*Fine Gael*



Steven Matthews  
Cathaoirleach  
*Green Party*



Paul McAuliffe  
Leas-Cathaoirleach  
*Fianna Fáil*



Cian O'Callaghan  
*Social Democrats*



Richard O'Donoghue  
*Independent*



Eoin Ó Broin  
*Sinn Féin*

## SENATORS



Victor Boyhan  
*Independent*



John Cummins  
*Fine Gael*



Mary Fitzpatrick  
*Fianna Fáil*



Rebecca Moynihan  
*Labour*



Mary Seery Kearney  
*Fine Gael*

### Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 30 July 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 18 September 2020.
3. The Dáil Committee of Selection nominated Deputy Joe Flaherty to replace Deputy Jennifer Murnane O'Connor on 2 February 2021.

## APPENDIX 3: LINK TO MEETING TRANSCRIPT

- [Thursday 22 September 2022](#)

## APPENDIX 4: LINKS TO OPENING STATEMENTS & SUBMISSIONS

### OPENING STATEMENTS

[Mr Peter Burke T.D., Minister of State for Local Government and Planning, Department of Housing, Local Government & Heritage](#)

### SUBMISSIONS

[Association of Irish Local Government](#)

[Local Authority Members Association](#)

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